

The SNaP logo is a white speech bubble shape with a tail pointing towards the bottom left. Inside the bubble, the letters "SNaP" are written in a bold, white, sans-serif font.

SNaP

**Specific Needs and
Protection**

**Domestic Violence
Specific Needs and Protection
National Report | Portugal**

Heloísa Perista (coord.) | Paula Carrilho | Ana Ferreira
With the collaboration of Alexandra Silva

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CESIS – Centre for Studies for Social Intervention

Av. 5 de Outubro, 12, 4º Esq.

1050-056 Lisbon

Portugal

Contact: +351 213 845 560

Email: cesis.geral@cesis.org

Web: www.cesis.org



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1. Introduction

Social science studies show that individuals suffering from physical or cognitive disabilities or mental illnesses are significantly more often victims of physical, psychological and sexual violence than their peers.¹ This begs the question whether and how measures of protection against violence in the close social environment are working for this group. *SNaP – Specific Needs and Protection* started out with the hypothesis that police and court measures of protection in cases of violence in close social relationships are less often imposed when incidents involve women who need support in their daily lives or are in need of care (e.g. women with a physical or cognitive disability), or do not (effectively) protect them from (further) violence. Two previous Daphne III projects² showed that in particular the protection of older, dependent women or those in need of nursing care poses particular challenges to the police and/ or the legal system. Protective measures aim to keep the endangerer from the victim, only permitting limited, if any,, contact between the perpetrator and the victim. Such protective measures, however, presuppose that the person to be protected is not in need of daily assistance from the perpetrator.

¹ Hughes, Karen et al. (2012). *Prevalence and risk of violence against adults with disabilities: a systematic review and meta-analysis of observational studies*. http://www.who.int/disabilities/publications/violence_children_lancet.pdf.

FRA - EU Fundamental Rights Agency (2014). *Violence against women: an EU-wide survey. Main results*. Luxemburg, http://fra.europa.eu/sites/default/files/fra-2014-vaw-survey-main-results-apr14_en.pdf.

Schachner, Anna et al. (2014). *Zugang von Frauen mit Behinderungen zu Opferschutz- und Unterstützungseinrichtungen bei Gewalterfahrungen. Nationaler Empirischer Bericht Österreich*. Wien. http://women-disabilities-violence.humanrights.at/sites/default/files/reports/ws_3_empirischer_bericht_oesterreich.pdf

Schrötte, Monika; Hornberg, Claudia (2013). *Lebenssituation und Belastungen von Frauen mit Behinderungen und Beeinträchtigungen in Deutschland*. Berlin.

https://www.bmbf.gv.at/frauen/gewalt/2013.06.Langfassung_Quantitative_Studie_Lebenssituation_u.pdf?4wnc9f.

Schrötte, Monika; Hornberg, Claudia (2014). *Gewalterfahrungen von in Einrichtungen lebenden Frauen mit Behinderungen – Ausmaß, Risikofaktoren, Prävention. Endbericht, hrsg. vom Bundesministerium für Familie, Senioren, Frauen und Jugend*. Berlin. https://www.bmb.gv.at/frauen/gewalt/2014.Gewalterfahrungen_von_in_Einrichtungen_lebenden_Frauen.pdf?5h8111.

² "Intimate Partner Violence against Older Women" (www.ipvow.org) and "Mind the Gap". (<http://www.ipvow.org/en/research-reports/mind-the-gap>)

Project Design

Scientific studies from different countries³ indicate that the current practice of protective orders is problematic because the support needs of victims with so-called specific needs are not considered or not adequately taken into account. With that in mind, the research teams in the partner countries⁴ examined national protective measures for their suitability and efficiency for different victim groups with specific needs. On the country level, *SNaP* therefore focused on the following issues:

- Which victim groups can be identified by their “specific needs”?
- Are current legal provisions fully at their disposal, or are there limitations?
- What are barriers for an ideal protection of victims?
- What is the scope for improvement, what are alternatives to existing measures of protection against violence?

The study therefore focused on the lived practice, the essential issue was whether and how those involved are able to identify specific needs and how they react to them. Another point we needed to clarify were the factors that influence decisions about imposing protective measures in cases with victims with specific needs. We analysed from the victim’s perspective what prevented them from having recourse to measures of victim protection, and which problems confronted them when they turned to the police or other agencies.

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In order to facilitate the understanding of the results, we will first outline the respective legal provisions for the protection against violence in the close social environment on the national level and present some statistics on domestic violence and protective measures (see Chapter 2).

On the basis of the research results, we also drafted an international policy paper to increase the awareness of politics, government agencies, lobbying organisations and victim protection facilities for specific needs and the consequences of ignoring them.

³ Ackerman, Jeffrey; Love, Tony P. (2014). Ethnic Group Differences in Police Notification about Intimate Partner Violence. *Violence Against Women*, Vol. 20(2), 162-185. <http://vaw.sagepub.com/content/20/2/162>

Hague, Gill, et al. (2007). *Making the links. Disabled women and domestic violence. Final report.* https://1q7dqy2unor827bqjls0c4rn-wpengine.netdna-ssl.com/wp-content/uploads/2015/12/Disabled-women-Making_the_Links_-_full_length_report_large_print11.pdf

Schröttle, Monika; Hornberg, Claudia (2013). *Lebenssituation und Belastungen von Frauen mit Behinderungen und Beeinträchtigungen in Deutschland*. Berlin. https://www.bmbf.gv.at/frauen/gewalt/2013.06.Langfassung_Quantitative_Studie_Lebenssituation_u.pdf?4wnc9f.

⁴ Besides the project leader, the Institute of Conflict Research (IKF, Austria), the participants include ZOOM - Gesellschaft für prospektive Entwicklungen e.V. and the German Police University (DHPol) (both Germany), CESIS – Centre for Studies for Social Intervention (Portugal), Safe Ireland (Ireland) and the University of Bialystok (Poland).

Methodological Approach

As described above, our study aimed to identify victim groups with specific needs, to examine the implementation and effectiveness of protective measures for these groups, and to develop recommendations to improve their protection. To reach these goals, we chose a qualitative research approach⁵ combining a number of methods and perspectives:

- **Collection of data on legal provisions and regulations and secondary analytic evaluation of existing data on victim protection measures.** This step provided an overview of the respective national regulations and their implementation as far as national statistics were available, but also gave us an insight into the problems confronting victims of violence with specific needs.
- **Collection of data on legal provisions for the protection against violence within the immediate social environment in five more countries.** In this literature analysis, we collected data on relevant legal provisions, taking into account evaluations and experiences in Great Britain, Spain, New Zealand and the Netherlands as well as the U.S.A. The analysis concentrated on potentially valuable approaches to victim protection for vulnerable groups that might be adopted, on implementing and monitoring measures and on the protection against violence. Insights from these studies were primarily used in the cross-country project report.
- **Interviews with experts and practitioners from the fields of police work, the legal system and NGOs.** In the exploratory phase of the project, each partner carried out expert interviews with national and international key experts (4 in A, PT, PL, IE, 8 in G), in order to explore key restraints relating to legal provisions and their implementation and to identify specific needs groups and target groups for interviews. Furthermore, in each partner country, 29 experts and practitioners were interviewed; in Germany, because of the size of the country, 44. The national project teams were free to choose between individual interviews or focus group discussions. The interviews focussed on three areas, namely (i) identifying groups with specific needs; (ii) the most important current barriers to the protection against violence in legal provisions and their implementation as well as room for improvement; and (iii) the collection of agency-specific data and case histories. In addition, two expert interviews were conducted in each country to sketch and draft a national policy paper.

⁵ A quantitative empirical survey leading to sound data was not feasible within the financial framework of the Daphne III programme. On the one hand, such a survey would have required a very large sample in order to determine which victims are particularly vulnerable with regard to barriers in accessing victim protection measures. On the other hand, such a project would only have provided limited information, because it is difficult for research to reach the most vulnerable groups, for instance victims with a serious cognitive disability.

- **Analysis of files and qualitative case histories.** At least 50 files were analysed in each country; the approach regarding the case providers (e.g. police, public prosecution, courts, NGOs) was left open on the national level, and therefore varied considerably. Privacy rules sometimes complicated access to and tracking of cases. As “special needs” of victims, e.g. disabilities or residence status, are not used as classification markers in the institutions that provided the cases, no computer-aided search for relevant files was possible. In Portugal, with the support of different professionals, the case files were chosen adopting a methodological approach based on different although complementary data-gathering strategies: collecting data about criminal proceedings from the Public Prosecutor’s offices and some courts; and interviewing victims and the professionals who follow their respective cases. We would like to emphasize from the start – regardless of the source used for file analysis – that because of the random nature of file selection this cannot be called a representative study in any of the countries. Nevertheless, we can infer case types that provide information on the implementation of victim protection measures, their effectiveness, and awareness for and attention to specific needs within the police and the judiciary.

For file analysis, we developed a project-wide grid which was only adapted with regard to national specifics. We collected information on the socio-demographic data of victims and endangers as well as information on the living conditions at the time of the violence, on the history of violence and the experienced forms of violence. In addition, we surveyed the victim’s attitude towards seeking help – who did the victims turn to, what support did they receive, and what was their attitude towards the involvement of police or public prosecution? Another focus was the approach of police and judiciary: Were protective measures taken, and if so, which ones? What were the problems that arose in the course of police/ judicial procedures? What was the impact of protection orders? The analysis grid was used to ensure the comparability of basic data while enabling us to enter into the specifics of each case. We did not attempt a statistical evaluation beyond some essential case features for the presentation of the overall sample, as this would not lead to reliable data due to the random selection of cases.

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- **Expert meetings on the national as well as EU level.** The aim of the national expert meeting was to reflect upon the main findings together; but also to collect inputs for the recommendations to be included in the policy paper. In Portugal, 11 experts accepted our invitation, including representatives of the security forces, victim support agencies, justice professionals, Directorate-General for Justice Policy – Ministry of Justice, SCML – the Lisbon’s major charity, and FENACERCI – an umbrella organisation defending the interests and rights of people with intellectual disability and their families.

Finally, we held a final conference in Berlin in September 2016, to integrate the experiences and perspectives of other European experts and to benefit from their knowledge for the development of recommendations for future activities on the national levels, but also on the EU level.

Terminologies

In the study, we focused on female victims of violence in intimate relationships who were over 18 years of age at the time of the abuse. We did not focus exclusively on intimate partner violence, but also took into account violence from – male and female – relatives, acquaintances, carers and fellow occupants in institutions.

As “groups with specific needs”, we initially understood the “traditional” fields of disability – physical, cognitive and mental handicaps. Discussion within the project teams, and not least the inspiration from interviewed experts in all five countries, finally resulted in an expanded definition of “specific needs,” which not only allowed for person-centred characteristics, but was based on a more inclusive understanding of vulnerability and included structural, cultural and perpetrator-specific factors (cf. further discussion in Chapter 3).

A research project on “special needs⁶ and protection orders” requires some explanation regarding the meaning of these headline concepts. While “protection order” is more or less a technical term with its meaning depending on the legal and socio-political framework, the meaning of “specific needs” is less straightforward.

In literature, “specific needs” are frequently mentioned with regard to victims of specific types of crime such as intimate partner violence, sexual assault, child abuse, or trafficking in human beings. On the other hand, victim groups such as children, older adults, persons with disabilities, or ethnic minorities are characterized as having “specific needs” (see for example Berson, 2010; Franklin et al., 2015; Jackson et al., 2015; Twyman et al., 2010)⁷. While the term „specific“ is very much open to interpretation, it can be considered as an antonym to „standard“. Thus, it indicates that these types of crime are linked to specific (non-standard) victim needs or that these groups of victims have specific needs distinguishing them from other groups. In both cases, the term „needs“ primarily refers to post-victimization processes such as formal and informal victim support and case handling by the police and the judiciary (and not, for example, to pre-victimization needs linked to specific risks of becoming a victim).

In the context of the project, “specific needs” should not be considered as a stable feature of victims or victim groups. Rather, it refers to the interaction of person and situation. This is in line with an interactionist understanding of human behaviour (see e.g. Cantor/ Kihlstrom, 1987)⁸ or

⁶ The project proposal was referring to “special needs”; in the course of the project, we decided to replace “special” by “specific”, as disabilities result in specific needs, but not necessarily exceptional ones.

⁷ Twyman, Kimberly A. et al. (2010). Bullying and ostracism experiences in children with special health care needs. *Journal of Developmental and Behavioral Pediatrics*, 31(1), 1-8.

Jackson, Alison M. et al. (2015). Aspects of abuse: Recognizing and responding to child maltreatment. *Current Problems in Pediatric and Adolescent Health Care*, 45(3), 58-70.

Franklin, Anita, et al. (2015). *Unprotected, overprotected: meeting the needs of young people with learning disabilities who experience, or are at risk of, sexual exploitation*. Ilford, UK: Barnardo’s.

Berson, Sarah B. (2010). Prosecuting elder abuse cases. *NIJ Journal*, Issue No. 265, 8-9.

⁸ Cantor, N. and Kihlstrom, J.F (1987) *Personality and Social intelligence*. Englewood Cliffs, NJ: Prentice-Hall.

with a concept of "persons in context" (Shoda et al., 2007)⁹, the importance of which has been linked to societal tendencies of ever growing interdependencies (Hermans/ Dimaggio, 2007)¹⁰.

Specific needs arise and exist in given situations, they are not "permanently attached" to a woman via her ethnicity, disability status or other characteristics. In the field of violence in close interpersonal relationships, the project focusses upon frictions and mismatches between victimization experiences in specific (although possibly repeating) situations, individuals involved in and affected by these experiences, and measures taken to handle incidents and to prevent their reoccurrence.

The situations the project looks at are those where the use of protection orders is an option. The main research perspective is characterized by the following questions:

- Where do tensions, frictions, or problems arise between the application of a standard protective measure and the situation of a victim of domestic violence (DV)?
- How do institutions handle these difficulties?
- How can problems be solved or at least diminished?

Problems and frictions can arise with regard to the (anticipated) consequences of an application of barring orders. This refers to such aspects as not being able to live independently once the perpetrator has been banned, losing one's permanent residence permit, being ostracized by one's significant others, or endangering custody. Since a victim's willingness or readiness to initiate or accept measures taken in a case of violence will at least partly be determined by her anticipation of effects and side-effects, those consequences need not to be "real" or "certain" in order to have an impact on the way in which cases of interpersonal violence are handled.

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Problems can also arise with regard to the availability of measures. This may be of limited importance with regard to emergency barring orders issued by the police and is more relevant for measures where a woman affected by DV has to take an active part in getting the measure activated. Availability issues may for example be related to lacking information, being illiterate, not speaking the respective country's official language.

Such critical person – situation interactions may be more prevalent or may have a higher probability among persons with certain characteristics. But this link is not a categorical one. A female DV victim may have a severe disability and still be unaffected by worries about being able to manage her household when the perpetrator is away (because there are good technical solutions or a well-functioning social network). A woman from an ethnic community where very hierarchical

⁹ Shoda, Yuichi; Cervone, Daniel; Downey, Geraldine (eds.) (2007). *Persons in context: Building a science of the individual*. New York: Guilford Press.

¹⁰ Hermans, Hubert J.M.; Dimaggio, Giancarlo (2007). Self, identify, and globalization in times of uncertainty: A dialogical analysis. *Review of General Psychology*, No. 11, 31-61.

conceptions of gender roles are widespread may still have confidence in the loyalty of her significant others if she actively supports banning the perpetrator from her home.

What has been said about “specific needs” also applies to a (related) notion of “victim vulnerability”. The term vulnerability has its origin in the Latin word for wound, *vulnus*. In a very broad sense, vulnerability can be understood as the capacity to be hurt or damaged, or as a person’s risk of encountering a bad outcome (cf. Aday, 2001; Spiers, 2000)¹¹. A model presented by Turner et al. (2003)¹² differentiates between a system’s exposure to hazards or risks, its sensitivity, and its resilience, hinging upon its capacities to adjust and cope. In the context of the present project, victim vulnerability – again focussing upon post-victimization issues – refers to a person’s odds of encountering negative case outcomes. Again, it is not some stable and generalized personal feature of “vulnerability” that is important for the project. The project looks at a kind of “situational victim vulnerability” in the sense of a lack or at least diminished capacity of using protection orders to enhance one’s safety. This situational vulnerability can be assumed to be more prevalent among certain groups of people than among others but still it is an interactionist concept linking the person in the post-victimization period, the situation and the context within which she lives, and the measures at hand and the organizations being able to apply them.

Structure of the Report

Chapter 2, “Legal Provision on Protection and Application of Measures” starts with an overview of the development of legal provision on protection against violence in Portugal and its most important measures, which are then discussed in detail. This also contains the available information on implementation and data.

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In Chapter 3, “Identification of Vulnerable Groups and the Application of Protective Measures – The Perspective of Practitioners and Experts”, we first present typological dimensions that (may) lead to (increased) vulnerability or specific needs. The chapter centres on the perspectives of practitioners and experts regarding the awareness for and identification of specific needs of victims of violence as well as assessments on the effectiveness of protection orders for the groups identified, possible complementary measures and suggestions for improvement of the protection of victims with specific needs.

Results from Case Analysis are presented in Chapter 4, “Victims with Specific Needs and Protective Measures”. Following the description of file access and an overview of the cases, we proceed to analyse the files, focusing mainly on the circumstances creating specific needs, the efficiency of the

¹¹ Aday, Lue A. (2001). *At risk in America* (2nd ed.). San Francisco, Cal.: Jossey-Bass.

Spiers, Judith (2000). New perspectives on vulnerability using emic and etic approaches. *Journal of Advanced Nursing*, 31(3), 715-721.

¹² Turner, Billie L. et al. (2003). A framework for vulnerability analysis in sustainability science. *Proceedings of the National Academy of Sciences of the United States of America*, 100 (14), 8074-8079.

intervention(s) and the resources available to the victim. For Portugal, we have identified three clusters on the basis of the analysed cases, each of which is illustrated by one or two examples.

In the final Chapter “Summary and Conclusions”, a synthesis of the main findings is presented.

2. Legal Provisions on Protection and Application of Measures

Overview on National Policies and Legal Framework on Domestic Violence in Portugal

In Portugal, domestic violence was recognised as a social problem only in the 1980s, with the ratification of the Convention to Eliminate All Forms of Discrimination against Women in 1980 (which entered into force on September 1981).

In the following decade, in line with several international recommendations, the first pieces of legislation specifically geared to the protection of victims of domestic violence begun to emerge, thus setting up the first public policies in this field.

Since 1999, a total of five National Actions Plans (NAPs) have been approved and implemented in Portugal.¹³ The NAPs are guiding instruments for the development of policies aiming at preventing and intervening in the field of domestic violence and their conception, implementation and monitoring is under the responsibility of the Commission for Citizenship and Gender Equality.

The V NAP - National Plan to Prevent and Combat Domestic and Gender-based Violence (2014-2017).¹⁴

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This NAP incorporates an explicit gender-based perspective into the overall policies on domestic violence, by “expanding its implementation scope, until then limited to domestic violence, to other forms of gender-based violence”, namely female genital mutilation and sexual assault. This perspective is aligned with the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), ratified by Portugal in February 2013.

