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Re: Third-party intervention Kurt v. Austria, Application No 62903/15

WAVE is a network of women's organisations working to combat and prevent violence against women and domestic violence in Europe. It was founded in 1994 and is based in Vienna. The network comprises women's NGOs in 46 countries and has over 150 member organisations.

WAVE member organisations provide psychosocial and legal services to victims of violence against women and domestic violence, such as women's shelters, helplines and crisis centres. Their aim is to facilitate the victims' access to justice in order for them to exercise their right to live free from violence. WAVE members have provided services to tens of thousands of victims of violence against women and domestic violence in European countries, mostly women and children, who are disproportionately affected by domestic violence.

WAVE has, with great concern, noticed the large number of women killed in Austria in the past two years. The femicide rate has increased to 41 cases in the 2018 statistics. Eurostat data shows that the proportion of female victims of homicides in Austria is higher than in any other European country.¹ A recent study on homicide shows that in more than half of the cases of murder in the domestic sphere, a history of violence already existed and was known to the authorities before the murder happened.² It is a well-known fact that children are also affected severely by domestic violence, that they are threatened to be killed and become victims of homicide either together with their mother or only themselves, especially if women try to separate from the violent partner – as the "last revenge" on the mother.

A. Risk factors and risk assessment in cases of domestic violence with a focus on the risk for children

Fear to report and seriousness of domestic violence

According to the EU-wide survey of the Fundamental Rights Agency, the reporting rates of incidents of domestic violence against women are generally low. Only one in three victims of partner violence report their most recent serious incident to the police or some other service.³

Perpetrators very often warn victims not to report them to the police and even threaten to kill them and the children in case they do file a report. Such threats are often made repeatedly and they serve to intimidate the victims and prevent them from seeking help. Threats of murder are well-known risk factors.

It is especially difficult for women victims of violence to report violence if the perpetrator threatens to kill not only them but also the children. Of course they want to prevent that from happening, and are afraid of turning to the police. This was also evident in the case of Kurt v. Austria: the mother was immensely worried about the safety of her children. She stated this even at the police station, when she finally took the courage, with the support of the specialist support service, to file a complaint with the police. She also told the police during reporting that she had not reported the death threats until then because she feared that he would act on his threats and actually kill the children, which horrifyingly really happened. On Tuesday she reported the violence

¹ Eurostat (2018): Death due to homicide, assault, by sex. <https://ec.europa.eu/eurostat/en/web/products-datasets/product?code=tps00146>

² Haller Birgitt (2012): High Risk Victims - Tötungsdelikte in Beziehungen. Verurteilungen 2008-2010, Studie verfasst im Auftrag des Bundeskanzleramtes/Bundesministerin für Frauen und Öffentlichen Dienst, Wien.

³ European Union Agency for Fundamental Rights (2014a): Violence against Women: an EU-wide survey. Results at a glance, Vienna, p. 10. <http://fra.europa.eu/en/publication/2014/violence-against-women-eu-wide-survey-results-glance>

4 March 2016.

to the police and on Friday her son was shot by the husband and died. The case itself is an example of how dangerous repeat violence and threats are.

Implementation of knowledge about risk factors and systematic assessment

Risk factors for domestic violence are well known through research and practices, and this knowledge is available to everyone through open sources.⁴ The authorities thus knew or ought to have known about the risk factors in theory and in the concrete case, in which several factors indicating extreme high risk were well documented.

WAVE members have carried out several European projects aimed at developing and implementing standards for the protection and support of victims of violence against women and domestic violence, for example, the EU-funded projects PROTECT I and II. In the course of these projects, evidence-based risk factors for domestic violence were identified, with a special focus on the risk of repeat and lethal violence. The project has shown that alarming gaps in the protection of victims still exist in many countries. Despite the available knowledge about risk factors, risk assessment and safety management are not carried out systematically in many regions. Violence against women is still seen as “quarrels between partners” or “domestic affairs”, and even repeat violence and serious threats such as the threat to kill the victim are often not taken seriously.

