

QUESTIONNAIRE

décembre / December 2012



**RECONNAISSANCE ET EXÉCUTION DES ORDONNANCES DE PROTECTION RENDUES PAR  
DES JURIDICTIONS CIVILES ÉTRANGÈRES :  
QUESTIONNAIRE À L'ATTENTION DES ORGANISATIONS NON GOUVERNEMENTALES**

*établi par le Bureau Permanent*

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**RECOGNITION AND ENFORCEMENT OF FOREIGN CIVIL PROTECTION ORDERS:  
QUESTIONNAIRE FOR NON-GOVERNMENTAL ORGANISATIONS**

*drawn up by the Permanent Bureau*

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## INTRODUCTION TO THE QUESTIONNAIRE

In 2011 the topic of “the recognition of foreign civil protection orders made, for example, in the context of domestic violence cases”<sup>1</sup> was added as a new item to the work programme of the Hague Conference on Private International Law (< [www.hcch.net](http://www.hcch.net) >). The Permanent Bureau of the Hague Conference has conducted preliminary background research on this topic<sup>2</sup> with a view to begin an assessment as to whether a new international treaty (*i.e.*, a new Hague Convention) or other instrument should be developed in order to ensure the recognition and enforcement of civil protection orders across international borders. Civil protection orders may include, for example, “no contact” and housing exclusion orders in cases of domestic violence, “stay-away” orders in cases of stalking, and other injunctions to protect victims or potential victims from crime or other harmful interpersonal behaviour.<sup>3</sup>

The Permanent Bureau has circulated a [Questionnaire](#) to Members of the Organisation in order to obtain further information on legislation and to assess the need for and feasibility of an international instrument in this area. The input of non-governmental organisations which might have experience in this field would also be very beneficial. Your responses to this Questionnaire, sharing any information you may have based on expertise you or your organisation may have, would be a valuable contribution to the current assessment.

The Permanent Bureau kindly requests that your answers be submitted (in either English or French) as soon as possible, but in any case by **1 February 2013**, in order to allow the Permanent Bureau sufficient time to analyse information received for the attention of the governing Council of the Hague Conference that will meet in early April 2013. Responses should be sent by e-mail to < [secretariat@hcch.net](mailto:secretariat@hcch.net) > with the following heading and indication in the subject field: “NGO Questionnaire concerning the recognition and enforcement of foreign civil protection orders – [name of non-governmental organisation].”

Should you have any questions about this Questionnaire, please do not hesitate to contact Philippe Lortie, First Secretary, or Maja Groff, Senior Legal Officer, at < [secretariat@hcch.net](mailto:secretariat@hcch.net) >. We are grateful for your time and assistance on this important project.

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### **Identification**

**Name of your organisation:** Autonomous Women's Centre - AWC

Country / Countries where based: Serbia

Website of organisation, if applicable: [www.womenngo.org.rs](http://www.womenngo.org.rs)

### **For follow-up purposes:**

Name and title of contact person: Vanja Macanovic

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<sup>1</sup> Conclusion and Recommendation No 23 of the 5-7 April 2011 Meeting of the Council on General Affairs and Policy of the Conference (available on the Hague Conference website at < [www.hcch.net](http://www.hcch.net) > under “Work in Progress” then “General Affairs”).

<sup>2</sup> “Recognition and Enforcement of Foreign Civil Protection Orders: A Preliminary Note,” Prel. Doc. No 7 of March 2012 for the attention of the Council of April 2012 on General Affairs and Policy of the Conference (available on the Hague Conference website at < [www.hcch.net](http://www.hcch.net) > under “Work in Progress,” then “General Affairs”).

<sup>3</sup> Please see Prel. Doc. No 7, *ibid.*, for examples of common protection order legal regimes and variations of these regimes in a variety of jurisdictions.

## **Part I. National protection order legislation**

1. Please briefly describe any civil protection order regime(s) in your jurisdiction, and describe, in your view / the view of your organisation, its / their main positive and negative features, as applicable. (Please attach another sheet, if necessary.)

According to Article 198 of the Family Law (2005), the following measures may be taken against a family member who commits violence: 1 - expulsion/eviction order out of a family flat or house regardless of the property ownership or leasehold right; 2 - order for the victim to move into a family flat or house regardless of the property ownership or leasehold right; 3 - restraining order with regard to the victim; 4 - restraining order with regard to the place of residence or a working place of a victim; 5 - prohibition of the further harassment of a victim (non malestation order). The orders can last up to one year, with possibility of prolongation. The protection measures can be requested by the victims themselves or by the social service or public prosecutor as individual actors in the civil proceedings in the interest of the victim/s.

2. Please briefly list any other protection order regimes (*e.g.*, under criminal law, under police laws, etc.) in your jurisdiction which are important in your view / the view of your organisation.

Since 2009, in the Criminal Code of Serbia exists security measure (art. 79 and 89a) - restraining order that can be issued along with the criminal sentence, for the period of 3 years. From the same year, in the Criminal Procedural Code exists restraining order (art. 136) that can be issued during criminal proceedings, but it is almost impossible to apply it in a situation where victim and a perpetrator live in the same household. Similar measures exist in the Law on misdemeanour. The police in Serbia is not authorized to issue protection measures.

3. Have law reforms in this field been recently conducted or are they planned for the future in your jurisdiction? If so, please briefly describe.

Law reforms are constant and ongoing, but unfortunately, for the last four years no proposals from AWC for amendments of the relevant laws (family law, criminal code, criminal procedural code, police law) hadn't been accepted by the relevant Ministries or Parliament.

4. In the experience of your organisation / in your professional experience, what are the main issues which arise in your jurisdiction with respect to the enforcement of civil protection orders? (*e.g.*, what is being done well in your jurisdiction and what could be improved?)