The V NAP focuses on five strategic areas (in a total of 55 measures), among which the protection of victims and promotion of their social integration. This is a Plan that, as stated in its preamble,

¹³ I National Plan against Domestic Violence (1999-2002), approved by the Resolution of Council of Ministers 55/99 of 15 June. Available at: <http://app.parlamento.pt/violenciadomestica/conteudo/pdfs/legislacao/rcm551999.pdf>

II National Plan against Domestic Violence (2003-2006), approved by the Resolution of Council of Ministers 88/03 of 7 July. Available at: <http://app.parlamento.pt/violenciadomestica/conteudo/pdfs/legislacao/rcm882003.pdf>

III National Plan against Domestic Violence (2007-2010), approved by the Resolution of Council of Ministers 83/07 of 22 June. Available at: http://www.cig.gov.pt/wp-content/uploads/2013/12/III_National_Plan_Against_Domestic_Violence.pdf

IV National Plan against Domestic Violence (2011-2013), approved by the Resolution of Council of Ministers 100/2010 of 17 December. Available at: http://www.cig.gov.pt/wp-content/uploads/2013/12/IV_PNVD_2011_2013.pdf

¹⁴ V National Plan to Prevent and Combat Domestic Violence and Gender-based Violence (2014-2017), approved by Resolution of the Council of Ministers 102/2013 of 12 December. Available at: https://www.cig.gov.pt/wp-content/uploads/2014/06/CIG-VPNPCVDG_2014-2017_ENG.pdf

“aims to delineate strategies for the protection of victims, (...) and the strengthening of the support provided to the existing national network of support centres for victims”.

An analysis of the measures proposed by the Plan shows some potential for the development of initiatives directly linked with the objectives of SNaP, namely:

- Measure 28: ‘To ensure the existence of solutions at the district level to intervene with particularly vulnerable victims, namely older people and people with disabilities’.
- Measure 42: ‘To extend training programmes for professionals who intervene directly or indirectly in the area of domestic and gender-based violence’, through the:
 - Development of training benchmarks and support handbook for the intervention with particularly vulnerable victims, namely older people and people with disabilities;
 - Capacity building of professionals for intervention with particularly vulnerable victims, namely older people and people with disabilities.

In addition to the National Plans established in the Resolutions of Council of Ministers, legal provisions have supported public policies on domestic violence.

Domestic Violence and Protection

The 1982 Penal Code first introduced the crime of *maltreatment or overload of minors or people in subordination or between spouses* as a crime of public accusation nature. This was the first approach to domestic violence, a type of crime that has evolved substantially along the years.¹⁵

The legal framework to punish this criminal offence soon proved inadequate to the protection of its victims. The 1987 Code of Criminal Procedure (hereinafter, CPP), in its original version, entailed coercive measures that, however, could not appropriately respond to the characteristics of this type of crime as, then, prohibition of contacts or prohibition of staying in a certain place or leaving a certain place were only applicable to crimes with a maximum penalty higher than that of the crime of *maltreatment*, at the time.

In 1991, Law 61/91 of 13 August introduced a set of measures aiming at the protection of women victims of violence and established, for the first time, the possibility of removing the perpetrator from the family home that could cumulate with a guarantee, to help the victim's financial autonomy. This law reinforced protection mechanisms, including the creation of shelters and victim support services, among other measures, later regulated in 2000.

This law, however, raised many doubts among practitioners on its applicability¹⁶, and it was not until the penal reform of 2007 that a coercive measure of prohibition and imposition of certain behaviours was introduced into the CPP.

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A prohibition of contact with the victim, including barring from the household or workplace of the victim had already been introduced in the Penal Code, for the crime of domestic violence, by Law 7/2000 of 27 May, as a supplementary penalty.

In the 2007 amendment of the Penal Code¹⁷, preventive imprisonment was not applicable to the crime of domestic violence and detention was made dependent on founded reasoning to consider that the suspect would not willingly present himself to the authorities.

The Domestic Violence Law (Law 112/2009 of 16 September) established a comprehensive legal framework applicable to the prevention, protection, and assistance to victims of domestic violence. This specific legislation regarding domestic violence is focused on measures for protection of victims from further abuse, and does not address criminalisation or punishment, but introduces tools and procedures aimed at the safety of victims; it seeks to promote a more appropriate holistic

¹⁵ For the purposes of this report, we will not get into detail on the evolution of legislation on the crime of domestic violence; instead we will focus on aspects relevant to protection and to vulnerable victims.

¹⁶ For more information on this topic see Gomes, et al (2014). *Estudo Avaliativo das Decisões Judiciais em Matéria de Violência Doméstica*. Almedina, pp. 51-52.

¹⁷ Introduced by Law 59/2007, of 4 September.

approach to the phenomena of domestic violence, also by unifying previous legislation (for instance, Law 107/99 of 3 August).

Its article 2, paragraph b) provided for a definition of particularly vulnerable victim of domestic violence as it is to be considered under this Law: a victim whose vulnerability arises namely from her/his young or old age, her/his health condition, or from the fact that the type, degree or duration of the abuse resulted in serious injuries for her/his psychological well-being or conditions of social integration. And article 20, paragraph 3 establishes a specific provision on protection for particularly vulnerable victims when testifying.

The Act created a special regime for detention and a special coercive measures regime, of an urgent nature. Furthermore, it introduced electronic surveillance as a means of monitoring enforcement of prohibition of contacts, which could be determined by the judge. An amendment to the Act in 2013 (Law 19/2013 of 21 February) made it obligatory to determine electronic surveillance monitoring in cases where it is “indispensable to the victims’ protection”.

In 2010, an amendment to the CPP (approved by Law 26/2010 of 30 of August) extended the concept of violent criminality to include domestic violence. Preventive imprisonment is since then possible in domestic violence cases.

As far as the remote assistance and alert system (protection measure of teleassistance - *teleassistência*) goes, Legislative Administrative Rule 220-A/2010 of 16 April stipulated the conditions for its initial use to victims and the electronic surveillance of perpetrators (tested only in the districts of Oporto and Coimbra). In 2011, Order 63/2011 of 3 February extended the implementation of those measures to the whole country.

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Law 19/2013 of 21 February brought the mandatory nature of using electronic monitoring for the supplementary penalty of prohibition of contacts, which until then was possible but not an obligation. The Law also amended the Domestic Violence Law by introducing the mandatory electronic monitoring for all measures of prohibiting contacts included in its article 31, as well as those established in article 52 and 152 of the Penal Code, if deemed necessary for the victim.

However, the most important aspect of this amendment of the Penal Code is probably the definition of “person particularly vulnerable”. The characteristics of vulnerability listed are no longer an exhaustive enumeration but instead a merely exemplifying one.

A recent amendment to the Domestic Violence Law, introduced by Law 129/2015 of 3 September brought many improvements to the Domestic Violence Law, as a consequence of the changes imposed by the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention).¹⁸

¹⁸ More detail on the changes brought on by this Law will be presented further on under chapter Legal Provisions in detail.

Law 130/2015 of 4 September amended the Criminal Procedural Code and introduced in a separate diploma the Statute of Victim. This law encompasses the transposition into the Portuguese system of the Directive 2012/29/EU establishing minimum standards on the rights, support and protection to victims of crime, and includes amendments to the CPP, including the definition of victim and that of a particularly vulnerable victim. It is of particular relevance to highlight that this newly adopted law was the first to introduce the concept of victim, with a specific statute, into criminal procedural law.

This Law establishes rights to all victims of crime and does not interfere with specific legislation for certain types of crime, as is the case of domestic violence victims. However, it impacts on victims of domestic violence in several aspects, among which are a more robust right to information, with more proactive obligations to the authorities, communication guarantees throughout the proceedings, as well as measures to prevent secondary victimisation.

Special measures of protection are foreseen for particularly vulnerable victims, some already existent for victims of domestic violence and now enlarged to other groups of victims and some are brand new, such as, for instance, in case of need, and if the victim so requests, that all declarations shall be taken by the same person.

Protection Measures and Legal Provisions in Detail

During the process of transposition into the national legal framework of the Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European Protection Order¹⁹, the proposal of Law states in its explanatory memorandum²⁰:

The current proposal of law aims at transposing the Directive in reference, entailing the emission mechanisms by the Portuguese State of an European protection order, as a consequence of a main penalty or supplementary penalty that, in some way, aims at protecting the victim from the convicted person, or following the issuing of a coercive measure that intends to protect the integrity of the victim, or succeeding the issuing of an injunction or rule of conduct as regards a temporary stay of court proceedings during investigation stage, with the same purpose of protecting the victim.

Considering that the Directive does not implicate any changes to the national judicial systems, the legislator in the approved diploma considered such measures for the purposes brought forward by the Directive. In fact, according to Van der Aa *et al.* (2015), States have been either introducing new protection measures in their legal systems or exploring ways of reinterpreting pre-existing measures²¹.

It is however noteworthy those coercive measures do not aim at the protection of the victim in a first line, as they are measures of procedural safeguards and only instrumentally aimed at the protection of the interests of the victim²². But the protection of victims is considered when pondering the adequacy of coercive measures to the specific case. Gomes *et al.* (2014) indicates that, from the sample analysed in the study, there seems to be a growing trend to issue coercive measures with the safeguarding the victim's safety in sight.

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In the opinion of a high court judge, also member of the Portuguese Association of Women Jurists, interviewed for the purposes of this study, there are no real protection orders in Portugal, in any stages of the proceedings, because the guiding principles of the Portuguese criminal and criminal procedural system aim at ceasing the criminal activity and not the protection of the victim as a first line principle, which is deemed as problematic for the protection of victims.

For the purposes of this report we shall consider and focus mainly on such measures considered in Law 71/2015.

¹⁹ Transposed into the national system by Law 71/2015 of 20 July.

²⁰ More information regarding the discussion surrounding the transposition process of the above mentioned Directive available at: <https://www.parlamento.pt/ActividadeParlamentar/Paginas/DetailheIniciativa.aspx?BID=39275>

²¹ Van der Aa, S. et al, *Mapping the legislation and assessing the impact of Protection Orders in the European Member States*, 2015.

²² On that regard, the High Council of the Public Prosecutor referred to this aspect in its opinion on the proposal of Law at reference. Opinion available at: <https://www.parlamento.pt/ActividadeParlamentar/Paginas/DetailheIniciativa.aspx?BID=39275>

It is noteworthy that the Committee on the Elimination of Discrimination against Women (CEDAW) recently²³ urged Portugal to apply protection orders against abusive partners as it was considered that there is a limited use of protection orders in the country. Furthermore, it urged the country to *establish a mechanism to ensure effective cooperation and coordination between family and criminal courts in order to ensure women have immediate recourse to protection orders and injunctions against abusive partners, without the need to engage in criminal proceedings.*

In fact, all these mechanisms above mentioned are of a criminal nature and depend upon reporting of the crime. Upon reporting the victim receives a proof document of their statute of victim of domestic violence and such rights are to be guaranteed immediately.

The inexistence of emergency barring orders has been contested, especially after the Istanbul Convention was ratified by Portugal and entered into force in our legal system.

The measures mentioned prior are regulated by the CPP²⁴ and, for the crime of domestic violence, the Penal Code²⁵ in parallel with the Domestic Violence Law (Law 112/2009 of 16 September)²⁶.

Civil Protection Orders for Victims of Domestic Violence?

In Portugal, the possibility of applying for civil measures also exists (Civil Code, article 70, paragraph 2, second part) but it is little known and therefore seldom used²⁷. These can be issued only through a special procedure of voluntary jurisdiction as a response to a violation, or threat of violation, of a personality right (Civil Procedural Code, articles 878 to 880). Since this is a voluntary jurisdiction procedure, the civil judge is not bound by strict legality principles and thus a change in circumstances can alter the decision. According to Ferreira (2005)²⁸, the major problem of this procedure is its fable enforceability. Enforceability has proven problematic, giving rise to discussion among scholars and in jurisprudence on whether there would be criminal liability for the violation of such measures or solely civil liability.

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²³ CEDAW, *Concluding observations on the combined eighth and ninth periodic reports of Portugal, 2015*. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolNo=CEDAW%2FCO%2FPRT%2FCO%2F8-9&Lang=en

²⁴ Available at: http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=199&tabela=leis

²⁵ Available at: http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=109&tabela=leis

²⁶ Available at: http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=1138&tabela=leis

²⁷ There have been cases however in which such measures were used, namely in cases of stalking by former partners (for instance, Lisbon Court of Appeal (*Tribunal da Relação de Lisboa*), Lisboa/Case 18645/10.9T2SNT.L1-2, 27 October 2010).

²⁸ Ferreira, M. (2005). *Da Intervenção do Estado na Questão da Violência Conjugal em Portugal*. Almedina, p. 160.

Coercive Measures

Coercive measures can be issued at any stage of the criminal proceedings (from pre-trial stage until *res judicata*). They can be imposed during investigation stage and further on in the proceedings, and the fact that one was issued in a pre-trial stage does not prevent issuing a new coercive measure in another procedural stage.²⁹ During investigation and preliminary judicial stages³⁰, it is a decision of the Court of Inquiry Judge, afterwards of the judge of the proceedings.

The public prosecutor has a particularly crucial role in the procedures leading up to the issuing of a coercive measure. Although these can only be issued by an (investigative) judge, the public prosecutor has the initiative. The judge can however issue a coercive measure different from that that the public prosecutor requested, even if it is a more serious measure, as long as the judge presents reasoning which is based on danger of escape or of continuity of the criminal activity and disruption of public order.

Victims cannot formally request that a coercive measure is issued, they can only suggest its promotion to the public prosecutor in charge of the case.

The criteria to issue a coercive measure meets one of these three: risk of escape of the perpetrator; danger for the gathering of evidence; danger that the criminal activity will continue or severely affect public order and tranquillity (article 204 of the CPP). The purpose is therefore not to ensure the protection of the victim, in a first line, but to contain the criminal activity and its perpetrator. An assessment of proportionality, necessity and adequacy needs to be made, thus to ensure it is “necessary and suitable to the precautionary needs and proportional to the seriousness of the crime and sanctions that will presumably follow” (article 193 of the CPP). The protection of victims is instrumental to the intent of containing the criminal activity and an aspect accounted for when pondering the adequacy of the coercive measure to issue.

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Under article 200 of the CPP, coercive measures of prohibition of certain behaviours can be issued against perpetrators of any crime that has a penal scale with the severest punishment of more than three years of imprisonment. Such is the case of the crime of domestic violence, but also, for instance, the crimes of maltreatment, rape or sexual abuse of children.

The maximum duration of coercive measures of prohibition of certain behaviours is the same determined for pre-trial custody (article 215 of the CPP, *ex vi* article 218, paragraph 2 of the Code). This means that in cases of domestic violence, for instance, it can last up to four months, if no accusation has been made; eight months, if there no decision by the instruction judge has yet been issued; one year and two months if there is no decision by a first instance court; one year and six months if there is no decision reaching *res judicata*. However, when a crime has a

²⁹ In these lines: Lisbon Court of Appeal (*Tribunal da Relação de Lisboa*), Lisboa/Case 2136/10.0PASNT-A.L1-3, 16 September 2015.

³⁰ This is an optional pre-trial stage, between the investigation stage and the trial stage. It only takes place when the victim, in his/her role of assistant in the criminal proceedings, or the defendant do not agree with the decision taken by the public prosecutor by the end of the investigation stage and request a pre-trial criminal investigation.

maximum penalty framework of more than eight years imprisonment, such as, for example, the crime of rape, the legal maximum duration is of six months, ten months, one year and six months and two years, respectively.

The violation of a coercive measure can lead to issuing a more serious coercive measure, considering the motives for the violation, implying that a new fact changes the first decision, as establishes article 203 of the CPP.

There is a special coercive measure regime for victims of domestic violence, set forth in article 31 of the Domestic Violence Law. These coercive measures obey to the rules established for coercive measures in the CPP, including regarding criteria, but they are of urgent issuing. Domestic violence cases are of an urgent procedural nature and coercive measures are to be issued within 48 hours, after the perpetrator is hold as defendant.

Article 31 of the Domestic Violence Law establishes the following types of orders:

- Barring from the residence where the crime took place or where the victim lives;
- Ordering the perpetrator not to contact, by any means, or harass the victim, including imposing that the perpetrator does not use certain means (for e.g.: telephone) or does not attend certain places (for e.g.: does not approach a victim's workplace). Prohibition of contacts can extend to people other than the victim, such as relatives of the victim;
- Not to acquire or use arms or other tools that can facilitate the commitment of crime or to give those to the authorities for a certain period of time;

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Among other additional measures established in the CPP, article 200 contains the following: upon consent, medical treatment in appropriate rehabilitation facilities for perpetrators with any substance addition that has contributed to the commitment of the criminal offence.

These coercive measures can be issued together with others determined in criminal procedural law, including pre-trial custody.

The compliance with these coercive measures can be monitored by electronic surveillance, as determined by article 35 of the Domestic Violence Law.

Article 31 explicitly determines that orders of prohibition of contacts and barring orders shall be relevant even when the victim left the house, due to crime or serious threat of crime of domestic violence.

As mentioned before, since 2007 domestic violence is a typified crime³¹ punishable by one to five years of imprisonment.

³¹ Domestic violence is defined in article 152 of the Penal Code as: "the infliction, whether repeatedly or not, of physical and psychological maltreatment, including corporal punishment, restriction of freedom and sexual offences to a partner, ex-partner, person of the same sex or of different sex, who have maintained or have a relationship analogous to that of partners, person with whom one has a child, or to a person who is vulnerable due to age, disability, illness, pregnancy or economic dependence living with the perpetrator".

The recent amendment to the Domestic Violence Law brought by Law 129/2015 of 3 September, among other relevant changes, introduced the following important aspects:

- 1) upon determining the statute of victim of domestic violence, the visitation regime has to be evaluated whenever there are children and visits by the perpetrator can be suspended or conditioned (article 14, paragraph 2);
- 2) reporting needs to be registered immediately and, when the crime is not reported directly to the public prosecution, it needs to be immediately communicated to the public prosecutor together with the first risk assessment made by the police (article 29, paragraph 3);
- 3) immediately after the reporting of a crime of domestic violence³², and regardless of any precautionary or police measures taken prior³³, the public prosecutor orders, in the fastest way, the law enforcement/police to execute all urgent procedural acts of evidence gathering within the shortest period of time possible and until a maximum of 72 hours, in order to enable the issuing of a coercive measure and protection measure (article 29-A, paragraph 1);
- 4) immediate referral to victim support upon reporting (article 29-A, paragraph 2);
- 5) decisions issuing coercive measures that restrict contacts between victim and perpetrator are to be communicated to the family court (article 37-B);
- 6) a suspended sentence shall always be subjected to compliance with conditions, namely prohibition of contacts and barring orders (article 34-B).

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Detention

Aside from detention when in *flagrante delicto* (article 256 of the CPP), there is also the possibility of detaining a perpetrator omitting in *flagrante delicto*.

This detention is made for the purposes established in article 254 of the Code of Criminal Proceedings, among which is that of presenting the defendant to a first judicial hearing, in which coercive measures can be issued, or to issue or enforce a coercive measure.

Coercive measures are issued within criminal proceedings and hence, of course, a crime has to have been committed already.

Not only judges but also public prosecutors can issue an arrest warrant. However, in the latter case the situation must entail the possibility of pre-trial custody.

³² Reporting can be made directly to the public prosecution services or to the police, which has the duty of immediately communicating to the public prosecution that a crime was reported.

³³ However, as Rodrigues (2016) highlights, these precautionary and police measures lack content other than that of procedures for evidence gathering (and apprehension of arms, we might add) established in the CPP, articles 248 to 253 of the Code. In Rodrigues, A., 'Medidas Cautelares de Polícia e Medidas de Coação', in *Combate à Violência de Género – Da Convenção de Istambul à nova legislação penal*, coord. Cunha, M., Universidade Católica do Porto, Porto, pp.211-215.

According to article 257, paragraph 1 of the CPP, an arrest warrant is issued when:

- 1) there is a reasoned belief that the perpetrator would not voluntarily present him/herself to the authorities; and
- 2) in that particular case the requirements for issuing a coercive measure are met (article 204 of the CPP) or it is indispensable for the protection of the victim.