This publication provides detailed knowledge about twenty well-known and evidence-based forms of violence as risk factors which are easy to identify if the case in question is checked using a systematic approach with a checklist (see Annex).

Some of the most common risk factors (Protect Manual II⁵) are:

- **Previous domestic violence against the victim:** Across a variety of studies of risk factors for domestic violence against women, prior domestic violence has been identified as the most common risk factor.
- **Violence towards the children or other family members:** Frequently, domestic violence extends to other family members, including children. Children witnessing violence are also traumatised and severely affected, and often they are also abused or even murdered. Children are also used by the perpetrator as an instrument of emotional manipulation and control over the victim. There is evidence that the risks that children experiencing domestic violence are facing often are not taken seriously. The rights of children and safeguarding actions for children are often side-lined by practitioners responsible for risk assessment.⁶
- **Increased frequency or increased severity of violent acts:** An increase in the severity and frequency of violent acts is one of the most significant factors of severe and potentially lethal assault.
- **Threats to harm and coercion:** Practical experience has shown that severe violence is often preceded by threats and coercion. This serves to intimidate victims and instils a permanent situation of danger and fear.
- **Threats to kill:** Threats to kill are the most serious form of threat and a serious risk factor for homicides. The often-heard common assumption that repeated threats to kill are not serious, because the perpetrator “has not killed the victim in prior instances” is wrong. According to studies on homicides, death threats have often preceded the murder, and according to an Austrian study in more than half of the cases a history of violence was evident and known to the authorities before the murder.⁷
- **Choking and strangulation:** Choking and strangulation are very dangerous forms of violence because they are potentially lethal.
- **Sexual violence and rape:** Women who have also been sexually assaulted are more likely to be subjected to more serious injury and serial abuse in domestic violence.
- **Use of/ threats by weapons:** The use of, or threats to use, weapons are significant risk factors for serious and lethal violence. In domestic violence all weapons, including fire arms, knives and dangerous objects that could be used to hurt, must be taken into account. It must also be considered that perpetrators who threaten to kill and do not have a weapon at hand yet must not be given the time to get themselves a weapon.
- **Possessiveness and extreme jealousy, non-acceptance of the victim’s wish of a separation:** Possessiveness and extreme jealousy are also associated with severe violence. In addition, patriarchal attitudes of perpetrators, such as very rigid concepts of male family honour and a sense of ownership of women, can enhance the risk. The non-acceptance of the victim’s wish of a separation creates very dangerous situations in times when the victim tries to leave.

⁴ See Danger Assessment to assess lethal risk: <https://www.dangerassessment.org/>.

⁵ See previous footnote, p. 86-93.

⁶ Women’s Aid (2016): Nineteen Child Homicides. What must change so children are put first in child contact arrangements and the family courts, Bristol. <https://www.womensaid.org.uk/tag/nineteen-child-homicides/>.

⁷ Haller Birgitt (2012): High Risk Victims - Tötungsdelikte in Beziehungen. Verurteilungen 2008-2010, Studie verfasst im Auftrag des Bundeskanzleramtes/Bundesministerin für Frauen und Öffentlichen Dienst, Wien.

- **Addiction, economic stress:** Use of drugs and alcohol are the most common forms of addiction among perpetrators in domestic violence cases, but gambling is a further serious risk factor in domestic violence. Gambling also causes economic stress, which is another risk factor.
- **Perpetrator's threats of suicide:** A perpetrator's mental health problems are associated with an increased risk of repeat and severe violence. Threats of suicide are risk factors for homicide-suicide cases.
- **Violation of protective orders:** Violations of protective or non-contact orders are associated with an increased risk of future violence.
- **Victim's fear of the perpetrator, fear for herself, fear for the children:** Research has shown that there is a strong correlation between the self-assessment of risk by the victim and the actual use of violence by the perpetrator. It is thus important to listen to the victim(s) and believe them if they express fear.
- **Separation:** Separation is commonly known as a significant risk factor for severe harm and killing of women by her husband or partner. If a victim decides to report violence to the police and to leave a dangerous perpetrator, the risk of harm and of being killed is high, and effective protection is essential.