Good sides of the protection orders in the Family law is that they can be issued even if there is no parallel criminal case, and in cases of only psychological or/and economical violence (which we usually don't have in criminal cases). Family law judges are authorized to issue protection measures *ex officio*. Breach of the protection order is a criminal act, and definition of family member who can ask for protection is very broad and in accordance with new international standards. Down sides are that protection orders are not issued urgently, rather in the period from 1 to 6 months depending on a case. Serbia lacks immediate protection of victims and all AWC efforts to persuade the state to adopt the Austrian model were in vain.

5. Please briefly list the main national or regional support facilities for victims of domestic violence (and / or any crimes or behaviours described in Question 9, below).

- Telephone hotlines

There is no national helpline, but individual hotlines are run by the 22 NGOs and 5 Centres for social welfare (CSW). SOS hotlines of women's NGOs receive no (or occasional and insufficient) financial support from the local governments, and none of them can be found in the data base of Social Protection Services, provided by the Republic Institute for Social Protection. Due to lack of financial support, 4 SOS hotlines of women's NGOs were closed in 2011. In 2012, Autonomous Province of Vojvodina established regional free SOS helpline run by 5 women NGO's.

- Counseling centers

Counseling for marriage and family service are provided within centers for social welfare (CSW) and financed through the budget of the Republic of Serbia. It is not clear enough whether these centers support a women victim/survivor or they are working on "family preservation". They use mediation and marital/partner therapy, which is contraindicated in cases of violence against women and domestic violence. They fail to understand the risk of increasing violence in the period of separation of women from violent partner and refer victims to counseling with abusers, particularly when it comes to parental issues and obligations, and thus directly threaten the safety of women.

- Shelters

Out of 13 shelters for women survivors of violence, 11 of them are state owned, within CSW. During the last 5 years, 4 shelters led by women's NGOs were closed due to the lack of finances.

- Rape

Serbia doesn't have Rape crisis center, nor specialized hotline/s for victims of rape.

## **Part II. Recognition and enforcement of foreign civil protection orders**

6. In the experience of your organisation / in your professional experience, have you encountered problems of persons who are protected by a civil protection order in one State having this foreign protection order recognised and / or enforced in another State?

- YES  
 NO  
 Not in a position to know

If YES, please describe:

## **Part III. Views on a potential international convention in this area**

7. Are there other situations of which you are aware where a new international Convention, which may include an international co-operation system, may be helpful to victims or potential victims of behaviours commonly covered by civil protection orders (e.g., domestic violence, stalking, etc.), for instance, in order to share information among national authorities across international boundaries, to provide information to at-risk persons regarding international travel, to help ensure a civil protection order will be recognised and enforced abroad, etc.?

- YES  
 NO  
 Not in a position to know

Comments: New Convention of the Council of Europe on preventing and combating violence against women and domestic violence, art. 62, which is still not legally binding international document.

8. If the Hague Conference were to develop a new international Convention in this area, in your view what would be the most desirable features of this new instrument? (Please check all which apply.)
- a.  Immediate, *prima facie*, enforceability of foreign civil protection orders by enforcement officials
  - b.  An international civil protection order multilingual certificate which must be applied for in the State of origin in order to be internationally enforceable
  - c.  Co-operative mechanisms including an international database registering enforceable civil protection orders
  - d.  A Convention which covers civil protection orders issued by courts and by administrative and other authorities
  - e.  A Convention that provides that enforcement officers have liability protection for good faith actions
  - f.  A Convention which addresses a broad scope of types of civil protection orders (e.g., including those addressing the types of behaviours listed in Question 10, below)
  - g.  Other features. Please specify:
- Further comments:

9. If the Hague Conference were to develop a new international Convention in this area, in your view which behaviours / situations should be covered or targeted by such a Convention? (Please check all which apply.)
- a.  Domestic violence
  - b.  Sexual assault
  - c.  Dating violence
  - d.  Stalking
  - e.  Forced marriage
  - f.  So-called "honour crimes"
  - g.  Human trafficking
  - h.  All of the above
  - i.  Other behaviours / situations. Please specify:

Please provide any comments on your above choices: Civil protection orders are usually issued in all these situations, especially where there has been emotional connection between victim and a perpetrator, so we don't see the reason why the Convention shouldn't focus on all these situations of a risk for victims.

10. Are you / is your organisation of the view that the Hague Conference should develop a new international Convention (or other mechanisms) for the recognition and enforcement of foreign civil protection orders (*i.e.*, so that a person protected by a protection order in one State can quickly have that order recognised and enforced in a foreign State)?
- YES
  - NO
  - Not in a position to know
- Comments:

11. If desired, please give any comments the models described in [Preliminary Document No 7](#) (Section 4)<sup>4</sup> or on any other existing model for a possible future Convention in this field (e.g., based on current national or regional instruments or otherwise): As it was mentioned in the cited document, there is obviously the need to create and adopt a worldwide Convention that would regulate this issue, having in mind that regional documents that now exist are

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<sup>4</sup> See Permanent Bureau, Prel. Doc. No 7, *supra*, note 2.

not unified and connected. The new Convention should take into consideration vulnerability of the victims and their need for immediate protection in every country, based on a decision from the authority from one country, regardless of the issuing authority (which might be the problem, for eg. if the court in one country refuses to validate protection order issued by the police in another country, because in the country of the court the police doesn't issue protection orders). Also, the procedure should be "user friendly" and tax free, because lots of victims are not in a situation to pay expensive taxes and hire an attorney, and most of the countries don't have or have very inefficient system of the free legal aid (eg. Serbia, Croatia).

- 12.** Please attach any other information or resource documents to this Questionnaire which you consider may be useful for the current assessment.