In paragraph 2, it is established that the police can also order detention omitting in *flagrante delicto*, if certain requirements are met. Namely, pre-trial custody is admissible; and there are elements to determine reasoned fear of continuity of the criminal activity or of escape of the perpetrator; and it is not possible to await a judicial warrant due to the urgency of the case.

There is a special regime for the crime of domestic violence established in article 30 of the Domestic Violence Law. According to article 30, the police can arrest the perpetrator (detention omitting in *flagrante delicto*) not only when there is a risk of continuity of the criminal activity but also if it is indispensable for the protection of victims upon warrant by the judge or the public prosecutor (paragraph 2). The police can also order a detention omitting in *flagrante delicto* in not only the cases within article 257, paragraph 2 of the CPP, but also when any of these prior requirements are met and there is jeopardy in awaiting an arrest warrant.

A detention by the police that is considered illegal results in a disciplinary procedure, as well as it can fulfil a crime of abuse of power and a crime of kidnapping.

In the case of detention in *flagrante delicto*, and for the crime of domestic violence in particular, the perpetrator is kept in detention until he/she is presented to summary proceedings trial or first judicial hearing in order to, eventually, have a coercive measure issued against him/her (article 30, paragraph 1 of the Domestic Violence Law). Enshrined in the Constitution of the Portuguese Republic (article 28, paragraph 1) is the right to be detained for no more than 48 hours before the defendant is heard by a judge.

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Injunctions to a Temporary Stay of Court Proceedings

The legal institute of temporary stay of court proceedings³⁴ applies to criminal offences with a maximum prison sentence of less than five years or of a penalty that does not imply imprisonment. The public prosecutor, with the agreement of the Court of Inquiry Judge, determines it. It cannot be used, for instance, in cases where the perpetrator has a criminal record for crimes of the same nature, has had proceedings suspended for a crime of the same nature before or has been subjected to security measure of internment.

³⁴ This institute is part of the consensus solutions found in Portuguese criminal procedural law and it entails that the proceedings can be suspended with the agreement of the involved for a certain period of time and obeying to certain conditions. If the perpetrator complies with the conditions established and no crime of the same nature is committed, the proceedings end with the term of the suspension; otherwise, the proceedings continue.

Injunctions imposed can be of prohibition of contacts or prohibition of approaching to a certain distance from the house or the workplace of the victim (*barring order*), among others, as the public prosecution has some level of discretion to determine a restriction to take “any other behaviour especially required in the case” (article 281.º of CPP).

For its implementation to the crime of domestic violence³⁵, it is dependent on a free and informed petition of the victim. When the public prosecutor considers that the institute is applicable in the case in particular and the victim has not requested so, the public prosecutor shall inform the victim in person of this possibility and its implications and, when a petition is received, the prosecutor shall personally contact the victim to make sure she was not coerced into petitioning.

This institute can only be used in cases where both the perpetrator and the victim consent to it. For the crime of domestic violence consent of the victim is mandatory regardless of whether she became an ‘assistant’³⁶ or not, but for other crimes it is dependent on that procedural status.

By default, the determination of which injunction to issue shall be preceded of hearing of the victim. Decisions regarding injunctions shall be based also on exchange of information with family and minors courts where actions regarding regulation of parental rights are undergoing, when that is the case, in order to harmonise decisions.

In order to determine a barring order through a temporary stay of court proceedings, the Directorate-General for Social Reintegration and Prison Services (*Direção Geral de Reinserção e Serviços Prisionais*, DGRSP - the Portuguese probation service) shall elaborate a report analysing if suspension is appropriate in the case at hands and accompanies its implementation.

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When barring orders are the injunctions imposed, electronic surveillance shall also be used when “indispensable for the protection of the victim”, if both the perpetrator and the victim and other people affected agree.

A temporary stay of court proceedings can take up to two years, but in cases of domestic violence it can last up to five years (article 282, paragraph 5 of the CPP). If the perpetrator complies with the injunctions the proceedings are then ended, but if he violates them or commits a crime of the

³⁵ The General Prosecutor’s Office’s Directive 1/14 of 15 January 2014 instructs on the interpretation and procedure to follow when resorting to a temporary stay of court proceedings. The steps hereinafter described are taken from the wording of this Directive. Available at: <http://www.ministeriopublico.pt/iframe/diretivas>.

³⁶ According to the article 68 of the CPP, victims have the right of becoming “assistants” in the cases and therefore to be represented by a lawyer. The “assistant” cooperates with the public prosecution and their action in the proceedings is subordinated to that of the public prosecutor. They can offer evidence, request actions they deem necessary (and insofar the victim can requests the issuing of a protection order), they can make an accusation independent from that of the public prosecutor (in case of crimes of public nature or semi-public nature) if the public prosecutor accuses, and has the right to request opening of an intermediate stage, the instruction stage, based on facts that substantially alter those of the prosecution’s accusation. They can also appeal from decisions that affect them even if the public prosecution has not done so. In case the crime is of a private accusation nature, the “assistant” has the role of a private prosecutor. Moreover victims have the right to a legal aid regime (depending on a means test proving their lack of adequate financial resources), including the nomination and payment of the lawyers’ fees and to be exempt to pay justice fees or to pay them in instalments. As of this year, victims of domestic violence are exempted from paying court fees. This is particularly relevant to reduce constraints to reporting due to economic insufficiencies.

same nature during the period of suspension the proceedings proceed (article 282, paragraphs 3 and 4 of the CPP).

Prohibition of contact issued as an injunction in these terms shall be monitored through electronic surveillance system whenever it is indispensable for the victim's protection, according to article 35 of the Domestic Violence Law.

Supplementary Penalties

Prohibition of contacts with the victim, including prohibition of approaching a certain distance from the house or the workplace of the victim, can be imposed as a supplementary penalty to the crimes of domestic violence (article 152, paragraphs 4 and 5 of the Penal Code). It can last from six months up to five years, and the crime of stalking (article 154-A, paragraphs 3 and 4 of the Penal Code), that can last from six months up to three years, and shall be monitored by electronic surveillance.

There are supplementary penalties of mandatory ordering and others that are at the discretionary power of the judge. In the cases of stalking and of domestic violence, these sanctions are not obligatory and therefore it not only presupposes a conviction in a main penalty but furthermore depends on the fulfilment of certain requirements, as it is not of automatic application. In order to be imposed, facts have to be alleged and proved to reason the necessity of its application, namely founded in the protection needs of the victim.

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If the offender violates the supplementary penalty, he/she shall respond for the crime of violation of prohibitions and restrictions (article 353 of the Penal Code). Such violation does not lead to a revocation of the suspension and insofar to effective imprisonment³⁷.

When convicted for a crime of domestic violence, the perpetrator can also be restricted from exercising paternal authority, tutelage or family authority, from one to 10 years (article 152, paragraph 6 of the Penal Code).

Monitoring Mechanisms

As mentioned before, electronic monitoring is possible for monitoring an order of prohibition of contacts for the crime of domestic violence.

Generally, however, when these orders are violated the victim has to inform the authorities of such violation, either because the judge did not order the use of electronic bracelets as a means of monitoring or because the perpetrator, or the victim, or other people affected did not allow. However, the judge can determine mandatory use of electronic bracelets when it is "indispensable

³⁷ On this understanding, Coimbra Court of Appeal (*Tribunal da Relação de Coimbra*), Coimbra/Case 112/09.5GASJP-A.C1, 28 January 2015.

for the protection of the rights of the victim”, as established in paragraph 7 of article 36 of the Domestic Violence Law.

Electronic surveillance consists of putting an electronic bracelet and having a device on the perpetrator’s home which receives information on his location (article 35 of the Domestic Violence Law) and on the victim’s home informing the police of an eventual approach of the perpetrator. It is a measure executed by the DGRSP.

Whenever the perpetrator does not comply with the rules, DGRSP informs the court and/or the police and police officers can arrest the perpetrator and take him to court. Probation services will certify if it is a breach of the system or not and in case of emergency, the police should be called to react.

By force of the Statute of Victim, introduced by the newly adopted Law 130/2015 of 4 September, victims need to be informed of coercive measures issued to the perpetrator, at least when in the presence of a “recognisably dangerous perpetrator” (article 11, paragraph 9)³⁸.

³⁸ Furthermore, victims (even if not ‘assistants’ to the proceedings) are to be heard about the termination or replacement of a coercive measure, “whenever deemed necessary” by the judge (article 212, paragraph 4 of the CPP).

Protective Measures for Domestic Violence Victims

There is a strong protection system set forth in the Domestic Violence Law that entails several protective measures, of police protection, judicial protection and social protection, envisioning protection in a holistic manner, going beyond the criminal sphere and considering domestic violence in its broad spectre of a complex social problem.

The Law recognises a right to information, to protection, to compensation, that are the baseline of the rights of victims.

We will focus now only on police and judicial protection, and not on social protection, however acknowledging how essential it is in order to ensure an effective response to this type of crime. The Law also provides for some mechanisms of response to the needs a victim has to meet her/his housing needs and economic insufficiencies, to name some of the dimensions that need to be accounted for in these cases.

Among others, the Law guarantees a right to safety and safeguard of private life of the victim and her/his family when there are serious threats of reprisal, further victimisation or strong reasons to believe privacy will be disturbed. It provides for the separation of the victim and the perpetrator in all premises they need to attend for the purposes of the proceedings. It provides vulnerable victims with the opportunity of benefiting from special hearing conditions in a public hearing by any means possible. Videoconferencing, for instance, is available for especially vulnerable victims (article 23 of the Statute of Victim) or who need it in order to ensure a testimony without constraints, with the possibility of being accompanied by a psychologist or psychiatrist or victim support professional upon request (article 32 of the Domestic Violence Law). The hearing can also be made wherever the victim is when the victim has no possibility of going to attend (for instance, bed-ridden victims), as established in article 33 of the Domestic Violence Law. Especially vulnerable victims can also benefit from what is known as "declarations for future memory". This is a regime aimed at preventing secondary victimization, that allows the victim to be heard by a judge during investigation stage, at the request of the victim or the public prosecutor, and those declarations can be used in trial (article 33, paragraph 1 of the Domestic Violence Law and article 24 of the Statute of Victim). Victims of domestic violence are also entitled to compensation from the State under some circumstances.

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Some aspects are however of added importance for the purposes of this study: risk assessment and police intervention; protection measure of teleassistance (teleassistência); and immediate shelter (emergency vacancies).

Police intervention can be divided in two areas – the first line and the second line police officers.

The first line corresponds to a more operational type of intervention. It often represents the first contact with the victim(s) and/or witness(es). A first register of incident is registered in a standardised notification form (*auto de notícia padronizado*), which is in force since 2006. It

includes the characterisation of the complainant, of the victim, of the perpetrator and the description of the context of the aggression, noting the type(s) of violence concerned and the type of victimization. Since 1 November 2014, filling a risk assessment form is compulsory³⁹.

It is worth noting that, at present, law enforcement agencies are the only entities to have harmonized risk assessment forms and procedures. All other entities involved in the support of victims of domestic violence use their own risk assessment. According to Baptista *et al.* (2015)⁴⁰ this creates difficulties to make a judicial decision based on the different approaches to risk factors.

This risk assessment form within law enforcement contains a set of 20 yes or no questions covering issues such as:

- the use of physical violence from the perpetrator towards the victim and / or other family members;
- former attempts to strangle, suffocate, drown or physically torture the victim and / or other family members;
- the need for medical assistance;
- the increase and / or aggravation of violent episodes;
- the use or threaten to use weapons against the victim and / or other family members;
- easy access to weapons;
- victim's belief of the capability of the perpetrator to kill her and / or other family members;
- prior attempts or threatens of killing the victim and / or other family members;
- stalking, coercion, controlling and / or intimidation behaviours perpetrated against the victim and / or other family members;
- emotional or psychological instability of the perpetrator;
- prior attempts of the perpetrator committing suicide;
- prior criminal complaints;
- perpetrators' abuse of alcohol and / or drugs;
- perpetrators' prior violation of court order;
- financial constrains;
- conflict regarding the custody or contacts with their children;

³⁹ Risk assessment is compulsory upon report of a crime of domestic violence, but it shall also be determined an update for trial (article 34-A of the Domestic Violence Act).

⁴⁰ Baptista, I., Silva, A. and Carrilho, P. (2015). INASC – Improving Needs Assessment and Victim Support in Domestic Violence related Criminal Proceedings. Lisboa: CESIS. http://www.inasc.org/pdf/INASC_NationalReport_Portugal_EN.pdf

- intention of or marital rupture;
- victim's and / or other family members' specific needs and/or lack of support of third persons;⁴¹
- victim's pregnancy or recent motherhood.

The response to this set of questions is converted into a score and classified within a scale ranging from high to low risk, depending of the number of 'yes' and 'not applicable or unknown' answers.

If the risk is classified as high, the police must re-evaluate the situation up within three to seven days. If the risk is classified as medium, the re-evaluation must be made up to 30 days. Finally, if the risk is classified as low, the police must re-evaluate the situation up to 60 days. Besides the existence of the scale, the evaluation of the level of risk also considers the perception (experience) of the police officer. Both, quantitative and qualitative evaluations will contribute to assess the risk level.

Additionally, the form contains the set of measures aimed at the immediate protection of the victim to be implemented whenever the risk assessment made requires it, among which:

- Increasing the police surveillance to the victim's home, workplace or the place where the crime took place.
- Make periodical contacts with the victim.
- Refer the victim to a shelter for women victims of domestic violence. It is important to mention that there are also set emergency vacancies within shelters and other specific structures, for immediate shelter.
- Accompany the victim, when requested, to certain places (court, hospital, etc).
- Reinforce to the victim the importance of "considering keeping a distance from the perpetrator, resorting to a shelter, house of a person of trust in the first days (whenever the perpetrator was not detained").
- Police accompaniment of the victim, in case of need, to remove all personal possessions from home, as well as the possessions of the children and of elderly people in their direct care; this measure is determined by the police/law enforcement agencies, taken regardless of the stage of the proceedings, and the belongings taken shall be listed in the proceedings (article 21, paragraph 4 of the Domestic Violence Law).
- Make a security plan together with the victim, depending on the risk level (article 27-A of the Domestic Violence Law).

⁴¹ The officer filling in the risk assessment form needs to specify whether it refers to specific needs or to a lack of support network.

- Refer the victim for issuing of teleassistance (teleassistência): This protection measure is issued by a judge or, during investigation stage, the public prosecutor, whenever it is “indispensable for the protection of the victim” and upon the victim’s consents (article 20, paragraph 4 of the Domestic Violence Law).

The creation of this measure (teleassistance) was a consequence of a reflexion about the need to ensure protection and safety to victims of domestic violence and decrease their risk of re-victimization; the Commission for Citizenship and Gender Equality (Comissão para a Cidadania e a Igualdade de Género, CIG) is the Governmental agency responsible for installing, securing and maintaining technical systems in operation and thus coordinates it.

The measure aims to increase the protection and safety of the victim, ensuring 24 hours free and adequate response to emergency and crisis situations; it is foreseen for a period of time not exceeding six months, but renewable by Court decision if the circumstances of the victim so demand. It comprehends access to information, emotional support and, if necessary, police protection. In addition to a telephone service for information and emotional support, the technological support system allows the victim’s geographical tracking (fundamental in emergency/crisis situations). The equipment given to victims consists of a mobile voice and GPS device connected directly to a call-centre, involving professionals specifically prepared to give an appropriate response to every situation; this call-centre accesses the victim’s signal via a web platform, obtaining real-time information on the victim’s position.

It is to be applied in cases of medium risk of further victimisation, when the victim does not live with the perpetrator, has a small social support network, has no signs of serious mental health illness and no signs of substance abuse. It should to be issued simultaneously with a coercive measure or before it.

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The system is cancelled when the court so determines in compliance with the law. The victim can also request the end of the system to the court. Furthermore, it can also be cancelled by proposal of CIG or the law enforcement agencies when the victim misuses it, when the risk decreases significantly, when the victim does not comply with the duties attached to its applicability for several times, when the victim reinitiates contact with the perpetrator except in justified circumstances.

A final note to mention the special exceptional regime of measures of protection of vulnerable witnesses within criminal proceedings, established in Law 93/99, of 14 July. The measures there contained include, among others, the possibility for the witness:

- to testify without being present in court through the use of technical means in real time (this may be requested by the public prosecutor, the victim or the perpetrator);
- to provide an address which is different from his/her usual address (which is the case of domestic violence victims temporarily living in a refuge);
- to have access to transport provided by the State in order to go to court;

- the possibility to stay in a waiting room different from the one where the perpetrator is;
- to benefit from police protection.

All these measures can be requested, during the investigation stage, by the public prosecutors, the witness or the police and have to be confirmed by a judge.

This Law provides for measures to protect particularly vulnerable witnesses. The Law defines, in its article 26, No 2, that a witness can be considered as vulnerable according to “young or old age, health state or the fact that the witness will have to testify against a family member or closed social group where the witness is in a position of subordination or dependency”.

However this Law is of exceptional nature, meaning that the measures thereby set forth are to be put in place only when, in the specific case, these measures prove to be “necessary and appropriate to the protection of people and to reaching the intents of the proceedings”.

Implementation and Data

Over the past few decades, domestic violence (DV) / intimate-partner violence (IPV) has gained increasingly more public and political relevance. In being recognised as a violation of human rights and dignity, domestic violence is a social problem of wide, transversal dimensions.

Available statistics about domestic violence are dispersed so it is not easy to draw a picture of the real size of the phenomenon at a nationwide level. Increased difficulties are experienced when the focus is placed on victims with specific needs. Furthermore, data on application of protection measures are very scarce.

The most recent Report⁴² published by the General Secretariat of the Ministry for Home Affairs (*Secretaria-Geral do Ministério da Administração Interna, SGMAI*) shows that in 2014, the national police authorities registered 27,317 cases reporting domestic violence. The Report does not allow us to draw a profile pertaining to women victims of domestic violence owing to the fact that the study was made with reference to the victims' characteristics regardless of sex. In terms of the victims' specific needs, it was not possible to obtain this kind of information from the Report.

Generally speaking, and in agreement with previous years, in 2014 about 84% of the victims were women. Almost half the victims of domestic violence who filed a complaint with the police authorities were married or lived in *de facto* unions with the person who assaulted them (47.8%). In 21.1% of the cases, the victims were considered to be economically dependent on their abusers. With regard to the individuals who committed the assault, the aggressors, the data show that 87% of them were men. Excessive alcohol abuse was one of the problems affecting 40.8% of the individuals who were reported to have committed DV, as was drug abuse (11.9%). Physical and psychological violence are the most frequent forms of violence committed in intimate-partner violence while economic violence was flagged more often in situations involving violence against parents.

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In the above-mentioned Report, it was possible to see that out of a total of 6,723 inquiries which the SGMAI⁴³ was informed about, 77% of the cases were dismissed; 18% resulted in an accusation and 5% were given a temporary stay of proceedings. The main reason for dismissing the cases was lack of proof.

Out of a total of 2,954 final sentences, most of them resulted in a conviction (58.3%); in 59% of the cases, the sentence was between two and three years (normally, suspended for the same

⁴² SGMAI (2015) *Violência Doméstica 2014 – Relatório anual de Monitorização*. Available at: http://www.sg.mai.gov.pt/Noticias/Documents/Rel%20VD%202014_vfinal_14agosto2015.pdf

⁴³ Based on decisions concerning proceedings for the crime of domestic violence issued in 2014 and communicated to the SGMAI (by email and excel map). The sample of decisions is based on data communicated by 133 districts.

period). In more than a half of the convictions, extra sentences were handed down: namely obliging the perpetrators to attend an educational treatment programme.