The more risk factors are present, the more dangerous the situation is for the victim. If several of the above risk factors coincide, experts speak of an extreme risk of being seriously harmed or killed.

Danger to the victim and to the children is often evident in domestic violence cases

The Austrian WAVE member, the Domestic Violence Intervention Center Vienna, which is the largest specialist women's/victims' support service in Austria, providing services to roughly 6 000 victims/survivors of violence against women, domestic violence and stalking per year, has provided information on the situation in Austria. According to the Center's ample and long-term experience (since 1998), the following examples of patterns of violence and risk factors for children in domestic violence cases are very common and have also been apparent in the current case of the killing of Berk:

- Previous conviction of the perpetrator due to violent behaviour
- Continuation of abuse of a victim and her children despite a conviction
- Beating and slapping the children repeatedly
- Denial of violence against the children and downplaying it by admitting that the beatings only happened "every now and then" if the children were "naughty"
- Gambling addiction of the perpetrator and economic stress in the family caused by it
- Accusing the wife of being a whore sleeping with other men as a sign of possessiveness and extreme jealousy
- Repeated threats to kill the wife and the children
- Threats to kill the wife if she left him
- Threats to kill the children in front of their mother
- Taking away the victim's phone before a beating so that she cannot call the police
- Committing violence against the mother in front of the children
- Children testifying to authorities about the beating they received from their violent father and reports that they are afraid of him
- Increased frequency of threats, up to daily threats to kill the wife and the children
- Deprivation of liberty, locking up the victim and her children
- Increase of severity and brutality of violence, choking the wife
- Raping the wife
- Using increasingly brutal threats, such as the threat to chop up the children in front of their mother's eyes
- Threats by the perpetrator to kill himself and the children
- Putting pressure on the victims to meet the perpetrator despite the existence of a police barring order
- The victim clearly expresses that she is taking the threats very seriously and that she is in great fear of her husband for the children and herself.

It is self-evident that with such a list of violent behaviour and risk factors, an immediate risk to the children and their mother must be assumed by authorities. The combination of physical and sexual violence, threats to harm and threats to kill establish a permanent situation of danger, intimidation and fear, which leads to permanent traumatic stress in the victims. In such an unpredictable situation, victims never know when the perpetrator will strike the next blow and what it will be. As already stated, threats and coercion are used as a mechanism to prevent victims from reporting the violence and to enable perpetrators to exercise increasing power and control over them. The freedom to leave ceases to exist.

The combination of the forms of violence described above are risk factors leading to a **constant risk of immediate danger and harm**. According to the Istanbul Convention, “*immediate danger refers to any situation of domestic violence in which harm is imminent or has already materialised and is likely to happen again*”.⁸ An ongoing situation of violence and threats does not make the situation less dangerous – on the contrary: as explained above, it creates a situation of permanent immediate danger to which the victims are exposed and from which they cannot escape without risking their life and health. The situation resembles terror and being held hostage, it is a painful permanent maximum stress situation similar to torture.⁹ In such a severe situation, victims are known to develop a specific survivors’ mechanism, the so-called “Stockholm syndrome”, an identification with the aggressor in order to secure one’s own survival. The Stockholm syndrome causes victims to act not in their own interest but in the interest of the perpetrator at whose mercy they are.

If a victim in such a situation of immediate danger calls on all her courage to report the violence to the authorities and does not get effective protection, this must be regarded as a violation of the right of everyone, including children, to live free from violence (Article 4.1 of the Istanbul Convention). And a failure to meet the obligation to exercise due diligence to prevent abuse and murder (Article 5.2 of the Istanbul Convention) and to meet the standards that the European Court of Human Rights has developed in its jurisprudence over the past years in cases of domestic violence.¹⁰ If authorities consider risk factors systematically, take them seriously and act accordingly, they can save the lives of victims of domestic violence and their children.