The Annual Statistics Report published by the Directorate-General for Rehabilitation and the Prison Services (DGRSP)⁴⁴ revealed that in 2015, DV crime against a married partner or the equivalent was the third most registered crime (7,328 cases). Imposing restraining orders in the field of domestic violence where contact was forbidden and the aggressors' movements were monitored by means of electronic surveillance represented more than half (52%) the total number of cases being tried in court in 2015. During the last five years, forbidding contact which was monitored by means of electronic surveillance underwent an average annual growth of 57%. The individuals placed under surveillance, i.e. the aggressors, were men in 99.3% of the cases. Seven out of every ten aggressors were over the age of 40 and had Portuguese nationality.

According to the Portuguese Commission for Citizenship and Gender Equality (CIG), and owing to the crime of domestic violence, the following individuals were found to be in prison in June 2016:

- 150 people held in pre-trial custody for the crime of DV of which 101 individuals (8 women and 93 men) are awaiting trial; 49 individuals (3 women and 46 men) are awaiting their respective final sentences to be handed down;
- 527 convicted offenders (8 women and 419 men);
- 32 individuals found not liable (2 women and 30 men) where 14 have been interned in the prison establishment's psychiatric wing and 18 in a non-prison psychiatric institution.

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Still according to the CIG data, during 2015, 674 protection measures of teleassistance (teleassistência) were decreed which was the equivalent of an increase of approximately 123% in comparison with the previous year (in 2014, 302 measures had been decreed).

In Portugal there is a lack of studies on the prevalence of domestic violence against women with specific needs. The existing research is now only covering elderly victims,⁴⁵ and does not cover other specific needs, namely physical and mental disability, which does not reveal the impact of the domestic violence on this group in particular nor explores adequately their access to protection.

In 2010, results from a study on the impact of discrimination on women with disabilities⁴⁶ show that women with disabilities are, in particular, a vulnerable group of abuse and physical and sexual

⁴⁴ DGRSP (2016) Relatório estatístico Anual – 2015. Available at: http://www.dgrs.mj.pt/c/portal/layout?p_l_id=PUB.1004.1&p_p_id=20&p_p_action=1&p_p_state=exclusive&p_p_mode=view&p_p_col_id=&p_p_col_pos=0&p_p_col_count=0&_20_struts_action=%2Fdocument_library%2Fget_file&_20_folderId=45&_20_name=Relat%C3%B3rio+Estat%C3%ADstico+2015.pdf

⁴⁵ Ferreira-Alves, J. (2004). *Fatores de risco e Indicadores de Abuso e Negligência de Idosos*. Polícia e Justiça. Número especial. Available at: <http://repositorium.sdum.uminho.pt/bitstream/1822/4423/3/abuso%20e%20neglig%C3%Aancia%20-%20ciencias%20criminais.pdf>.

Ferreira-Alves, J. (2006). Avaliação do Abuso e Negligência de Pessoas Idosas: Contributos para a sistematização de uma visão forense dos maus-tratos. In Abrunhosa, R. & Machado, C. (Eds). *Psicologia Forense*. Coimbra: Quarteto.

⁴⁶ Fernandes, P. (coord.) et al. (2010). *Impacto da discriminação com base na deficiência das mulheres*. Lisboa: INR – Instituto Nacional para a Reabilitação. Available at:

violence. The violence occurs within the family and is related to other abuses, namely related with domestic work.

More recently, a study on prevalence of violence and abuse against older women⁴⁷ reveals that 39.4% of women aged 60 and over reported experiencing some form of mistreatment in the last year.⁴⁸ From those, 26.1% reported the incident or sought help. The most common types of mistreatment were: emotional or psychological abuse (32.9%); financial abuse (16.5%); violation of personal rights (12.8%), neglect (9.9%); sexual abuse (3.6%) and physical abuse (2.8%). Results from the study also show that some variables are significantly related to overall abuse and different levels of abuse severity, namely the age (respondents in the most aged group (80 and over) were more likely, when mistreated, to experience the most severe level of abuse); physical health: women perceiving poor physical health were more likely to experience neglect, emotional abuse, violation of rights and the most severe level of abuse; and mental health: women reporting symptoms of depression were more likely to experience any type of mistreatment. Also these women experienced more the most severe levels of abuse.

Regarding other vulnerable victims, a study of 2012 on prevalence of domestic violence against migrant victims⁴⁹ suggests that migrant victims face added obstacles in accessing justice and services, due to their specific circumstances, making them more vulnerable to violence. Such specificities are linked to their undocumented status, not speaking the local language, belonging to a minority social group, socially and culturally isolated, as well as discrimination and prejudices within official agencies.

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A recent study assessing judicial decisions concerning domestic violence Gomes *et al.* (2014)⁵⁰ concludes that the most common coercive measure applied is the Term of Identity and Residency (TIR). As much as in 80% of the reported cases, it was actually the only measure applied. Nevertheless, the study shows a change on the way the judicial system applies coercive measures, with a considerable increase on the application of the coercive measure that forbids contact with the victim and of barring orders.

On the decision-making process, still according to Gomes *et al.* the judicial practitioners often see the victim of domestic violence as a blocking agent to the issuing of coercive measures. The victim, as the central piece of the process, can be at the same time the origin of a double frustration: its

<http://www.inr.pt/download.php?filename=O+impacto+da+discrimina%26ccedil%3B%26atilde%3Bo+com+base+na+defici%26ecirc%3Bncia+nas+mulheres&file=%2Fuploads%2Fdocs%2Finfestatistica%2Festudos%2FImpactDiscrMulher.pdf>

⁴⁷ Ferreira-Alves, J. e Santos, A. J. (2011). *Prevalence Study of Violence and Abuse against Older Women. Results of the Portugal Survey (AVOW Project)*. Portugal: Minho University, Braga. Available at: <http://repositorium.sdum.uminho.pt/bitstream/1822/11920/1/AVOW-National-Report-PortugaFinal16032011.pdf>

⁴⁸ The sample covers 1,700 women aged 60 and over. The field work took place between April and June 2010.

⁴⁹ Duarte, M. (2012). *Mulheres nas margens: a violência doméstica e as mulheres imigrantes*. Sociologia. Revista da Faculdade de Letras da Universidade do Porto, Vol. XXIII, 2012, pp. 223-237. Available at: <http://ler.letras.up.pt/uploads/ficheiros/10303.pdf>

⁵⁰ Gomes, C. et al, (2014) *Estudo avaliativo das decisões judiciais em matéria de violência doméstica*, Coimbra, CES. This study was based on the analysis of 500 judicial decisions communicated to the Commission for Citizenship and Gender Equality (*Comissão para a Cidadania e Igualdade de Género, CIG*) between January 2010 and June 2013.



own, as it does not see positive results for itself, and for the judicial agents, because its absence of collaboration often leads to a decision not to prosecute. The study also shows that supplementary penalties are seldom issued.

3. Identification of Vulnerable Group and the Application of Protective Measures – The Perspective of Practitioners and Experts

Method

Sample and Procedure

A convenience sample of professionals dealing with domestic violence victims was selected to be interviewed in this study based on accumulated knowledge and contacts of the research team or by suggestion of the professionals interviewed, including during the four exploratory interviews conducted in Portugal. Professionals were selected based on their role in the judicial, police, and social protection systems towards victims of domestic violence, and experience with domestic violence cases. To the number of 25 interviews with professionals agreed for the purposes of this study we added three more interviews in order to gather additional information of specific important aspects. Out of the 30 professionals initially selected, contacted by email followed by telephone call, 28 agreed to participate in the study.

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Semi structured interviews guidelines were prepared according to the research objectives and adapted to the participants' profile. Interviews were held between June 2015 and June 2016.

On the one hand, interviews were conducted with public prosecutors in departments of criminal investigation of the public prosecution (N=9; all from the Public Prosecutor Offices in Évora, Coimbra, Oporto and Lisbon), judges (N=2) and law enforcement agents (N=3; two National Republican Guards, GNR - and one officer from the Public Security Police, PSP, in Lisbon and Coimbra – these are members of second line special police units for domestic violence victims and other vulnerable victims).

On the other hand, victim support, social care and lobby organisations professionals were interviewed. Namely, victim support professionals (N=12) - in shelters for women victims of domestic violence and their children (N=6) and in victim support centers (N=6), of Oporto, Évora and the metropolitan area of Lisbon), a professional of a national lobby organisation for the rights of people with disabilities (N=1), and a healthcare professional working on elderly care in Lisbon metropolitan area (N=1).

Almost all interviews took place at the professionals' workplace. All interviews were fully recorded and transcribed at a later stage. The average interview duration was of 60 minutes.

The focus areas for analysis of the discourse of the respondents were the following: ⁽¹⁾ The identification of specific needs victim groups, ⁽²⁾ Characteristics of vulnerability in specific needs victim groups, ⁽³⁾ Factors influencing/affecting the access to justice, ⁽⁴⁾ Identification of vulnerabilities by law enforcement agents and judicial authorities and impact on decisions made, ⁽⁵⁾ Protection and victim support measures for victims with specific protection needs, ⁽⁶⁾ The execution, adaptation and monitoring of coercive measures, and ⁽⁷⁾ Alternatives to vulnerable victims' protection.

Data Analysis | The Perspective of the Practitioners and Experts – Main Results

Identification of Vulnerable Groups/Specific Needs

In general, all practitioners interviewed have had contact with women victim of domestic violence with specific needs in a vulnerable situation, as defined for the purposes of the study, and identified the following groups:

- Elderly women, with impairment and/or a fragile health condition;
- Women with serious health problems and women with physical disabilities, who depend upon a caregiver;
- Women with intellectual disability;
- Women with mental health problems;
- Migrant women, who do not speak the Portuguese language, are socially isolated and/or undocumented.

It is important to understand first why practitioners identified these groups as presenting specific needs that, in certain circumstances, can make these victims more vulnerable to violence perpetrated in private settings. The victim's vulnerability mainly relates to their capability and opportunity to seek and find protection. To break the cycle of violence and seek a way out can be more challenging to victims who have specific needs or face specific living conditions (like migrants socially isolated or undocumented).

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Elderly women are considered particularly vulnerable when, **due to health problems, often related to their age, they depend on a caregiver**: *It is not only their old age, it is the fact that they have very little mobility, very little agility, they seldom leave the house and they are dependent upon others for their daily care* [PT15_PP⁵¹].

In such circumstances, often these women are more isolated and, when bed-ridden, their contact with others is very limited, if existent. As the literature shows (Minayo, 2006)⁵², often the perpetrator is also the caretaker and main social support of these victims and is a close family member. When the caretaker is also the perpetrator, these women become extremely vulnerable to violence and their ability and opportunity to report the crime is highly reduced: *With elderly people it is very difficult because they highly depend upon their caretaker, caretaker who is often the perpetrator (...) this makes these people stay silent, they stay silent and then we, the police,*

⁵¹ PP is the acronym public prosecutor.

⁵² In this perspective, see: Minayo, M. (2006), "Violência e Saúde". *Revista Ciência & Saúde*, 13(2): 803-806.

and the public prosecution have great difficulties in protecting them, in finding ways to act against the perpetrator [PT24_POL⁵³].

A common feature is that these women often have a small primary social network, hence limiting their ability to decide to break the violent relationship. The caretaker is often a close family member and thus this affective relationship, in such isolated contexts, tends to increase the difficulties of reporting: *As regards elderly people what I see is that often the perpetrator is also the care-taker and often also the last link, or at least the closest, to a family. [PT5_PP]*

Finding ways to get out of the violent relationship is a choice that comes with great difficulties when these victims feel they do not have people of trust to help them with their basic care needs and have a fragile health condition. It is even more so when, depending on the level of impairment, they have serious mobility or communication constraints. In some extreme cases, providing information about the situation they are under is impossible due to a cognitive deterioration caused by dementia or loss of memory. In such cases not only is the victim more vulnerable but also added problems arise for reporting and for guaranteeing protection.

Isolation, fear of reprisals, fear of not finding effective means of support alternative to the little and precarious support they get and the use of this fear as a threat by perpetrators, as part of their violent behaviour, all these factors are referred by practitioners as playing a role in these cases discouraging reporting and even testimony further on in the proceedings.

As will be discussed further on (in this section), unsuited resources for these victims' needs or a shortage of resources in the community is one of the major problems signalled by all practitioners as a relevant external barrier.

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Fear of institutionalization is namely pointed out by practitioners as a deterring factor for some of these women: Her daughters told me, after the coercive measure was issued, they told me that she was afraid of merely thinking of being taken to an institution, not only that but also of imagining that the perpetrator would be taken away. (...) Also this woman knew, deep inside, that he would help her with her basic needs whereas her daughters completely resigned from taking up that responsibility [PT19_PP].

Some studies⁵⁴ have indicated that, even when ill, a majority of elderly people prefer to keep living in their own houses, as they would perceive their autonomy as reduced for living in a place that is not of their intimacy. This perception may not be the only factor explaining fear of institutionalization, and it cannot be generalised to all elderly women victim of abuse, but together with threats by the perpetrators, it may partially explain some of these cases.

⁵³ POL is the acronym for police officer.

⁵⁴ Anetzberger, 1987, cit in APAV (2010), *Manual Titono – Apoio a Pessoas Idosas Vítimas de Crime e de Violência*, p. 43. Available at: http://www.apav.pt/intranet16/images/manuais/manuais_intranet/Manual_Titono.pdf

Another aspect mentioned by all practitioners regarding elderly women victims of domestic violence is that they become particularly vulnerable when the perpetrator and prime caretaker is their son/daughter. In the opinion of the practitioners interviewed, this aspect limits even more the victim's initiative to leave the abusive relationship: *She was reporting her son that, for many years, was her prime caretaker. Therefore, in a first impulse after the abusive episode, the victim reported the situation and she was very nervous, but then she must have thought: "what have I done? What will happen to me?" not only that but also "what will happen to my son?"* [PT19_PP]

In the experience of some of the public prosecutors interviewed, cases where the perpetrator is the offspring of the victim mostly reach the judicial system when witnessed by others: *Only the situations where there is flagrante delicto, situations when a neighbour calls, and then everything is denied. These cases of family violence where the children abuse of the older women usually lead to stepping back.* [PT1_PP]

Several aspects that are indicated in the literature (APAV, 2010)⁵⁵ as possible reasons for such behaviour are also highlighted by practitioners, namely feelings of guilt and shame for a perceived failure in the upbringing of the adult child, or an ambivalence of feelings due to the bond with the child: *Often they feel guilty and the feeling of guilt is so intense that they think that it [the perpetrator's behaviour] was due to bad education they have given him/her while growing up or that they did not pass on appropriately their values and that that is the reason why that person that has a duty to take care of them is the aggressor* [PT24_POL].

The dominant perspective was that a considerable part of these perpetrators had problems linked to consumption of alcohol or drugs or other mental health problems (e.g. schizophrenia), which delayed even more a victim's decision to report the crime and influenced their expectations of an outcome when they did: *These people are exhausted and they come to us not so much with the intent of a conviction but more so seeking help* [PT23_PP].

If it happens [attempts to get treatment to perpetrators before reporting] with women [partners as aggressors], even more so with mothers, it doubles [PT28_VS⁵⁶].

Our respondents also mentioned that these women tend to be in a precarious financial situation because of the prevalence of financial abuse or crimes of extortion committed by the perpetrators: *With elderly women the problem is always a financial problem, (...) these people [perpetrators] are not worried with taking care of them but instead in benefiting from the little these women have, usually their pensions and their houses* [PT24_POL].

⁵⁵ APAV (2010), *Manual Títano – Apoio a Pessoas Idosas Vítimas de Crime e de Violência*. Available at: http://www.apav.pt/intranet16/images/manuais/manuais_intranet/Manual_Titono.pdf

⁵⁶ VS is the acronym for victim support professional.

A previous study (Luoma et al., 2011)⁵⁷ identified Portugal, compared to other countries analysed, as the one with highest prevalence rates of violence and abuse against older women, with emotional abuse and financial abuse as the most widespread forms of violence against this group. In fact, this study also points out to neglect⁵⁸ as another prominent, but less frequent, form of violence against older women. This latter form of violence is identified as prevalent in cases in which adult children are the perpetrators. The practitioners interviewed also frequently mentioned this form of abuse.

Regarding **women with serious health problems** (e.g. physical consequences due to cerebrovascular accidents, Alzheimer disease, Parkinson disease, among others) and **women with physical disabilities who depend upon a caretaker**, all practitioners point out some aspects of vulnerability identical to those of elderly women with impairment or fragile health conditions that were mentioned above.

Problems concerning the impact of the aggressor being the person who provides basic care to the victim are also felt in this group. One public prosecutor mentions that this not only conditions a decision to report the crime but also raises difficulties in applying a coercive measure that implies barring the perpetrator, regardless of the disease, because even in cases where the victim has some level of autonomy, for instance in situations of physical disabilities, there are aspects that make promotion of autonomy even more difficult than it is for other victims: *In many cases women feel unprotected for starters because they have more difficulties in finding a job, they have more difficulties in going anywhere [mobility constraints] and they feel they need the help of their partner and so even when they abuse them they do not feel like they can leave the relationship [PT1_PP].*

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Isolation and a lack of suitable alternative resources in the community are also of concern. The fact that the caretaker is often someone close to the victim, usually a family member, also increases fear of reprisals. An aspect that increases dependency of these victims and that was mentioned is that there is frequent financial dependency or abuse. Particularly in the case of women with disabilities, the lobby organisation interviewed has mentioned that in cases of family members or people with whom victims have a romantic relationships, who are the caretakers but also the perpetrators, there are many situations where the perpetrators manage the victim's finances and keep the victims' social benefits: *A lot of times these people are expropriated from their pensions and it is their families who manage it, and the romantic relationships (...) and their income when they are working [PT26_LO⁵⁹].*

⁵⁷ Luoma, M.-L., et al (2011), *Prevalence Study of Abuse and Violence against Older Women. Results of a Multi-cultural Survey in Austria, Belgium, Finland, Lithuania, and Portugal (European Report of the AVOW Project)*. Finland: National Institute for Health and Welfare (THL)

⁵⁸ The World Health Organisation defines neglect as "the refusal or failure of responsible caretakers to provide a caredependent older adult with assistance in daily living tasks or essential support (...)" (WHO: 2012).

⁵⁹ LO is the acronym for lobby organisation.

Moreover, like elderly women, physical access to institutions and services is also jeopardised by mobility constraints. One victim support professional emphasised that impaired mobility rises greater difficulties in ensuring security measures that are always taught to victims of domestic violence, creating a situation of increased vulnerability, which calls for an adaptation of such measures: *This woman no matter how many measures are taught, if the perpetrator finds her she can never react at the same speed other people do* [PT14_VS].

Women with intellectual disability are a vulnerable group mentioned in previous literature as particularly relevant to consider. As mentioned in Section 2, a study on the impact of discrimination based on disability on women, in Portugal (Fernandes coord., 2010) suggests that women with disabilities are more vulnerable and more at risk of violence and abuse, particularly to physical and sexual abuse. It furthermore pinpoints that women with intellectual disabilities are a particularly vulnerable group. This aspect has also been mentioned by the lobby organisation interviewed in our study: *(...) focus on intellectual disability and multi-disabilities because it is referred in the literature that, within the spectre of disabilities, these are indeed the most vulnerable, especially women* [PT26_LO].

One of the specific vulnerabilities identified for this group by the lobby organisation and victim support professionals is the difficulty in recognising what consists of a violent or abusive behaviour: *The recognition of what is an abuse and what is maltreatment, because these people often are not capacitated to recognise it, to identify the signs, to understand that that is an abusive relationship* [P26_LO].

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One public prosecutor also referred to this problem, explaining how evidence is gathered through testimony of others and also the importance of expert reports in such cases: *Victims with reduced cognitive or intellectual capacity and that, within an evaluation, are victims with a mental age below their real age (...) they do not even have the capacity to understand the situation as it is in reality so they are in need of special protection. Once we have the expert reports we have the necessary elements to apply for coercive measures* [PT19_PP].

Aside from their frequent dependency, these victims are also particularly “invisible”, as referred by the lobby organisation representative, a perspective shared by several of the victim support professionals interviewed: *We are talking about a population that has very little visibility, especially if we talk about intellectual disability, they are not in the normative contexts, and when they are they are in group, not on their own and therefore are less visible in the eyes of the common citizen, their isolation makes them much more unprotected* [P26_LO]. In many cases, when these victims do not have the ability to represent themselves, detecting signs of violence is particularly difficult and situations reported are normally already very serious. Those with the capacity to do so often were not stimulated to develop levels of autonomy and communication. All of this increases invisibility of this group.

These two factors, as well as greater isolation, may lead to increased difficulties in reporting criminal offences.

Adding to that, access to information and means of communication are also seen as considerable impediments: *Their vulnerability increases due to their dependency but also because of accessibility, not physical, like in other types of disability, but in terms of information. (...) they do not have access to information, to mechanisms of reporting; and, on the other hand, also because services are not prepared to receive them* [P26_LO].

The information available is not simplified for the understanding of these groups of people, professionals are not appropriately trained to communicate appropriately (not all relevant stakeholders and not nationwide) and there may be a need for standard procedures protocols.

In addition, these women often do not know of the existence of services and how to reach them.

When these victims have the capacity to testify, victim support professionals and the lobby organisation representative tend to express that their testimonies are at times not considered reliable when it is not a coherent speech with well-placed time and space references and there are no physical evidences to directly link. The same is referred by one of the public prosecutors interviewed. The representative of the lobby organisation further mentions how this works as a deterring factor for reporting by staff of organisations working with this vulnerable group: *Between fantasy and a factual reality without having a physical evidence of that reality there is a big distance and often the option is to [consider it] fantasy because there is no concrete evidence and because that person is in a more protected environment than what can be the future, that is unknown* [P26_LO]. She further mentions that prevention protocols exist within organisations but there is still a long way to go to have systematic registration of cases of suspected violence.

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Women with mental health problems are another group that might be vulnerable to domestic violence and in need of specific protection measures. The literature suggests (Trevillion et al, 2012)⁶⁰ that women with mental health problems have high prevalence and increased likelihood of becoming victims of domestic violence across all diagnosed categories of mental health problems, when compared to women without such disorders. The study also suggests that not only domestic violence can lead to people developing mental health problems but also that people with mental health problems are more likely to experience domestic violence.

The problem of providing protection to victims with mental health problems is a dominant concern among all groups of professionals, who feel that there is lack of responses and there are problems with the articulation with healthcare services to provide the necessary care for these women, which is particularly essential: *Two big challenges are women with mental health problems and articulating with the healthcare system to support these victims (...) it is as if it was another subject that does not affect them, domestic violence is another world [for mental health care services]* [PT18_VS].

⁶⁰ Trevillion, K. (2012), *Experiences of Domestic Violence and Mental Disorders: A Systematic Review and Meta-Analysis*, PLOS One.

Regarding protection, and participation in the proceedings to allow it, another aspect raised, by one public prosecutor, was the lack of credibility at times given to testimonies of victims with mental health problems: *This country is not for old people, but it is even less for people with mental health problems that are serious and impairing. Firstly, the testimony of the victim tends to be discredited. What she says is not convincing and it is discredited even in situations where they know exactly what they are saying. In some aspects, they do not have a perception of reality, but others they absolutely do but their testimonies are not stabilised. (...) In court, either situations are visible, were witnessed, photographed, or it is very difficult. It is difficult to prove because if there are wounds it is alleged it was the victim that bit herself, hit the walls...* [PT1_PP].

Migrant women victims of domestic violence may also be in vulnerable situations and hence have specific needs in what concerns access to justice, which conditions access to protection.

In the perspective of all practitioners, migrant women can be even more vulnerable than other women can when they do not speak the local language and are in a situation of isolation, frequently also in the economic dependency of the perpetrator.

Often isolation comes as a consequence of the violent behaviour of the perpetrator, with contact with family and friends restricted, with limitation on social acquaintances, increasing when women do not work outside of the home. Isolation also contributes to have little access to information on their rights and the existent protection avenues (Duarte, 2012).

The difficulties faced are particularly intense when victims are in an irregular situation in the country: *There is a huge problem when they do not speak the language because they have difficulties in seeking help. Some of them do not have their papers in order and they [the perpetrators] threaten them that they will be sent away [deportation] that they take away their children, (...) they do not trust the institutions because they do not know how they function or who to go to. (...) Sometimes the institutions also do not treat them appropriately. Since many of them are in an irregular situation, they fear removal* [PT20_VS].

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The dominant perspective among all practitioners is that undocumented migrants tend to be more reluctant to report the crime. Victim support professionals point out several factors that may contribute to it.

Perpetrators are said to withhold victims' documents or delay initiating processes of regularisation, often letting residence permits expire, with victims accumulating fines they cannot pay, also due to their economic dependency: *They don't let them regularise their situations (...) we have several situations that, precisely, one of the forms of domestic violence is to make them remain irregular so that they cannot work, cannot be autonomous, cannot react to the acts of violence* [PT11_VS].

Another aspect raised is that the police has to notify the Immigration and Borders Service (*Serviço de Estrangeiros e Fronteiras* – SEF) when an undocumented migrant is identified, even if the migrant is a victim of domestic violence, which works as a deterring factor to many women for fear of a removal procedure. A few victim support professionals pointed out that sometimes priority is given to communicating the situation to SEF instead of registering the report of the crime. In fact,

although undocumented migrants can enjoy the same rights and protection as other domestic violence victims in the eyes of the law, they may be more reluctant to report namely for fear of expulsion from the country⁶¹. This is even more so when the victims have children with Portuguese partners who, due to removal procedures, might stay with the child even though they are the perpetrators. Several victim support professionals highlighted the important work that has been developed with SEF in regularising the legal status of victims of domestic violence, but noting that the whole process to obtain regularisation is a particularly difficult and bureaucratic procedure: *It is not [a] very easy [process] and then they ask for a contract or means of subsistence, then they don't come [to the country] regular, many come through other countries, (...) there is a very bureaucratic process that fortunately has been overcome lately, with a lot of work in partnership and some good will* [PT11_VS].

(...) if she does not have a document proving who she is then it is as if she does not exist. She has to find that document (...) and then sometimes to have one document they need to have another one, but for that one they do not have the first one, (...) and then we spend six months explaining that if the person does not have any of the two what will we do? (...) and then embassies are not always receptive and sensitive to domestic violence cases [PT10_VS].

However, one victim support professional recognised that the fact that victims were in a shelter and supported by an organisation could be an important aspect on the smoothing of these procedures: *The fact that they are in a shelter indeed helps. This interaction with SEF is not made possible so much as a consequence of the law but more on the basis of our daily work in partnership and building of trust. I do not feel our law allows for stopping these removal procedures* [PT28_VS].

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The many barriers that undocumented migrants face may indeed hamper their initiative to report, which is the only way to access protection measures:

They don't have [access to] anything. They want to go to a healthcare facility⁶², it is difficult, a lot of letters, declarations annexed, and that lingers. She cannot find a job. (...) she does not have the right to social insertion subsidy (...) [PT10_VS].

(...) these women do not have access to legal assistance by the State (...) [PT2_VS].

Regarding one other aspect of importance to access justice and protection for migrant women, all practitioners referred to problems with having services of interpretation available upon need and in all services. The problem was mentioned not only regarding the guarantee of a victim's right to information and right to be heard and participate in the proceedings and as a limitation to reporting

⁶¹ It is noteworthy that in Portugal detention due to irregular stay is not a common practice, with alternative measures being preferred, most commonly notification for voluntary leave. Expulsion is obviously possible nonetheless.

⁶² Access to healthcare is universal and shall not be denied to people based on their legal status but these difficulties in practice were pointed out. During interviews, a good practice was identified in one healthcare center where an effort is made to help undocumented migrants. Migrants are helped to collect all the needed documents before going to SEF to initiate regularisation procedures and signal to SEF is made only afterwards, in order to make sure these women do not cease to go to the healthcare center and ensure their access to healthcare.

(hence conditioning access to justice); but also as an aspect that can impact on gathering evidence, thus influencing the course of the proceedings and, insofar, the issuing of coercive measures:

I never understood how that woman tells her story considering she never had an interpreter with her, it was never mentioned who the interpreter was in the elements of the case, she went through different services, and when she had an interpreter, she told such a horrific story! The legal medicine report for instance was completely silent regarding the burn marks that she talked about (...) there are specific cases where we can see there was a problem in the beginning that determined the final result [PT6_PP].

Some aspects that are not particular to one group only and that may enhance some of these vulnerabilities and that were referred by practitioners are worth mentioning, such is the case of fragile economic situations and unemployment.

An aspect that stood out was the influence of living in rural settings. Living in rural areas can have an impact on vulnerability, not per se, but due to increased isolation and shortage of services available. This lack of services has been referred for instance in situations of need of care to victims dependent for their basic needs: *To live in a rural or urban setting is not different per se, but if we take a look at how the reality is there it is very different and people are more unprotected. (...) In the [urban] centers there are mechanisms and nurses can go, in the most isolated places [in the countryside] there are little means and everything is far from each other [PT1_PP].*

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The CEDAW Committee produced a general recommendation in 2010 on older women and their protection of human rights identifying as a specific area of concern information on and enjoyment of their entitlements and rights, namely pointing to older women living in rural areas or urban slums as often suffering also from “a severe lack of basic resources for subsistence, income security, access to health care (...)” (§12)⁶³.

Protective Measures and Specific Needs

They all have increased difficulties, some in accessing [justice and protection], others to make themselves understood, others because the existent responses are not suited to them. (...) We do not look at these people [PT18_VS].

Most practitioners agreed in one main conclusion: the whole system is thought in a standard way hence it does not have in mind the inclusion of victims with specific needs.

⁶³ Available at: <http://www2.ohchr.org/english/bodies/cedaw/docs/CEDAW-C-2010-47-GC1.pdf>

Identification of specific needs is included in the risk assessment form, as seen in Chapter 2, and only in such terms. Specific needs are not all recognisable at a first glance. Even if general guidance exists arising from the letter of the law and establishment of priorities for some groups, there is a lack of nationwide procedures in place to specifically evaluate such needs and identify them: *These [vulnerabilities] are identified when the victim brings that to the proceedings, otherwise no one asks, either they can talk and expose their problems or then it is not considered* [PT28_VS].

Another issue is then what is made with the identification of this vulnerability: *Those victims are identified as particularly vulnerable in the sense that we classify the proceedings as especially urgent because other classification is not made prior (...) all domestic violence cases are urgent, but some are especially urgent due to the seriousness of the crime or the quality of the victim (...) it is evaluated case by case* [PT19_PP].

One judge referred that the justice system tends to treat vulnerable victims in a more careful manner but current constraints, with overload of professionals, may jeopardise this individualised approach: *I believe that the justice system treats the most vulnerable victims in a more attentive manner, even though today we live a moment of shock with the fast introduction of new management techniques (...) that if not well adapted to the justice system may bring a depersonalisation* [PT8_J⁶⁴].

A victim support professional however pointed out that the system is not prepared, that there might be a sensitive approach by professionals individually and good practices, but they are not part of a coherent and generalised pattern: *There is growing personal sensitivity to certain aspects, even when victims testify, namely with elderly people, but the judicial system does not provide differentiated responses* [PT7_VS]. She further notes that even existent mechanisms drawn considering certain cases of vulnerability, such as, for instance, declarations for future memory, are not used as frequently as they should and not always in an adequate manner.

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The dominant approach among victim support professionals is that not accounting for the specificities of these victims when issuing coercive measures in a criminal procedural level, which, in their experience, tends to be the case, has an impact in these victims' lives that does not allow them to tackle needs that are different and specific: *The judicial system does not bring different responses to these victims, they are treated equally on a procedural level. (...) Where I see that there is a difference is that, since there is no specific judicial response particular for these situations, this then has an impact in people's lives, because that person is always someone who has needs that need to be tackled in a different manner. Since the judicial system does not respond as it should then we will not be able to improve that particular person's life* [PT28_VS].

In the opinion of victim support professionals, the consequences of these particularities being unaccounted for in judicial terms leads to the same legal consequences as to other women (lack of

⁶⁴ J is the acronym for judge.

application of coercive measures needed and/or lack of a measure that is appropriate to the particular case and/or timely issued). However, the impact of these legal consequences in these vulnerable victims' lives may be aggravated because of the very aspects that make them vulnerable: *A woman with a paralysis, with a physical disability impairing her in 70%. (...) What was issued was a measure forbidding the perpetrator of approaching the victim and since the victim was in a shelter, with her minor children, in spite of the fact that this perpetrator had previously been convicted for the crime of domestic violence, the judge considered that she was already in a safe place and he did not need to be taken away from the common house. Therefore, this woman, with two minor children, stayed one year and a half in a shelter. (...) She could only return home after a civil court order attributing her the family house, which was a lengthy procedure. (...) None of this was achieved in due time and it was not granted taking into account her impairment, it was because of a series of other factors and not in the criminal proceedings. (...) Her vulnerability was not accounted for [PT28_VS].*

Among public prosecutors, the prevalent approach was that vulnerability is taken into account by public prosecutors when applying for a coercive measure, as it plays a role in the urgency of requesting the issuing of one.

The major problems public prosecutors pointed out were a greater difficulty of these victims in collaborating with the investigation and problems related to cases where the victim depends upon the care of others where solutions for ensuring the well-being of victims are scarce.

As far as the first aspect is concerned, all public prosecutors, as well as all law enforcement agents, referred that victims in situations of added vulnerability have even more difficulties in collaborating with the investigation: *the victim, in spite of knowing she is one, she often does not see an alternative because the person abusing her is also her caregiver. (...) What happens many times is that victims end up not collaborating and then it is a very difficult crime to investigate so it becomes very difficult for us to intervene [PT5_PP].*

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Often professionals feel that these victims are particularly in need of victim support and that greater attention needs to be paid to empower these victims and to accompany them throughout the proceedings: *what do these victims, especially the elderly, want? (...) they want the situation to stop, they don't want a criminal proceedings, they are afraid to put their sons and grandsons in prison (...). As they say, they "don't want anything bad to happen to him, I want the situation to stop". And then we have serious problems in the course of the investigation because people come here and become silent (...). (...) it is difficult to explain to those people that they can have another way of life and that it is not their fault (...). A closer support to these vulnerable victims would be very very important [PT6_PP]*

Mention to the importance of the institutional networking at the local level and of more personalised and integrated support, namely via case managers, was made by several respondents as a means to more adequately respond to specific need and added vulnerability. Ensuring effective protection to vulnerable victims was hence considered linked to the type of support needed:

Vulnerability is always taken into account, the more vulnerable the victim is the more she is in need of protection, the problem then is how to enforce [the coercive measure]... (...) It is always easy to take someone out of the house; the problem is what to make of the person who is there, because she remains in a very vulnerable situation [PT6_PP].

The main perspective among public prosecutors is that the application of a coercive measure in such cases shall be linked to the promotion of solid responses on a social level, which is of the utmost difficulty when there are no family members available and willing to replace as caretakers: *In that specific case, (...) of a woman not of an old age but who had a stroke some years back, she was dependent upon her husband and she always refused to be placed in an institution. A coercive measure barring the perpetrator from the house of the victim was imposed on him. He never complied with the coercive measure and the victim said she had no one else to take care of her in fact [PT19_PP].*

It did not become clear to what extent these constraints could lead to public prosecutors refraining from requesting such a measure or not, but the need for a more integrated approach between the different levels of protection (judicial and social) was evident and highlighted by all practitioners: *I can never refrain from applying for a coercive measure for that reason [the victim's dependency on the aggressor who is the sole caretaker], what I need to do is to simultaneously activate the social protection mechanisms that ensure this kind of support [PT5_PP].*

We have coercive measures imposed on the perpetrator that also work, somehow, as measures of protection to victims. If I apply a measure barring the perpetrator from the house I will be benefiting the victim, but in order to do that, if the victim is vulnerable due to disease or old age, I need the help of social services (...) and then that does not work [PT6_PP].

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There is a shortage in resources that is said by all practitioners to put in jeopardy the well-being of these victims, namely in cases where it would be possible for the victim to stay in her house if appropriately supported. Lack of means, shortage of vacancies, unequal distribution throughout the country, the limited extent of the services that can be provided (also in the type of services available for the needs at stake), the costs involved and the bureaucracy in getting timely support in cases of financial insufficiency, all these aspects are highlighted:

We had the homecare services, the nurses and aid providers, but there are less and less [PT10_VS].

Social Security only allows associations number of homecare support co-financed when, in fact, associations have many more requests [PT27_HP⁶⁵].

In this kind of support people need to prove they cannot pay, otherwise these services are paid and these victims with special needs (...) are often economically dependent [PT1_PP].

⁶⁵ HP is the acronym for healthcare professional.

Day care centres are options often used together with support by the family, for victims with more autonomy. Regarding victims who are bed-ridden and/or very dependent the solution found tends to pass by institutionalising the victim, which is often difficult due to shortage of vacancies. In many cases that is often also not the will of the victim. Some public prosecutors feel that they have little they can do in such cases, unless these are cases in which the victim could be in a situation that would justify interdiction, which is a civil measure said to imply a lengthy procedure not suited for the urgency of these cases: *If we have an old woman not in full use of her mental capacities and the daughter or the sons do not want her to be taken to a home for the elderly, because they want her home in order to stay with her pension, the house, or social housing, in spite of not taking the needed care of her, we cannot act. If we do not have an interdiction we cannot override the will affirmed by that woman, and our colleagues [in civil court], it ends up being a lengthy procedure. (...) We need to solve the problem of these victims who need care 24hours; the homecare professionals can be with them during the day but what about the nights? (...) it is difficult to make this all work in a short period of time* [PT6_PP].

A topic of particular concern was that of immediate protection. Shelters are used in cases where coercive measures cannot (alone) protect sufficiently, as well as in cases in which such level of protection is needed until the issuing of a coercive measure to the perpetrator.

The dominant perspective among judicial practitioners and law enforcement is that there are serious difficulties in finding shelter for victims with specific needs. One police officer even mentioned difficulties in finding vacancies for emergency shelter⁶⁶: *Older women that we had to take to shelter, and I am not talking of a shelter for battered women and their children, I am talking about emergency shelter, we do not have an answer. Women with disabilities, regardless of which [type of disability], we also do not have an answer* [PT24_POL].

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One public prosecutor highlighted that women with some kind of impairment or physical disability tend to be put in homes for the elderly due to impossibility of being placed in a shelter: *This woman became severely ill, with a very serious injury, she became blind, and she is in a home because she cannot go to [was not accepted in] a shelter* [PT1_PP].

Victim support professionals also mention that there is a difficulty in finding available shelters or providing suitable responses within shelters to some groups of victims. One victim support professional referred that a shelter, as a social response, has a specific model of functioning to reach specific goals and many of these groups of victims with specific needs are in need of different responses. She further mentions that this leads to an adaptation of the shelter in order to provide for a more suitable response to these victims, adapting the shelter and the responses provided within it. The professionals refer to women with problems of consumption of substances who are not stabilised, women with serious mental health problems, women with serious physical disabilities, women with intellectual disabilities and women dependent upon care due to age or

⁶⁶ Regarding the differences between shelter and vacancies for emergency shelter, please refer to section 2.

disease. It is acknowledged that new solutions need to be found, as services tend to be little differentiated: *We have to be flexible because we understand that there are no resources. The only "answer" available is going back to the violent behaviour. We cannot simply not respond* [PT10_VS].