Ineffective protection of children

In Austria, at that time the police barring orders did not include the protection of the children at school. Moreover, a barring order cannot prevent a dangerous perpetrator who intends to kill from carrying out his deed. Firstly, risk assessment should not rely on the victim’s own assessment, but according to systematic standards. Secondly, when issuing barring orders, in the context of domestic violence, the authorities should consider the specific nature and dynamics of this phenomenon along with the enhanced risks and impact domestic violence has on children. According to article 31(2) of the Istanbul Convention, all the necessary measures should be adopted to “ensure the exercise of any visitation or custody rights does not jeopardise the rights and safety of the victim or children”. Finally, it is of the utmost importance to acknowledge the safety risk children face when contacting with the perpetrator and how limited and ineffective barring orders can be for children’s safety. In addition, a civil court protection order cannot serve this purpose (see also section C). Pre-trial detention would have been an effective mean to save the boy’s life and is intended specifically for such situations.

Abolition of the provision banning perpetrators from schools

After the terrible murder of Berk, upon initiative of specialist support services, the police barring order was amended to include the possibility to ban aggressors from schools or child care facilities; unfortunately this provision was abolished in the latest law reform, which has been in force since 1 January 2020; instead, a regulation that prohibits the aggressor from approaching the victim was introduced; but if the aggressor is standing in front of the school and waiting for the child without approaching her/him, he may not be sanctioned; the child, in order to get to school, has to approach the aggressor, which can be very dangerous; specialist victims support services have protested massively against abolishing the ban from school and child care facilities, but regrettably, their protests have not been taken into account.

Domestic violence happens everywhere

Our knowledge about risk factors shows that domestic violence is not restricted to the home. There is no reason for authorities to believe that domestic violence would “only happen at home or in its vicinity” and that children and other victims would not be endangered at other places. Such assumptions are rather “wishful thinking” than reality and bear the danger of overlooking the risk of children to be harmed. The relevant literature and practical experience show that children experience violence in many circumstances, including in child contact situations and in public, and that children need special protection and care.¹¹ The argument that the danger to a child at another place than the home could not have been foreseen because previous violence happened at home thus lacks any rationale and is rather a justification for inaction.

⁸ Istanbul Convention Explanatory Report, Para. 265.

⁹ Herman, Judith L. (1992): *Trauma and Recovery. The aftermath of violence – from domestic abuse to political terror*, New York.

¹⁰ See, for instance, *Opuz v. Turkey*; *Kontrova v. Slovakia*; *Talpis v. Italy* and the recent case of *Volodina v. Russia*.

¹¹ See, for instance, Kavemann, Barbara / Kreyssig, Ulrike (ed.) (2005): *Handbuch Kinder und häusliche Gewalt*, Berlin; Hester, Marianne / Radford, Lorraine (1996): *Domestic Violence and Child Contact Arrangements in England and Denmark*, Bristol.

Being cooperative with the authorities is NOT a sign of low risk

Showing willingness to cooperate with the authorities does not in any way diminish the threat a perpetrator represents to victims; it is merely a strategy to avoid negative consequences and sanctions. It is well known that perpetrators often behave friendly towards strangers and authorities, but have a different face at home. It is discriminatory for victims if authorities use arguments such as “the perpetrator was cooperative” to deny victims protection through pre-trial detention, and it is privileging perpetrators if authorities are gullible and easy to mislead. In no research on risk factors is the willingness of perpetrators to cooperate with authorities regarded as a factor diminishing risk and it should not be justifiable for state authorities to use this argument for failing to protect a victim.

B. Stereotyping and victim blaming

Judicial stereotyping is a cross-cutting issue in cases of violence against women. As a consequence, their right to a fair and just trial is disproportionately affected.¹² Two very common attitudes can bear relevant consequences in the adjudication of these cases. First, there is an extensive misunderstanding surrounding the expectation of a woman’s behaviour, which implicitly allows the idea that victims bear partial responsibility for the violence. Second, in the context of proceedings, this has the ultimate effect of overturning the burden of proof, making the victim responsible for the correct evaluation of the risk they face.