Usually we have difficulties in receiving an elderly person dependent upon care, from there we can see that there is something wrong in the system. Look, for example, emergency shelters are something very recent, it has two or three years, and none of those houses is prepared to receive the elderly. (...) Then homes for elderly people cannot provide appropriate victim support [PT14_VS].

All groups of practitioners, however, tend to agree that there is a need for a more integrated response, with better articulation between services and fostering the work developed in network. They believe that all needed responses shall be found in partnership, and not by creating "ghettos"⁶⁷: *We need to think fast and in an effective way about the type of answers we are going to give [to these difficulties]. We need to articulate the support provided by victim support services in the field of domestic violence and services provided by organisations that provide support in the field of vulnerability, for mental health problems, for people with disabilities, for elderly women* [PT3_VS].

A woman survivor of violence who has a consumption problem, where does she go with her children? There is no-where. Even rehabilitation centers take a long time and many exams are needed. It is understandable because they are [only] working the problem of consumption, not consumption and violence, nor the problem of an alcoholic mother with three minor children. Our services are very compartmentalised [PT10_VS].

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They nonetheless note that there is not currently an investment in resources allowing for an appropriate response. Moreover, they mention that there is a complete void in some specific areas. That is the case for victims with serious mental health problems: *if we have a psychiatric pathology, obviously, a coercive measure is essential to contain the perpetrator from committing the crime, and many times, it is not issued, but that alone is not enough. (...) It would be essential to have a better medical framing of all these psychiatric pathologies* [PT20_VS].

All practitioners considered this the biggest challenge, the lack of preparation to deal with and the lack of responses when in cases of mental health problems. Only extreme cases with attack of others or of oneself have an immediate response, and getting a diagnosis and appropriate oversight of treatment is pointed out as a huge difficulty: *There are no psychiatric services 24 hours a day throughout the country. Also the local primary healthcare centers [centro de saúde] often have only one psychologist for everything* [PT18_VS].

⁶⁷ The State Secretary for Citizenship and Equality has recently revealed that a project is undergoing to create a specialised response for women victims of domestic violence with intellectual impairment. Information available at: <https://www.publico.pt/sociedade/noticia/governo-anuncia-investimento-de-um-milhao-em-respostas-para-vitimas-de-violencia-domestica-1739563>.

The main perspective among public prosecutors was that, overall, the existent coercive measures fit the specific needs of the victims, albeit the need for social services adding up in some cases. The problem pinpointed is that of the timeliness of issuing measures considering the needs of victims that imply responses that are even more urgent.

All victim support professionals, on the other hand, expressed that they believe what mostly hinders victims, and particularly victims vulnerable due to their specific needs, is indeed the lack of timely application of coercive measures (they are not issued early enough and sometimes are outdated when issued at last), but not only. It is also the lack of an adequate evaluation of the appropriateness of a given measure to the specific case: *A woman with schizophrenia was kidnapped in her house for one entire month, tied to a chair. When she was saved she was hospitalised in a psychiatric area for six months and no coercive measure was issued against him. Social protection measures had to be applied to tackle this judicial flaw* [PT28_VS].

Sometimes alternatives to allow for immediate protection are particularly damaging in cases of vulnerability of victims with some specific needs, thus demanding a faster issuing of a coercive measure: *A woman with a cognitive disability (...), that will always need support of others, has no working capacity, does not know how to read and write, that it is her 10-year-old daughter who takes care of her, and it was her mother and sister as well. This woman wants to go back to her mother and sister, to the place where she feels safe, but (...) going back is having the perpetrator around and his family [who were also violent towards her] (...). A man (...) with guns, who ran around the house chasing his wife and daughter, a particularly vulnerable woman, we say a coercive measure needs to be issued (...) and the answer came and says that TIR (Statement of Identity and Residence) is sufficient...* [PT10_VS].

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As a consequence, for victims with some specific needs barring the perpetrator from the family house can have advantages that add up to the benefit it can bring to most victims, as it has a stronger impact on a victim that becomes even more affected in her daily life with a relocation. An example of a best practice was given by a victim support professional, who however pointed out that it was a success story that does not represent the majority of cases: *a very old woman, 80 something years old comes to an emergency shelter, her husband, also 80 something, (...) she has serious mobility constraints and no one had an emergency vacancy. All institutions that had vacancy had stairs and this woman could not climb them (...) in the end a place was found [within the network]. (...) The public prosecutor was relentless until this man was taken out of the house, she took a man with cancer the house, found relatives to take care of him, that was the biggest fear 'oh, an old man with cancer will stay unprotected' and so this woman returned home, has police surveillance on (...)* [PT3_VS].

The vulnerabilities of the perpetrator seem to be somehow accounted for. According to one of the public prosecutors, there are cases in which it had an impact on judges' decisions, also disregarding that the victim was vulnerable too, when considering pre-trial custody. However, a few victim support professionals highlighted that it does also have an impact on other measures: a

woman of 80 or more years and he [perpetrator] was around the same ages, the judge did not issue the barring of the aggressor from the house, the woman was to go to a shelter [PT12_VS].

All practitioners agree that coercive measures are increasingly more applied. Nonetheless, victim support professionals still deem the number insufficient for the actual need and that little to no evaluation of impact seems to be made: *Coercive measures are still insufficient, not verified, not confirmed and completely distant from reality* [PT20_VS].

In the same lines as prior research indicates⁶⁸, practitioners conclude that the effectiveness of coercive measures depends highly upon the characteristics of the perpetrators more than any other aspect: *That depends on the perpetrator because if he really wants to do her wrong he will, because he knows where she lives and her routines (...) between the signal of the equipment and the arrival of the team...* [PT16_POL]. However other aspects are also relevant.

Monitoring is one of those, and it is consensual among the interviewees that unless there is electronic surveillance that is a particular challenge especially in cases where victims are most vulnerable. All practitioners seem to agree that electronic surveillance is more often used⁶⁹, as statistics presented under Chapter 2, which is deemed by all as an important step, although it is still slim to the needs in practice. The biggest problem felt in this subject by public prosecutors at the moment seems to be the timeframe between the issuing of the measure and its enforcement with the installation of the device: *we were supposed to have a measure enforced one week to 10 days but the fact is that sometimes it takes more than one month (...) in those cases we have the barring of the perpetrator without any means of control* [PT19_PP].

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But what is flagged by victim support professionals as particularly worrisome is what happens when coercive measures are in fact breached: *when there is a violation and the probation services inform the proceedings there is no change to a more serious coercive regime applied to the perpetrator. Usually what happens is that we need to move the woman to another place* [PT28_VS]. Among victim support professionals is prevalent this perception of a lack of consequences for the breach of the measure imposed, or action taken only when violations are already very serious, consisting of a new crime: *[the court] considered a more serious measure was not needed because the man did not put the family in danger. That is not true. She is here in the shelter but he has been tormenting her family, stays in his car in front of her mother's house and threatens her mother and her son (...) that lives with his grandmother. Moreover, he was accused of a crime of domestic violence against this son in law too!* [PT20_VS].

Other aspects that influence the effectiveness of measures arise from specific vulnerable circumstances a victim can encounter due to flaws in the protection system.

⁶⁸ Baptista, I., Silva, A. and Carrilho, P. (2015). *INASC – Improving Needs Assessment and Victim Support in Domestic Violence related Criminal Proceedings*. Lisboa: CESIS. http://www.inasc.org/pdf/INASC_NationalReport_Portugal_EN.pdf

⁶⁹ In spite of the increase in the number of devices in use, this is still a rather recent system and one that took a while to be significantly used.

Having minor children can boost an initiative to leave the abusive relationship or it can be a deterring factor for reporting, as previous research has shown⁷⁰.

In terms of protection, however, it may make women more vulnerable in certain circumstances due to conflict between visitation rights and coercive measures imposed. In spite of the current legal framework, enhanced with very recent amendments as seen in Chapter 2, this aspect can still affect the effectiveness of such measures: *Our law determines that visitation rights can be suspended or limited and that often is not well evaluated by courts* [PT28_VS]

(...) then the woman has to find a solution, she cannot meet him but she is the one who has to find an uncle or a cousin or a grandfather to make it. (...) usually the courts do not take up that responsibility, unless it is a very serious situation, and it is true that we see more [supervised visits in court] but then it depends on where in the country we are, and it shouldn't [PT12_VS]

Both public prosecutors and victim support professionals have expressed their concern that communication between the family court and the criminal court is not yet a generalised practice, highly depending from court to court. A respondent was particularly critical regarding this aspect: *I think that these communications have not been made, they only exist between public prosecutors (...) courts do not communicate between each other, or they do only when there is a final sentence* [PT1_PP].

An aspect that strikes as even more concerning is that some victim support professionals have expressed that with or without communication there is no apparent consideration of the violent context in the decision-making process: *But what I see is that with or without communications [family] courts do exactly the same (...) it is another department (...) that is how they put it* [PT28_VS].

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Another aspect referred to as having an impact on effectiveness of protection orders is the difficulty of enforcing such measures when cases refer to women within closed communities, more isolated, especially but not only within migrant communities, when the communities and/or families are not supportive. Difficulties might arise from the fact that they live close to each other, there might be multiple perpetrators or pressure from families and/or victims may fear to be excluded from the communities: *They [woman and children] ended up not wanting to stay in that house because it was a community from Guinea and the relatives of the perpetrator all lived in the same neighbourhood and the pressure was immense* [PT5_PP].

One relevant aspect regarding some of these communities, raised by one victim support professional, is that prejudices regarding particular communities may influence police intervention in such cases: *For example, in a training we gave the other day a police officer said to me 'ah, with*

⁷⁰ Baptista, I., Silva, A. and Carrilho, P. (2015). *INASC – Improving Needs Assessment and Victim Support in Domestic Violence related Criminal Proceedings*. Lisboa: CESIS. http://www.inasc.org/pdf/INASC_NationalReport_Portugal_EN.pdf

Gypsies do not even think about it! If someone calls the police they are done', (...) so I do not know if they are sufficiently aware to understand that that woman needs extra protection [PT13_VS].

One measure of protection that is increasingly used is teleassistance (teleassistência), the alarm system and helpline. There is no consensus among the practitioners interviewed, with some public prosecutors and victim support professionals and all police officers being very positive about the system, but a few public prosecutors and victim support professionals seeing few to no advantage in the system. What is more relevant to note, however, is its limitations when applying to cases of victims with specific needs. According to information provided by CIG⁷¹, the public prosecutors “shall ponder the adequacy of applying this protection measure in certain circumstances (e.g. victims with disabilities or incapacitated in a way that can compromise the efficacy or feasibility of the measure; victims who do not speak Portuguese; among others)”.

A final note to highlight the problems felt by practitioners regarding the timeliness of application of coercive measures.

The general perception is that often cases of victims with specific needs in a vulnerable situation are either reported to (or witnessed by) the authorities when they imply very serious situations, or they are more hidden, less reported and it is even more difficult to gather (circumstantial) evidence (as seen above).

The issuing of coercive measures implies the existence of reporting and hence of a criminal proceedings.

Detention omitting in flagrante delicto is a mechanism seen by most public prosecutors and police officers as used more frequently than it used to be. Arrest warrants for such circumstances are not an uncommon practice anymore. However, police officers still refer to the possibility of detaining without a judicial warrant as a possibility seldom used: *In the majority of times the requirements for such a detention are not met and, insofar, we cannot arrest the perpetrator, we cannot take him/her out of the house, and what victims want is that in that moment we take the perpetrator away* (PT24_POL).

The consequences of a detention considered illegal, explained in the legal framework (see Chapter 2), may lead police officers not to detain the perpetrator without being absolutely certain that these requirements are met.

As Durão (2013)⁷² refers, the police – similarly to other judicial professionals – have a conservative approach regarding the possibility to detain a perpetrator, expecting to witness the offences in loco and then proceed with detention of the perpetrator.

⁷¹ Information extracted from a powerpoint presentation gently provided by CIG and used in a training for public prosecutors of the Lisbon District in June 2016.

⁷² Durão, Susana (2013). “Violências privadas como se fossem direitos públicos. Perspetivas antropológicas”, *Revista MANA – Estudos de Antropologia Social*, N. 19 (2), pp. 277-302. Available at: www.scielo.br/pdf/mana/v19n2/a03v19n2.pdf

Furthermore, as explained under Chapter 2, the requirements that need to be met for such an arrest might not allow the necessary speed of response and, in fact, the possibility of immediately simply removing the suspect by an administrative power is inexistent in Portugal. Some of the victim support professionals interviewed refer to this possibility as a pressing need: *introducing administrative measures that would allow removing the perpetrator from the family home, an immediate barring (...) is particularly important to the most vulnerable [victims]. For these women this needs to be made and ensured together with immediate social support and specialised support in domestic violence, available within a maximum timeframe of 24 hours [PT28_VS].*

4. Victims with Specific Needs and Protective Measures – Results from Case Analysis

Method

The method used in Portugal to collect the cases was based on the following different although complementary data-gathering strategies.

On the one hand, data about criminal proceedings pertaining to domestic violence were obtained from the services working for Public Prosecutor's Offices in the Investigation and Criminal Activities Department (*Departamento de Investigação e Ação Penal, DIAP*) in Lisbon, Oporto, Loures and Évora, as well as from the Oporto Court of Preliminary Criminal Inquiry, the Évora District Court, the Central Criminal Court of Lisbon and the Petty Criminal Court of Lisbon.

On the other hand, data were gathered by interviewing victims who were living at shelters or being followed up by the support services to victims of domestic violence, and interviewing professionals who had played an important role in the cases.

The cases to be studied were chosen with the support of different professionals according to the previously established criteria:

- Sex (women victims);
- Age (victim and perpetrator/aged 18 and over);
- Recognised vulnerability (in terms of what has been described above).

The different institutions contacted facilitated gaining access to the cases; they were always willing and interested in seeing the Project go forward.

Data collection took place between October 2015 and June 2016. A total of 50 cases was gathered and analysed.

Each case corresponds to one victim. In this section, a qualitative data analysis (narrative/interpretative) of the criminal cases and the data gathered from the interviews with respect to these cases is made. At the time the data were gathered, the cases were found to be at different stages of the criminal proceedings.

Our analysis was limited by the fact that the information contained in the case files and the information provided by victims or professionals may be complementary but only in a handful of cases this complementarity was ensured. In most cases, we only had one source of information, which limited the amount of data possible to collect.

Moreover, the consultation of case files in different stages of the proceedings does not allow for a full picture of the case in some situations.

Finally, the cases were first selected by the professionals interviewed according to what they thought was representative of the difficulties felt due to the vulnerability of victims.

Clustering around Victims' Vulnerabilities | Main Results

The court cases under study have been sorted into three main groups by taking into account a set of specific needs demanded by women victims. The first cluster groups together older women who are also suffering from some kind of illness and/or impairment. In the second cluster are dependent women relying on carers owing to their mental and/or physical health problems. In the third and last cluster, are migrant women who have serious difficulties in speaking and understanding Portuguese, are not registered or whose papers the aggressor has withheld from them.

Cluster I | Elderly Women also Suffering from Some Kind of Illness and/or Impairment

Elderly women who suffer from some kind of illness and/or impairment, and are dependent on others for their daily care were identified as victims who can be particularly vulnerable.

Our sample, they are mostly women who are widowed or divorced with a small primary social network or with no other alternative means of support. Most of them are bedridden, often suffering from Alzheimer's or Parkinson's diseases. In the remaining cases, having to rely on a caregiver is due to extremely reduced mobility. In some cases, besides the psychological and physical abuse, these women were seriously neglected in their daily care, in terms of nutrition (malnourished), hydration and personal hygiene care and cleanness of the house.

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In one specific case a joint home visit by the police, social service and civil parish identified an old lady in terrible personal hygiene conditions, bed-ridden, in a house in horrid state of conservation, dirty and with plagues. The elderly woman had not taken any meals at the date of the visit [PT - C31].

Their aggressors are mostly the male adult child upon whom these women depend for taking care of their most basic needs.

These sons committing the abuse share some common factors. Right from the start a pattern of alcohol abuse was observed. Not infrequently, this was linked to drug abuse as well as mental health problems. Not having a job was also a common characteristic among these perpetrators, where they were financially dependent upon their mothers.

It should be mentioned that for the most part, the victims in this cluster are not in touch with the social services where, for example, they would get to attend a day-care centre or receive home care. The women who are followed up by the social services receive part-time care.

Most cases occur in an urban setting and to a far lesser extent in the rural countryside.

The majority of the cases were reported by the social services and medical services, namely the hospitals and medical centres. In some cases, the professionals who reported the abuse belong to the social services that are following up the victim. In a small number of cases, a neighbour, who prefers remaining anonymous, reports the abuse or the victim herself does.

The main measures taken are orders forbidding the perpetrator to live in the same house as the victim, forbidding any contact with the victim whereby the perpetrator is monitored by means of an electronic bracelet, and forbidding the abuser to carry and use a firearm.

In some situations, these measures are issued after breaching the temporary stay of court proceedings. In the cases under study, the temporary stay of proceedings depended upon complying with certain injunctions, mainly the abusive individual attending medical and/or hospital alcohol treatment, drying out in an alcohol rehabilitation centre, being followed up by the DGRSP and showing up at appointments whenever scheduled. In a small number of cases, upon breach of the temporary stay of proceedings, offenders were taken into pre-trial custody.

A specific case needs to be mentioned concerning an order from the Public Prosecutor's Office to move the victim out of the house within a 24-hour deadline and activate a removal warrant sending the aggressor to a hospital where he was interned with a diagnosis of schizophrenia.

Cluster II | Dependent Women Relying on Caregivers Owing to Mental and/or Physical Health Problems

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Another group that is extremely vulnerable concerns women who are dependent on caregivers owing to mental health problems, intellectual disabilities and/or physical impairments. In a significant number of cases, such women are dependent on caregivers in order to perform the basic routines in their daily lives.

Most of these women in our sample are married and besides living with their husband/partner, their children make part of the household (close family aggregate). A small number of divorced women are included in this group. In some situations, the weak primary social network providing support becomes evident and mostly due to the aggressor's attempt to isolate the victim. In one specific case, the violent relationship lasted 50 years and the victim experienced even more difficulties in leaving the abusive situation because her children failed to help her.

Most of the women are dependent on care because they are suffering from serious health problems. Several had a stroke (cerebrovascular accident - CVA) which caused serious damage that led to considerable loss of independence. Psychiatric problems were diagnosed in some women and in a few cases, some women suffered from physical disabilities or intellectual or cognitive impairments.

Largely, the aggressors are their husbands/partners or ex-partners. In some situations, the offspring are also the aggressors although when this happens, the abuse is not only directed at the mother but also the father and/or the rest of the family.

The aggressors are above all characterised by the control they exercise over the victim whether it means removing her from the reach of family or friends, or by controlling her income /money.

Some cases involved the mishandling of medicines needed to ensure the victim's well-being: in some overdoses of the medicine were given, while in others there was total absence of medicine.

Furthermore, not infrequently, the victim was stopped from seeing her doctor. Similar to the first cluster, most of the abusive individuals revealed a pattern of alcohol abuse as well as drug abuse in some cases. In only one case, was the aggressor diagnosed with psychiatric problems.

Again, similar to the first cluster, most of the cases occurred in an urban environment while there was a small number of cases in the rural countryside.

In this specific cluster, mostly the victims themselves reported the abuse, or third parties did, although the health services also played a relevant part. In one particular situation, the victim's sister first referred her to the victim support services and afterwards these services reported the case. The victim resorted to victim support services after several attempts along the years to report the case to the police. We could not clearly assess the reason why criminal proceedings were not initiated, but according to the victim in two situations the police officers devalued the case, and in one more recent occasion, the report was not registered.

In these cases, the main measures applied to the aggressors are barring from the house where the victim lives and forbidding them all contact with the victim although the means of monitoring of the latter measure are not specifically mentioned.

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In two cases, the complaint was not made formally, which failed to lead to a court case. In both cases, the victims suffered from a variety of health problems that seriously impaired their independence; their reliance on their aggressors was a determining factor that stopped them from filing a complaint against them.

I didn't file a complaint because I live here and I rely on him. I don't want to make a complaint because I don't have the means to live on my own. And now we're going to lose our house.... I can go into an institution but where am I going to put my things? And my dogs that make me company and are the loves of my life? (...). He's my only link with the outside world [PT - C49].

In two concrete cases, after one of the victims had died and the other had been committed to a home, the coercive measures applied to the aggressors were reviewed and adjusted to the needs of the new situation. It was referred there was no call then to enforce such serious measures considering the protection needs of the victims at that time.

The cases of women with intellectual disability analysed have distinctive characteristics.

In some of these cases, the victims live with their parents or grandparents and attend a centre for the education and rehabilitation of people with intellectual disability. In two cases, the victims were subjected to sterilisation without their informed consent.

In the majority of the cases of victims with intellectual disability the abuse was committed by the father or both parents or grandparents, and in some others the boyfriend or boyfriend's close family. In one case, the perpetrator was the son of the victim.

Difficulties in reporting crimes involving victims with some intellectual disability or in identifying the existence of such vulnerability is evident in the fact that part of the cases were not reported or were identified throughout the investigation of a crime committed against another person next of kin.

In one case, the violence was reported to the police by a brother of the victim, in a case of sexual abuse and domestic violence against a woman with serious intellectual impairment. In this case, the father of the victim was the perpetrator and another crime of domestic violence was committed by him against the perpetrator's elderly wife.

Cluster III | Migrant Women with Serious Difficulties in Speaking and Understanding Portuguese, Undocumented or whose Papers have been Withheld from them by the Aggressor.

Migrant women with great difficulties in understanding the Portuguese language were also found to be in particularly vulnerable situations in some cases. Their ability to gain access to and understand the Portuguese justice system is often compromised. Moreover, in most of the cases seen, the women victims were undocumented, a factor that seriously restricts reporting instances of abuse.

Most of these cases in our sample deal with married women or women living in *de facto* unions, or women who are separated/divorced, all with minor children. For the most part, they are economically dependent upon the person abusing them. In two of the cases, the marriage was arranged between the families of the victim and/or the abuser.

In most of the cases, the presence of minor children was used to threaten or put pressure on the victim. The fact that there are minor children involved is simultaneously a conditioning factor discouraging the victim from reporting the crime and, when the crime is reported, a mechanism used by the aggressor to get closer to the victim again.

The aggressors are usually husbands or former partners. Most of them are also migrants but in some cases, they are Portuguese, in which cases increased difficulties rise because of the common children.

In the majority of cases analysed, the perpetrators abuse drugs and alcohol. Some of the aggressors have criminal records. Most aggressors exercise control over the victims by means of cutting them off from family and friends, or controlling the money they get or taking their papers away from them, and in some instances, their children's documents. In the rest of the cases, this control owns to the fact that the victim does not have any family or friends in Portugal.

It is important to mention that in most cases, the victims were referred to shelters. One of the victims was placed in a temporary shelter for victims of trafficking in human beings because apart from the crime involving intimate partner violence, she had also been the victim of human trafficking. In this specific case, the aggressor faced two separate charges, one based on trafficking in human beings and the other based on domestic violence.

The greatest difficulty found throughout the various proceedings was the victims' inability to speak and understand Portuguese mainly when interacting with the social services, including healthcare, and in a first moment of contact with the police. In two cases, friends helped to interpret during communications with the medical services and in the moment of reporting (in one case a friend and in the other the father of the victim). In one of the cases, the hospital called for the need of a professional interpreter as it considered that there was lack of neutrality by the father of the victim, hence jeopardising the interpretation and insofar the understanding of the case. Very few cases involved the services of professional interpreters in relevant occasions before questioning by the police, public prosecutor or in court.

In one case the lack of interpreter was particularly serious. The victim only had an interpreter (professional or not) when questioned for the purposes of the criminal proceedings but not when speaking to social services, in medical appointments and emergencies or the legal medicine institute. This conditioned the evidence, as an irrefutable link was not found between the victim's declarations to the public prosecution and the information within the reports.

Most of the cases involving intimate partner violence against migrant women happened in an urban setting.

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Mostly the victims reported themselves, when accompanied by friends or even by victim-support services. In very few cases, health services, namely the hospitals, reported.

In many cases, after the report was made, the whereabouts of the aggressors were unknown, which complicated enforcement of coercive measures despite the fact that such measures were issued, as well as applying a temporary stay of proceedings.

In one particular case, the Court of Inquiry Judge ordered the issuing of a coercive measure forbidding the aggressor (former partner) of being in the place where the victim worked, to contact her by any and all means and to have his whereabouts monitored by an electronic bracelet. After he breached all these measures and again physically abused the victim, the measures were suspended and he was taken into pre-trial custody where he awaited trial.

Case Studies: Illustrating each Cluster

The following selection of cases seeks to make a more detailed approach as regards the different clusters pinpointed. In order to do so, one case was chosen to illustrate each cluster, in order to make a detailed description and analysis of both the context and the types of violence and the circumstances creating specific needs as well as the proceedings under way and the measures taken during the course of the case.

In cluster II, two cases were selected. Due to the diversity of vulnerabilities included in that cluster, this was deemed important.

Cluster I Elderly Women also Suffering from some Kind of Illness and/or Impairment

The case concerns a very old woman with serious health problems [PT – C16]. She is 87 years old and a widow with one son and one daughter. The criminal complaint was lodged in February 2014. At the time, her son had returned home to live with her after he had been divorced.

After some months of having suffered physical and psychological abuse, the victim who was the aggressor's mother, decided to file a complaint. Physical abuse consisted of shoving, slapping and kicking. In some situations, there was an attempt to twist her wrists and more recently, to grab the victim by the throat and push her head out of the window to threaten her. Although she admitted that this behaviour had increased her state of anxiety and despair, where she even feared for her physical safety, the victim never wanted to make a complaint because she felt ashamed and because she thought that the abusive episodes were merely temporary.

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At the time the complaint was made, the aggressor was 47 years old and was recognised as suffering from alcohol abuse. Moreover, he had been diagnosed with cancer and his clinical situation was seen to have deteriorated. Despite of her also very fragile health condition, the victim was the aggressor's main caregiver as his health condition declined.

After the complaint had been lodged, and when the police arrived at the house, they witnessed the aggressor's extremely intoxicated and belligerent state. That day, the victim had told him she would be going out for a few hours. Hours later, the police was informed of a new violent outbreak with the same kind of behaviour. When the police arrived, they found the victim locked inside the kitchen calling for help out of the window of her flat, situated on one of the floors of the block. Using the keys owned by the daughter, the police entered the victim's flat. The aggressor persisted in insulting the police and tried to assault them by punching and kicking them. After he was brought under control, he was taken off to the police station. In the report the police officer stated that the victim was psychologically affected and that the negative impact on her declining health was visible.

When she was questioned, the victim stated that she was the aggressor's mother and did not want to press charges against him because *her son had no other place to go*. The victim's daughter stated "she wanted to respect her mother's decision" and for this reason had not wanted to report the case. Some days later, the daughter stated that her brother had a serious problem with alcohol addiction. Her brother's unstable, violent behaviour left the victim in a continuous state of panic. She wanted the police to take him out of the (victim's) house in order that he be "interned and treated so as to cure him".

When the victim was questioned again, she admitted that when her son drank, he became aggressive and she already knew about his behaviour during his marriage, which was the reason for the divorce. She admitted that she was afraid of her son but confessed that she "did not have the courage to throw him out into the street". The family's aim was to intern the abusive person so that he could receive suitable treatment. By putting in an application, the victim requested a Temporary Stay of Proceedings.

The Public Prosecution determined the Temporary Stay of Proceedings for a period of 30 months and made it dependent upon the offender's compliance with a wide array of injunctions: internment in the Lisbon Alcoholology Unit in order to dry out; afterwards, internment in a rehabilitation clinic; attending a clinical follow-up programme at the hospital and going to specialised consultation sessions indicated for his case, as well as subjecting himself to monitoring by the DGRSP where he had to attend all of the interviews whenever they were scheduled.

The perpetrator was interned in a rehabilitation facility. During Christmas, he was allowed by the institution to go home visit his family. During that stay, the aggressor once again physically abused of his mother and insofar violated the Temporary Stay of Proceedings.

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After the Temporary Stay of Proceedings had been breached through a new abuse committed against the victim, it was revoked and the charge went ahead. The Public Prosecution ordered that the perpetrator be taken into custody in order to appear before the Court of Inquiry. The Court of Inquiry Judge ruled that coercive measures be applied and placed a prohibition on the offender from living in the victim's house; forbidding him all contact with the victim and subjecting himself to monitoring by wearing an electronic bracelet. He should also undergo treatment for alcohol abuse and internment for the effect. Moreover, the Court of Inquiry Judge ruled that police patrols be conducted around the victim's residence and check whether the offender complied with the coercive measures, as it was still a high-risk case.

Hours later, the aggressor returned home with his mother's permission.

Taking into consideration this new turn of events, the coercive measures were revoked by the Court, where the ban was lifted on forbidding him to live at home, forbidding any and all contact with the victim and obliging him to wear an electronic bracelet. At the time the records were consulted, the offender was still awaiting trial and in internment in a rehabilitation facility.

In spite of her old age and her declining health condition, this woman was autonomous in her daily life. Her vulnerability in the case arises mostly from the fact that she was the main caregiver of her ill son, who, adding up, had an addiction and a very violent behaviour.

In the case in particular, these circumstances seem to have made it more difficult for her to report the crime and afterwards to face the course of the proceedings. The crime was reported when violence had already escalated, the victim wished mainly for her son's treatment, and the violence kept escalating.

The high risk of the case was considered for the issuing of coercive measures upon violation of the temporary stay of proceedings. The accumulation of a coercive measure of prohibition of contact and barring from the victim's house, together with the treatment measures, seem particularly positive in the case.

However, the perpetrator returned home, allegedly with the victim's consent, in violation of the coercive measures ordered, in circumstances that point out to a still high risk of continuation of the criminal activity.

The victim's stance in the situation seems to have had an impact in reducing the coercive regime and not on reviewing it and aggravating it considering not only the violation and risk of continuation of a criminal offence but also her vulnerability, the influence of this vulnerability in allowing the perpetrator inside her house, in violation of the coercive measure.

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Cluster II Dependent Women Relying on Caregivers owing to Mental and/or Physical Health Problems

Case 1

The case singled out here [PT – C31] is dated 2015, the year in which a criminal charge involving intimate partner violence was brought to bear. At the moment of consultation, the case was at the preliminary judicial stage, with no verdict or absence of verdict forthcoming.

The aggressor who is the victim's husband started behaving aggressively with the victim about 15 years ago when he physically abused her, as well as insulted and humiliated her. Despite his behaviour, and out of fear, the victim never sought any medical assistance nor did she tell anyone else about the situation. The aggressor exercised full control over her, plainly trying to prove her that "he was in charge", as he said.

Physical abuse entailed slaps, punches, head knocks, shoving and attempted strangling. Furthermore, he had fits of fury which involved breaking glasses, slamming doors or throwing food on the floor. In some situations, his abusive behaviour also involved his daughters and, in one occasion, the domestic helper.

It should also be mentioned that right from the start, the abusive partner administered the victim's finances. Despite the fact that she had her own wealth, she was never able to make her own decisions concerning her finances.

The victim had a daughter in common with the aggressor although she also had two daughters by a previous relationship. All the daughters have already reached adulthood and they do not live with the couple.

In mid-2011, the victim had a stroke (cerebrovascular accident) and was hospitalised for five months. During the period in hospital, the victim was necessarily kept in isolation, which was used by the aggressor to keep away members of the family and friends. Any visits the victim received were always made secretly, so that the aggressor did not know about them for fear of reprisal.

As a result of her stroke, the victim was severely hampered in terms of her cognitive and physical abilities. She suffered an accentuated overall decline mainly when it came to speaking and she was only able to move around in a wheelchair. The aggressor did not allow her to attend any kind of rehabilitation programme and he took charge of caring for her daily basic needs.

He frequently insulted and humiliated the victim owing to her mental and physical state, telling to "*say something (victim's name) say something*" and "*speak in English because I don't understand French*". At mealtimes, the aggressor would say to her "*hold out your paw*". And when the victim would try and blurt out words, he would immediately tell her to "*shut up or else you'll get a clout around the chops*".

In 2014, the aggressor decided that the daily caregiver who gave the victim assistance was only needed part-time. From this moment on, the victim was confined to her bedroom, made to lie in bed, alone without any kind of care.

A report was made by the domestic helper who had sometimes witnessed scenes of physical and psychological violence perpetrated by the aggressor against the victim. The domestic helper was also the target of the aggressor's abuse, as she tried to stop the aggressor from hitting the victim, which gave rise to a separate complaint being lodged.

After the aggressor had been reported, the evidence proving the case was collected by interviewing the victim's daughters, the domestic helper and the boyfriend of one of the daughters. The victim was not heard due to the difficulties she had in speaking.

Owing to the evidence collected, coercive measures were ordered where the aggressor was issued with an order to move away and not to approach the victim's house and forbidden all and any contact with the victim. However, the aggressor failed to comply with the measures and he warned the victim several times that *if I have to get out of the house, you'll go straight into a home*. According to witnesses, this type of threat left the victim extremely disturbed.

When police officers went to the house of the victim, they heard the victim beg her abuser "*don't go away, don't leave me alone*" in fear that she might be sent to an institution.

Afterwards, her own daughters questioned the appropriateness of the coercive measures, alleging that the offender was her sole caregiver and any order obliging him to leave the house would be negative.

In the accusation of the crime the public prosecutor, referring to all the events detailed above, accused the perpetrator for a crime of domestic violence and promoted the continued application of the coercive measures issued in the first judicial hearing of the perpetrator. The accusation reads that *“the perpetrator willingly threatened, insulted, assaulted and tormented the victim, his wife, an impaired person, defenseless due to her illness, causing her fear and constant alarm and permanent anguish, (...) intending to humiliate and belittle her, which he was able to achieve, conscious of the impact it had on her physical and psychological health”*.

In this case, the extreme dependency upon the care of others and the communication and mobility limitations this victim has made her very vulnerable, adding up to an already abusive relationship and particularly violent behaviour of the perpetrator in the case, dominating over the whole family. The perpetrator used this vulnerability to continue exercising violence over the victim. Furthermore, the perpetrator assumed the role of a caregiver but in fact used this situation to increasingly isolate the victim, limit the health care she would get and did not provide all the necessary basic care for this victim.

The vulnerability of the victim has been taken into account throughout decision-making processes and also in efforts to gather evidence that would allow for measures to be applied, overcoming the difficulties the victim's vulnerability brought.

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Barring the perpetrator from the house of the victim instead of further victimizing the victim by removing her from the house where she lived seems to have been a crucial step for the protection of the victim. It is particularly noteworthy that such measure was kept in spite of record of the victim saying she did not want the perpetrator to leave, note being made on the motives of such plea being a fear of institutionalization.

At the moment of consultation, however, there was no information on how the basic needs of the victim were then guaranteed to ensure efficacy of the measure and safeguard the victim's specific needs. It was not possible to further consult the case, in a more advanced stage of the proceedings, in order to know how the case developed.

This case, however, leads to a reflection about the need for an integrated approach, with the social support system and the judicial system working together for the protection of the victim, when families do not represent an alternative to provide the care such victims need and victims either do not have sufficient economic resources or cannot manage their finances.

Case 2

The following case [PT – C27] was lodged in January 2015 and at the moment, is still awaiting trial.

At the time the complaint was made, the victim was aged 67 and lived alone after a recent separation. She had lived in a *de facto* union with her ex-partner and aggressor for nearly seven years. She attended and was assisted by the Day-Care Centre in her residential area.

According to the victim's statement, her relationship was not prone to any quarrels but she had already been abused and threatened: physically assaulted with slapping and threatened with a knife. The aggressor *took out a penknife with a red grip that he used to carry around in his trouser pocket*, pointed it at her, saying that he "would stab her with it". The separation was due mostly to financial matters – she was suspicious because money had disappeared.

The victim was divorced and it is not known if there had been any children. At the time of the complaint, the perpetrator was 86 years of age and a bachelor. It is known that he had a niece with whom he went to live after the separation.

The abuse which gave rise to the criminal charge occurred in a public thoroughfare when the victim was going to a café. The aggressor had hidden himself and caught the victim unaware, attacking her with a stick. When she had fallen to the ground he started jumping up and down on the area of her neck. According to the police reports, when the police officers arrived on the scene the victim was bleeding copiously. First aid was rendered on the spot and then the victim was taken to hospital. As a result of the assault upon her, the victim was wounded on the head and had to have 14 stitches, and she lost her right eye, which left her with only partial vision.

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The aggressor's niece was questioned by the National Republican Guard (*Guarda Nacional Republicana*, GNR), and she confirmed that on the day the assault had taken place, her uncle had returned home with his trousers and boots splattered with blood. He confessed to her that he had beaten up his former partner. The niece stated that "he didn't show any sign of remorse" and he added, "if I'm going to jail, then I'm going to jail" and "if I have to pay for it, then I'll pay".

The victim was questioned while she was still in hospital and she gave an account of the facts related above. She confirmed that she wanted to press criminal charges against her attacker and asked that a coercive measure be applied which would stop him from coming near her.

Her attacker had fled the scene of the crime; the police (GNR) immediately alerted the hospital where the victim had been taken. At the hospital, a request was made to monitor all visits and immediately warn the GNR if the attacker intended to pay the victim a visit, which indeed, happened. At the time, the police together with the hospital security staff had posted surveillance over the patient. The attacker was held as defendant in the court case and was subjected to a Statement of Identity and Residence.

The GNR contacted the Victim Attendance Centre (*Núcleo de Atendimento à Vítima*, NAV) in order to have the victim placed in a suitable home that would give her the care she needed. It was decided that the victim was to remain in hospital until a social assistance solution could be found

by the NAV. The victim was received into a shelter for women victims of domestic violence and their children after being allowed out of hospital.

However, shortly after the victim was transferred from the shelter to a home for the elderly. The reason presented to the NAV was that this particular shelter did not meet the needed conditions to provide shelter for a woman of that age and with the specific needs of that victim, who became partly blind and with several other health complications. The shelter insisted that they did not feel equipped to deal with the case at hands, considering that they were not the appropriate response, and as soon as a vacancy in a home for the elderly opened the victim was transferred there.

Meanwhile, an intercalary report compiled by the GNR Centre for Investigating and Assisting Specific Victims (*Núcleo de Investigação e Apoio a Vítimas Específicas*, NIAVE) and sent to the criminal branch suggested that an arrest warrant omitting in *flagrante delicto* be issued. The reasoning for the urgency in the judicial hearing of the defendant was the need to issue coercive measures, due to the serious circumstances of the case. The police suggested issuing a measure of prohibition of all and any contact with the victim, forbidding the perpetrator to approach the victim in any way and obliging him to wear an electronic bracelet so that his movements could be traced, or alternatively, place him under pre-trial house arrest.