Authorities dealing with situations of violence against women, especially in cases of domestic violence or sexual violence, have a propensity to blame women victims of domestic violence for not having adequately protected themselves and their children, thus exposing them to secondary victimisation. This risk has been outlined by some GREVIO Reports (i.e. Turkey¹³, Italy¹⁴) where it was noted that the risk is greater with professionals (police, courts, social services) whose competence and knowledge are inadequate when confronted with the issue and dynamics of domestic violence and violence against women and children in intimate partnerships. Due to a lack of training on the issue of violence against women, and inherent prejudices and stereotyped interpretations of the role of men and women in intimate relationships (and as parents), the behaviour of women in these situations is often seen as “ambivalent”, incoherent or even contradictory.

The dynamics of violence against women (known as “power and control” mechanisms or the “cycle of violence”) are often not taken into account, and women feel insecure and disoriented by the different messages they receive from authorities: whatever they do in reaction to male violence is perceived as wrong and their credibility is continuously questioned. Authorities often fail to understand the specifics of a given situation, and the seriousness of the danger to which a woman is exposed is underestimated and questioned together with her credibility. Meaning is often attached to conduct that is, *per se*, neutral, and there is the expectation of a “reasonable”, “rational” reaction on the part of the victim to satisfy an ideal threshold of credibility.¹⁵ According to this improper standard, for instance, a woman will not be considered “threatened enough” when she does not attempt to escape from her abusive partner as soon as possible. As perfectly illustrated and explained in *Vertido v Philippines*: “the judiciary must take caution not to create inflexible standards of what women or girls should be or what they should have done when confronted with a situation of rape based merely on preconceived notions of what defines a rape victim or a victim of gender-based violence”.¹⁶

In the case at hand, the court attributed relevance to the fact that the applicant only denounced her husband three days after the rape occurred, during which time she stayed at home with him, and did not limit his contacts to the children. The court subsequently considered this as evidence of a low – if any – level of risk. At a closer look, the applicant did not have any reasonable instrument to impede the contacts between the violent

¹² Eliminating judicial stereotyping. Equal access to justice for women in gender-based violence cases. Final paper submitted to the Office of the High Commissioner for Human Rights on 9 June 2014, Author Simone Cusack.

<https://rm.coe.int/1680597b20https://rm.coe.int/1680597b20>

¹³ “GREVIO is also concerned about discretionary mitigation in court cases of violence against women as possibly mirroring sexist prejudice and victim blaming” https://insanhaklarimerkezi.bilgi.edu.tr/en/news/none-grevio_turkiye_raporunu_acikladi/

¹⁴ “In its report, GREVIO expresses its concern about the tendency of the system in place to expose to secondary victimisation mothers who seek to protect their children by reporting the violence”. <https://rm.coe.int/grevio-report-italy-first-baseline-evaluation/168099724e>

¹⁵ Karen Tayag *Vertido v The Philippines*, Communication No. 18/2008. An exhaustive reference of the risk of judicial stereotypes can be found at <https://rm.coe.int/1680597b20>

¹⁶ *Ibid.*

father and the children, besides repeatedly informing the authorities that the children’s father had threatened several times to kill them in front of her (see section A).

As already described, long-term domestic violence, accompanied by repeated death threats (towards the children as well) is not only paralysing (which is a typical reaction in traumatic situations and motivates fear), but also forces the woman to look constantly for a balance between the affirmation of her rights and safety with her children and the reality which often confronts her with frustrating obstacles to get real help and protection. These obstacles include inappropriate periods of protective measures, inadequate procedures imposed by the police and courts, forced contact between perpetrators and children, which inevitably involves the women themselves, the application of custody laws which ignore or underestimate the dynamics of domestic abuse and violence, protection orders which only consider the danger “at home” and not out of the home and in relation to the children who continue to be at risk from violence. By the same token, it is extremely concerning that the father’s conduct (before and after the separation) is given so little relevance, a situation that is clearly symptomatic of his propensity to repeat the crime.

Civil rights procedures and instruments against domestic violence in most European countries are not as quick and effective as some criminal law instruments. Maintaining free and unsupervised visiting rights, for instance, is very common in cases of domestic abuse.¹⁷ This creates the paradox, for the mother, that she cannot refuse the father’s contacts and visits to the children even in cases where she recognises his danger, and attempts to express her concerns. Therefore, while her perceived restraint will likely drive authorities to underestimate the risk, her refusal to allow visiting rights to protect her children will, on the other hand, make it appear that she is an alienating mother, and one who tries to withhold her children from their father’s care, with sometimes severe judgments by the courts and social services on her parental competence and right of custody.

This paradox can only be solved at its roots, that is by ensuring a correct understanding of the dynamics of domestic violence in the judicial handling of cases. The state cannot shift the responsibility to act on the victims. The woman cannot be blamed for not immediately applying for civil law barring orders to protect her children, as these instruments cannot replace criminal law obligations and provide no effective protection against the threats of a perpetrator. Rather, it should be the due diligence of law enforcement authorities, and of the state, to adequately train the staff concerned to this end, and in particular to be considerate of the specific nature and context of domestic violence.

Which legal protection instruments might be appropriate in a situation of repeat and severe violence and death threats will be further elaborated in the next section.

C. Adequacy of the legal framework with regard to preventing the killing of victims of domestic violence, and gaps in implementation

There is strong evidence that Austria has a structural problem concerning the legal protection of women and children from being killed. An expert statement in the Austrian NGO shadow report to GREVIO reads, “it is a major problem that very often, perpetrators of violence are not held in pre-trial detention until proceedings commence”, but that a crime report is filed while the perpetrator is allowed to go free. This involves the risk of their committing further acts of violence, and severely endangers the victim. It has frequently been proven that emergency barring orders issued by the police or civil court orders are not sufficient to protect victims in cases in which perpetrators have committed repeat violence or threatened to kill the victim¹⁸ and that thus, emergency barring orders “should not be used as a substitute of arrest and detention when there is a risk of repeated and severe violence, including lethal threat”.¹⁹

Arguments that a police barring order is sufficient in high-risk situations have been proven to be wrong. According to Austrian WAVE experts, the instrument of police barring orders was introduced as a “soft measure”

¹⁷ <https://rm.coe.int/final-statement-vaw-and-custody/168094d88>

¹⁸ GREVIO Shadow Report NGO Coalition (2016): Austrian NGO Shadow Report to GREVIO, Vienna. https://www.interventionsstelle-wien.at/download/?id=GREVIO-Schattenbericht_2016.pdf

¹⁹ Council of Europe (Ed.) (2017): Emergency barring orders in situations of domestic violence. Article 52 of the Istanbul Convention, authors: Rosa Logar and Johanna Niemi, a collection of papers on the Council of Europe Convention on preventing and combating violence against women and domestic violence, Strasbourg, p.10.

to prevent domestic violence from occurring altogether or to prevent minor violent acts. It was NOT meant to be applied in cases of repeat crime and threats to kill, for which, under the law of criminal procedure, pre-trial detention has been defined as the measure of choice to protect victims' lives.

The risk to be harmed is immediate at any time, because it is unpredictable when harmful acts will be carried out, it can happen within a few days, a week or in the next hour. The positive obligation to protect a victim must be applied as soon as there is a risk of harm, otherwise the threshold for getting protection is too high. A police barring order cannot be an effective means to stop a dangerous perpetrator because the aggressor is free to approach and harm the victim.

The Austrian WAVE experts also point out severe problem regarding the application of the law on pre-trial detention: authorities often use the argument that even if there was a ground for pre-trial detention, the authorities may use "more lenient" measures as alternatives to detention (Article 173, Para. 5 of the Code of Criminal Procedure) and that a police barring order is listed as a more lenient measure in the relevant act. However, the law is hardly applied properly: when adopting "more lenient measures" as alternatives to detention, the criminal justice authorities would have to issue, administer and monitor a criminal law order with protective measures. For example, such an order could have been issued in the case of the boy Berk: the judicial authorities could have applied comprehensive protection measures that go beyond the protection a police order can provide: the authorities could have prohibited the aggressor from going to the school of the children. This would have been of particular importance because, at the time of the murder of Berk, the law on police barring orders did not include the option of prohibiting an aggressor from coming to the school.