An arrest warrant omitting in *flagrante delicto* was issued with a view to cross-examining the offender. The Public Prosecutor's Office requested that the offender be taken into pre-trial custody. The following may be read in the report of the first judicial hearing: "despite the seriousness of the acts perpetrated by the offender and the criminal framework that may be applied in abstract (...), it is our understanding that the offender, tried in court, is not likely to be sentenced to a term of effective imprisonment". Accordingly, the investigative judge considered that pre-trial custody "would not be proportional to the sentence that would probably be passed down". The request for pre-trial custody was therefore denied owing to the fact that "a prohibition of contacts by all and any means [was deemed] appropriate, necessary and proportional, forbidding him to approach the residence or place in which the victim is known to be, within a perimeter of not less than 500 metres".

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In an addendum to the case, the GNR gave information about the fact that the aggressor resided less than 500m from the victim and the Day Centre attended by the victim was also situated nearer than the restraining order permitted, thus making the measures ineffective. Furthermore, in the addendum, the GNR stated that the aggressor was not hampered by any human or electronic form of control that would prevent him from approaching the victim. Moreover, the aggressor had "spoken and gesticulated in such a way as to make it clear that he would try yet again to assault the physical well-being of the victim, saying that 'this won't come to a good end'; 'I'm being cuckolded by four others, this can't end well' and at times, gesturing as if he were handling a rifle".

Owing to these facts, the Public Prosecutor's Office lodged an appeal with the High Court regarding the decision to apply coercive measures involving a prohibition of approaching the house of the victim and forbidding any contacts with the victim or coming within 500 m of her. In the appeal,

the Prosecution stated that the victim and the offender lived less than 50m apart from each other in the same road. The Prosecution added that the coercive measure applied "has therefore become totally and completely unenforceable". Moreover, the Prosecution added that "nothing in the reports indicates that when it comes to the trial and despite the fact that the offender has no criminal record, he will not be condemned to effectively serving a term of imprisonment given the gravity of the evidence against him". The Prosecution therefore requested pre-trial custody because "there are no other coercive measures applied to his case which, other than being taken into custody, will stop him from continuing to behave in a criminal way. Given the fact that the offender and the victim live so close to each other, house arrest naturally has to be excluded".

The Prosecutors at the Public Prosecutor's Office stated that they failed to understand "the reasoning underpinning the order being contested". They added that "the degree of violence demonstrated is more than enough to determine the application of a coercive measure that would objectively stop the offender from contacting the victim (...) which, if he were allowed to go free would actually happen". When referring to the fact that the victim was presently to be found living in a home for the elderly, the Prosecutors stated that even there, the victim was in hiding, "waiting for a coercive measure to be applied to the offender in such a way as to ensure that she could go home safely". Furthermore, they added that in having the offender "benefit from the type of opportunities allowed by the system, not only places the life and the physical safety of the victim in imminent danger" but forces her to live in a home for the elderly, so as to protect her very life, "thus making her give up the path she had already cut out for herself, her routine, her friends, her plot of land and her house". Moreover, all this was aggravated by the fact that she would have to learn to adjust to a debilitating injury that had resulted from the crime. The Prosecutors considered that the measures applied by the Court of Inquiry Judge "are not therefore sufficient, adequate and proportional to the protective needs that, in this concrete case, are important to predict".

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The Court of Appeal only accepted one part of the appeal.

The Court affirmed that there were no grounds to consider that pre-trial custody was necessary due to other coercive measures proving insufficient or inappropriate. It reasoned its decision in the following arguments: "for the time being and without any further elements, one cannot extract from the elements in the proceedings that the victim's house and that where the perpetrator lives are located in the numbers of the mentioned street and that from that one can infer that there are 12 numbers separating them. We do not have information to confirm what the measurements of the buildings are and conclude herein that they are 50m apart. There is no factual evidence of that" and "even if such distance was proven in the case, the fact is that at the time of hearing the victim was not residing there and nothing forbids the perpetrator from moving somewhere else (given that he informs the court) and one of the witnesses (...) referred his intention of moving to other residences".

Furthermore, the Court considered that "in spite of the seriousness of the perpetrator's actions, one shall not forget, as the decision under appeal mentions, that: 'it shall not be the victim suffering the 'punishment' of being taken away from her social environment, but in this moment

the demands that the court faces are only of a precautionary nature and not retributive (...) the perpetrator is 86 years old and suffers from several health problems' that are serious, aside from his very old age, which becomes even more relevant due to his age."

Hence, the Court of Appeal considered the coercive measure applied sufficient for the time being but concluded it should nonetheless be reinforced by determining the accumulation with another measure obliging the offender to present himself periodically at the police station closest to his house twice a week on even days. This measure was added to the order to move away from the house of the victim already enforced that followed the same terms, forbidding the offender to contact the victim.

In a ruling issued by the Public Prosecutor's Office, it was learned that the offender had not been notified of the change in the coercive measure passed down by the Court of Appeal and of the fact that it was impossible to comply it with because the police station in cause was closed on the days that had been decided upon by the Court of Appeal. The order requested that the Court of Inquiry Judge be informed and asked that the measure requiring the offender to present himself periodically be invalidated because the offender did not have the material conditions to travel to a police station further afield taking into account his poor health and lack of transport. At the same time, the ruling revealed that the offender had said the same thing when he had been told about this measure.

In the same ruling, the Public Prosecutor's Office reiterated its disagreement with the decision passed down by the Court of Appeal, stating, "the offender is now 86 years of age, has serious health problems, namely cancer and is much debilitated physically. Nevertheless, such vulnerability did not stop him from committing the acts that have been satisfactorily described in the records (...) in our opinion, only the coercive measure entailing pre-trial custody is able to circumspect the existing danger. Owing to his health problem, the offender can always seek adequate treatment needed in the prison hospital and the victim would be safe. The Appeal Court did not understand this to be so, and we respect its verdict".

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The measure was declared null and void by the Court of Inquiry Judge on the basis of the reasons given by the Public Prosecutor's Office and further warranted by the restraining order, in terms of forbidding contact with the victim that was nearing its expiry date.

The victim was constituted assistant and remained in the home for the elderly because she did not feel safe returning home despite the coercive measure imposed upon the aggressor.

In court, the offender faces criminal charges involving domestic violence, attempted murder with intent, and physical assault with intent, whereby the Public Prosecutor's Office has proof that the offender intended to cause the victim's death. Also included in the accusation's report, is the impact all this has had on the victim, stating that she "has suffered the irremediable loss of sight in her right eye", which immediately affected her daily life. Bearing in mind that the measures applied are nearing expiry, the offender is awaiting trial merely restricted to the Statement of Identity and Residence.

The victim's specific needs and vulnerability, which are evident in the case, were clearly considered in very different manners in the actions and decisions of the different authorities, leading to very different approaches in terms of victim protection.

The specific needs of the victim were also the source of added difficulties in finding alternatives to protection.

In this case, there were problems with the enforceability of the measure and therefore its efficacy, which are directly related with the lack of adequacy of the measure in the way it was applied to the concrete case.

Staying (or returning) home seems to be the will of the victim, as well as an important step also for her adjusting to her new condition, considering she is not fully dependent on care. This was not made possible in practice.

The vulnerability of the perpetrator seems to have had a greater impact than that of the victim in the residential court's decision to issue this coercive measure.

The fact that the victim was at the moment living outside of her house and in the residential home was also taken into account, thus making the victim's safe return home more difficult.

The difficulties in ensuring safety and hence guaranteeing enforceability of this measure led to the institutionalisation of the victim, instead of simply resorting to temporary shelter.

In addition, the case also shows difficulties in providing shelter to a woman with these specific needs, and even more so as the measure is prolonged due to the victim feeling unsafe to return home in spite of the fact that there is a coercive measure imposed prohibiting the perpetrator to contact her, that in the circumstances seemed fable to her and to the police and the public prosecution. In this case, appropriate responses within the shelter system for women with these specific needs were not found.

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Cluster III Migrant Women with Serious Difficulties in Speaking and Understanding Portuguese, Undocumented or whose Papers have been Withheld from them by the Aggressor

The present case refers to a Senegalese woman and was drawn from an interview conducted with the woman herself [PT – C47]. According to the victim, she arrived in Portugal in 2007 with her husband and it was at this time that the physical, psychological and sexual aggressions started. *I didn't know anyone. I came into Portugal in 2007 and I only managed to get help in 2011.*

The marriage had been arranged by her uncle in Senegal and the victim only met her husband on the day of the marriage. The victim was dependent on her aggressor at all levels. The husband isolated the victim and did not allow her to contact her family or her friends. He threatened her constantly and also threatened to have her relatives and friends living in Senegal killed. The perpetrator was also physically and psychologically abusive of their children.

The victim entered the Portuguese territory irregularly and she remained undocumented. The victim did not know how to speak Portuguese. The aggressor confiscated all the victim's documents. *"I didn't want this marriage, my uncle wanted it. We first met each other [victim and aggressor] on the day we married. We were married a long time before we came to Portugal. He treated me very well over there. As soon as we arrived here, he treated me very, very badly, always. My children were all born here and he always treated them badly".*

She was very often locked in her room and she could only come out when she fell pregnant. At the beginning when she was allowed out, she was kept under the aggressor's surveillance; he went with her to doctor's appointments but afterwards, and because the physician advised her go walking for the sake of a smooth pregnancy, her aggressor allowed her to go out alone.

It was while she was out walking that she tried to seek help among people who spoke her language, namely people from Guinea⁷³. She started getting to know these people, became friendly with them and they began helping her. *"I got to know the friends who helped me, in the street. I got to know them secretly. I went walking along the street and there were people who spoke my language and I talked to them".*

The linguistic barrier was her greatest hurdle when trying to gain access to the services and to the justice system. The victim said that she had contacted the Social Security services several times with the aim of asking them for help and that she felt belittled because she could not manage to speak Portuguese. She contacted the Committee for the Protection of Children and Young People at Risk (*Comissão de Proteção de Crianças e Jovens em Risco, CPCJ*) but she also felt as if nothing was being done. *The most difficult thing for me is that I'm not able to explain what I want to explain. The people who went with me, helped me but it's not the same thing. And afterwards, I was always very afraid; he threatened to harm them as well. (...) I tried looking for help with the social assistance. I couldn't speak a word of Portuguese at the time. I go with a woman friend and the friend explains. At this time, I didn't have any papers either, I go and they don't do anything. I go to the social security and it was the same thing. He has a [male] friend working in the social security and he [the friend] doesn't believe me. I went to the CPCJ and nothing. I went to the Immigrant Support and nothing there either. When I got desperate, I went to the police and managed to get away from the house.*

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When all the other channels were exhausted, the victim decided to go to the police with the help of a male friend from Guinea. When she was lodging the complaint, the language was also a serious barrier. The police escorted the victim to her house to pick up her belongings. The aggressor was at home and denied all the allegations. The victim and her children were taken out of from the house whereupon they went to stay at a friend's house where they lived for three months. The police also informed the Immigration and Borders Service (*Serviço de Estrangeiros e Fronteiras, SEF*).

⁷³ It did not become absolutely clear in the interview if the couple friend was from Guinea Conakry or Guinea Bissau.

It was also suspected that apart from being a victim of domestic violence, the woman was also the victim of trafficking in human beings. Police suspicions were confirmed. The police requested a referral for the victim and her children so as to place them a shelter that protected victims of human trafficking.

After the victim had stopped living at home, her aggressor continued to stalk her in the street and on the phone: “he stalked me at the places I worked in, when I took my child to school, I always had to hide. He telephoned me the whole time. I was very afraid”.

It was through the Immigration and Borders Service – SEF and as a victim of human trafficking that she was given a residence permit allowing her to reside lawfully in Portugal. From the moment she enrolled in the shelter she received counselling from the Association’s lawyer. Later, and owing to the fact that her aggressor continued to stalk her, the victim and her children were taken into another shelter. After arriving to the new shelter the victim changed all her contacts.

The lawyer initially followed up her cases, the two criminal cases and the civil case where parental rulings were concerned. A temporary system of fortnightly visits was decreed until the trial. The lawyer representing the victim requested a temporary stay of [the father’s] visiting rights. The outcome of the trial at which the victim was legally represented but not present, ruled that the offender was to be inhibited from the exercise of parental responsibilities.

The victim is now living apart from the aggressor. After one year living in shelters, she is now independent. She learned to speak Portuguese, did a vocational training course and joined the labour market.

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It is not known if and what measures were applied.

This victim faced particularly intense difficulties in finding help not only due to the isolation she was put under by the perpetrator but also for problems in communicating with several services around the protection system. Language was a very serious barrier for this woman.

Her access to information and support was minimum and help of a closer community played an important role in this victim’s search for help.

The fact that the victim was undocumented was also a deterring factor on occasion, but once in contact with the police system this was also a way to change her irregular situation in the country. However, this was solely due to the fact that she was also signalled as a victim of trafficking in human beings, which raises the question on how it would proceed in case there was only a domestic violence proceedings ongoing.

The perpetrator kept stalking and contacting the victim until she was moved to another region of the country, changed contacts and family and common friends cut out contact with the perpetrator. This attitude of the victim was the reason for the perpetrator to stop contacting her, as he continued even after he did not have the excuse of visiting children, as it was inhibited by the court. There is no information on whether coercive measures were issued or not, but the fact is that the victim had to be moved.

Another aspect important to note is the lack of information the victim has on whether the suggested coercive measure was issued or not. A doubt arises on whether the lack of knowledge of the language intensifies difficulties on guaranteeing information being appropriately passed on to the victim, a problem that has been identified in literature even in cases where this added difficulty does not exist.

5. Summary and Conclusions

Our study focused on the protection of women victims of domestic violence with specific needs. However, if the situation of these especially vulnerable women poses specific challenges, in many aspects it is the system of protection of victims of domestic violence as a whole that is at stake.

A first topic to be raised is that there are no real protection orders in Portugal, in any stage of the proceedings, because the guiding principles of the Portuguese criminal and criminal procedural system focus on the offender and aim at ceasing the criminal activity and not the protection of the victim as a first line principle. That is the reason why we opted to talk about protection, or protective, measures, when describing and analysing the coercive measures in place.

Nevertheless, mention should be made to the protection system set forth in our criminal justice system, and in the Domestic Violence Law in particular. This entails several measures of protection, of police protection, judicial protection and social protection, envisioning protection in a holistic manner, going beyond the criminal sphere and considering domestic violence in its broad spectre of a complex social problem.

We focused only on police and judicial protection, and not on social protection, however acknowledging how essential it is in order to ensure an effective response to this type of crime.

Given the lack of data and studies on victims of domestic violence with specific needs in Portugal, it is very difficult, based on existing information, to assess the impact of violence on these women and to explore adequately their access to protection. The outcomes of our research shed light on these important questions.

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The SNaP study allowed, first, for the identification of who are the groups of women especially vulnerable and with specific needs for protection as victims of domestic violence. In our country, these are the following:

- Elderly women, with impairment and/or a fragile health condition;
- Women with serious health problems and women with physical disabilities, who depend upon a caregiver;
- Women with intellectual disability;
- Women with mental health problems;
- Migrant women, who do not speak or understand the Portuguese language, are socially isolated and/or are undocumented (or whose papers the aggressor has withheld from them).

A main conclusion of our research points to the fact that, in general terms, the whole protection system, is thought in a standard way hence it does not encompass the inclusion of victims with specific needs. Even if general guidance exists arising from the letter of the law and establishment

of priorities for some groups, there is a lack of nationwide procedures in place to specifically evaluate such needs and identify them.

Another issue is then what is made with the identification of this vulnerability. The justice system tends to treat vulnerable victims in a more careful manner but current constraints, with overload of professionals, may jeopardise this individualised approach. Furthermore, there might be a sensitive approach by professionals individually and one-off good practices, but they are not part of a coherent and generalised system.

Not accounting for the specificities of these victims namely when issuing coercive measures in a criminal procedural level leads to the same legal consequences as to other women: lack of application of coercive measures needed; and/or lack of a measure that is appropriate to the particular case and/or timely issued. However, the impact of these consequences in the vulnerable victims' lives may be aggravated because of the very aspects that make them vulnerable.

The situation of victims who are care-dependent is particularly complex. Especially in cases where the person who usually provides care is the aggressor, alternative solutions for ensuring the well-being of victims are scarce, namely where it would be possible for the victim to stay in her home if appropriately supported. The application of a coercive measure in such cases should be linked to the promotion of solid responses on a social level, which is of the utmost difficulty when there are no family members available and willing to replace as caretakers and there is a shortage in resources. Lack of means, shortage of vacancies, unequal distribution throughout the country, the limited extent of the services that can be provided (also in the type of services available for the needs at stake), existence of staff properly trained, the costs involved, and the bureaucracy in getting timely support in cases of financial insufficiency, are serious problems to be met.

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A topic of particular concern is that of immediate protection. Shelters are used in cases where coercive measures cannot (alone) protect sufficiently but there are serious difficulties in finding shelter for victims with specific needs. For instance, women with mental health problems, women with serious physical disabilities, women with intellectual disabilities and women dependent upon care due to age or disease tend to be put in homes for the elderly due to impossibility of being placed in a shelter.

The lack of an adequate evaluation of the appropriateness of a given measure to the specific case is also to be mentioned among the problems regarding adequate protection. Sometimes alternatives to allow for immediate protection are particularly damaging in cases of vulnerability of victims with specific needs, thus demanding a timely and faster issuing of a coercive measure.

It is acknowledged that coercive measures are increasingly more applied. Nonetheless, these are still deemed as insufficient. It is noteworthy that the Committee on the Elimination of Discrimination against Women (CEDAW) recently urged Portugal to apply protection orders against abusive partners as it was considered that there is a limited use of protection orders in the country. Furthermore, it urged the country to establish a mechanism to ensure effective cooperation and coordination between family and criminal courts in order to ensure women have immediate

recourse to protection orders and injunctions against abusive partners, without the need to engage in criminal proceedings.

In addition, the inexistence of emergency barring orders has been contested, especially after the Istanbul Convention was ratified by Portugal and entered into force in our legal system.

Enforcing and monitoring the protective measures issued also shows as a relevant challenge still to be met. This includes consequences for the breach of the measure imposed, or action taken in those cases.

Other aspects that influence the effectiveness of measures arise from specific vulnerable circumstances a victim can encounter due to flaws in the protection system. This is particularly the case when minor children are involved, since conflict often arises between visitation rights and coercive measures imposed. Communication between the family court and the criminal court is not yet a generalised practice. In addition, with or without communication there is no apparent consideration of the violent context in the decision-making process.

Further specific, or aggravated, issues arise for women with specific needs: recognition of violence; reporting (especially when protective measures depend on the ability to engage in criminal proceedings); access to information; communication; access to specialised and adequate support; monitoring and follow-up; among others.

The need for a more integrated response, with better articulation not only within the judicial system but also between different agencies and services in general, assumes amplified importance when the victims have particular vulnerabilities. This includes the social support system and the judicial system working together, and the fostering of existing and new networks of support.

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New solutions need to be found, as services tend to be little differentiated and specialised. Moreover, complementary and/or improved protective measures need to be introduced.⁷⁴

Concluding with the words of one of our respondents, a pressing need would be:

Introducing administrative measures that would allow removing the perpetrator from the family home; an immediate barring (...) is particularly important to the most vulnerable [victims]. For these women this needs to be made and ensured together with immediate social support and specialised support in domestic violence, available within a maximum timeframe of 24 hours [PT28_VS].

⁷⁴ Specific recommendations aiming to improve protection of women victims of domestic violence with specific needs are detailed in another output of the SNaP study in Portugal, the *National Policy Paper*.