The sanctions for violating a criminal law order are much stronger than sanctions for non-compliance with a police barring order or a civil law order. The aggressor can be detained immediately for not complying with a criminal law order, whereas the violation of a police barring order – or a civil court order for that matter – is only punished by an administrative fine. Instead of actually applying lenient measures, authorities often argue that a police order or civil court order had been issued while the aggressor was still allowed to go free, without any restrictions and measures to protect victims in force.

In other words, the existing legal possibility to issue criminal law orders to protect victims is hardly applied. Instead, the initiative is left to the victims to apply for a civil court order. This places an undue burden on victims and nullifies the principle that it is the state's responsibility to prevent violence and protect victims.

Even if, in some cases, more lenient measures that are properly applied and complemented by well-coordinated and well-implemented protective measures can be an alternative to pre-trial detention, it is doubtful if it is justifiable to use this measure in cases of repeat and severe violence and threats to kill. If an aggressor does not comply with the order, the victim can be killed before the authorities are even able to prevent him from approaching the victim. In any case, the principle that the perpetrator's rights cannot supersede the victim's right to be protected from violence must be applied (see also CEDAW decision below).

In addition, the WAVE experts regard it as very problematic to argue that if a prior police barring order has been sufficient to prevent further violence, the same measure will also be effective in a new situation of serious violence and death threats. This disregards the actual situation, risk factors and escalation of domestic violence, and denies effective protection to the victim currently at risk. A new incident also indicates that previous protection measures obviously were not effective in stopping violence in the longer run, and this makes it all the more questionable to just use the same "soft" measure again and to fail to apply the appropriate measure for repeat and severe crimes and death threats, namely pre-trial detention.

The GREVIO report states clearly that a reassessment of the common practice of relying on barring orders instead of imposing pre-trial detention is urgently needed, since during the examination of GREVIO in Austria, another victim was killed under similar circumstances.²⁰

Two additional cases brought to the attention of CEDAW under the Convention on all Forms of Discrimination of Women represent a further indication that there is a systematic problem in Austria regarding the protection of victims of domestic violence from being killed. In both cases, women were killed by their husbands, after a history of abuse known to authorities, and threats to kill. The Austrian authorities had argued that issuing a police barring order and a civil law order constituted sufficient protection and that the detention of the perpetrator would have

²⁰ GREVIO Baseline Evaluation Report Austria 2027, p. 40f.

been disproportionate. The CEDAW Committee did not follow this argument and ruled that Austria had violated the two women’s right to live, reasoning that the perpetrators’ behaviour (death threats, intimidation and battering) had crossed a high threshold of violence and that the Public Prosecutor should have detained the aggressors.²¹

In both cases, the CEDAW Committee acknowledged the fact that Austria had established a comprehensive model of protection from domestic abuse but stated that this was not enough as in order for the individual person to enjoy the practical realisation of the principle of equality of men and women and of her human rights and fundamental freedoms, the political will that is expressed in the system of protection against violence must be supported by State actors, who adhere to the State party’s due diligence obligations. In other words: it is not enough to have good laws, they also need to be enforced in each case and by all actors.

Regarding Austria’s argument that detention would have been disproportionate, the Committee notes in both cases that although it has to be considered for each case individually whether detention would disproportionately interfere in a suspect’s fundamental and human rights, “the perpetrator’s right cannot supersede women’s human rights to life and to physical and mental integrity”.

Civil law protection measures are inadequate in cases of severe and repeat violence and death threats

As stated above, the WAVE experts are of the opinion that civil law protection orders, which in Austria are issued as interim injunctions, cannot be an alternative to criminal law protection measures such as pre-trial detention, because this would shift the state’s obligation to protect victims to the victim and would make it a private matter. Therefore, there must not be a demand on the victim to exhaust civil law remedies to protect its own life. Moreover, according to the Austrian WAVE member, i.e. the Intervention Center in Vienna, it is practically impossible to have an interim injunction issued and effective within two or three days. This is precisely why the Austrian law provides that the police emergency barring order is automatically prolonged from two to four weeks when the victim applies for a protection order, because the court needs time to issue the order and to put it into effect, which includes that it is served on the perpetrator.

The Intervention Center has ample experience in supporting victims to obtain an interim injunction, and has provided services to tens of thousands of victims in the past years. It usually takes at least 4-5 days before an order is issued and actually takes effect. Judges are also hesitant to issue orders without having heard the alleged perpetrator, what they actually could under the applicable law, because they want to give the other party the opportunity to be heard and because the applicant’s opponent has the right to lodge an objection if they are not heard, and judges want to avoid that.

The Austrian experts working in this field for many years do not know of any government statistics on interim injunctions which would furnish evidence that such injunctions are issued and enforced immediately. The GREVIO questionnaire (the basis for the state party report) is asking detailed questions about restraining orders, such as a question about the delay between issuing such an order and when it takes effect.²² The Austrian state report does not contain any data on these issues and the GREVIO report remarks that there is a lack of data and that it is not even possible to assess the overall numbers of protection orders issued.²³

²¹ United Nations/CEDAW Committee Communication No 5/2005 and Communication No 6/2005.

²² GREVIO questionnaire: see <https://www.coe.int/en/web/istanbul-convention/grevio>, p. 17.

²³ GREVIO Baseline Evaluation Report 2027, p. 21.

To summarise

The examination of GREVIO, the two CEDAW cases, the growing number of women who are killed, and the experience of specialist women’s support services in Austria point to a worrying gap in the protection of women and children experiencing serious violence and threats of being killed. In its evaluation report, GREVIO strongly encourages the Austrian authorities to “step up measures to assess the real risk of reoffending in domestic violence cases in order to make more appropriate use of pre-trial detention where warranted.”²⁴

The WAVE network requests that the Grand Chamber takes the above submissions into account in its consideration of Kurt v. Austria.

We kindly ask to direct the response to this third party intervention and any questions concerning it to:

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Marcella Pirrone, lawyer D.i.re Italy, vice-president of WAVE, e-mail: pirrone@pmllex.it,
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Yours faithfully,

Alicja Switon
Executive Manager of WAVE

²⁴ See footnote 1 above.

D. Appendix: Example of checklist for the assessment of risk factors used by the Domestic Violence Intervention Centre Vienna

Checklist: List of Risk Factors

Victim/s, endangered person/s:					
Perpetrator:					
Date of List of Risk Factors:					
IMPORTANT! Fill in and record in the computer immediately with receipt of notification!(prior to case record)					
	yes	no	Ctly. not known*	Risk factor	description
1.				Previous domestic violence against women	
2.				Violence towards the children or other family members	
3.				Generally violent behaviour	
4.				Violation of protective orders	
5.				Severity and frequency of violent acts	
6.				Use of / threats by weapons	
7.				Controlling behaviour and isolations	
8.				Stalking	
9.				Sexual violence	
10.				Threats to kill, threats to harm, coercion	
11.				Strangulation and choking	
12.				Issues related to drug and alcohol use	
13.				Possessiveness, extreme jealousy and other forms of harmful attitudes	
14.				Issues related to poor mental health, including threats and attempts to commit suicide	
15.				Economic Stress	
16.				Fear for herself and others	
17.				Separation	
18.				Child contact	
19.				Step child living in the family	
20.				Violence during pregnancy	
21.				Potential triggers	trial, divorce trial...
Sum				Explanatory notes:	
	yes	N o	ctly. not known		

***IMPORTANT: In case of risk factors, that where little or no information exists, you have to investigate further and check with the victim and the specialist victim support service.**