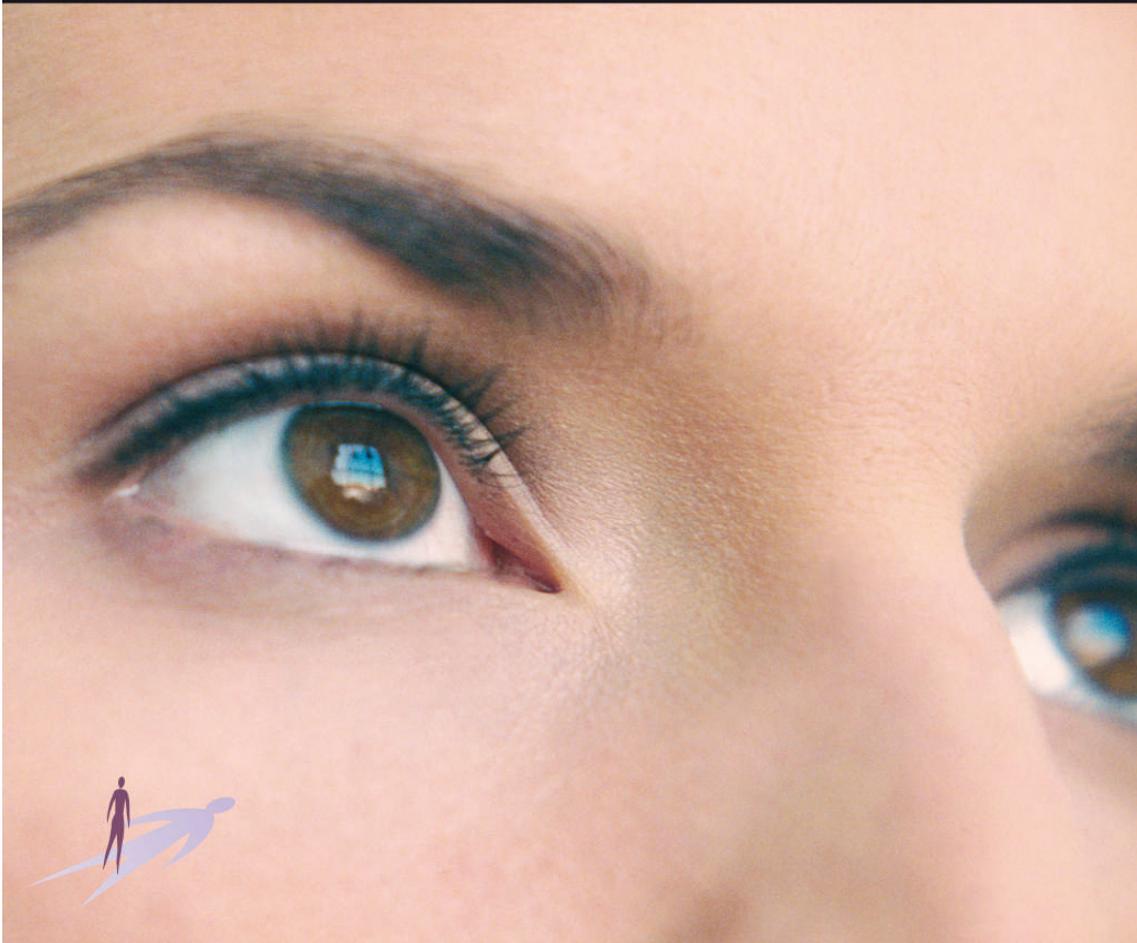


PROTECTING WOMEN FROM THE NEW CRIME OF STALKING: A COMPARISON OF LEGISLATIVE APPROACHES WITHIN THE EUROPEAN UNION

MODENA
GROUP ON
STALKING



UNIVERSITÀ DEGLI STUDI
DI MODENA E REGGIO EMILIA



DAPHNE PROJECT 05-1/125/W

PROTECTING WOMEN FROM THE NEW CRIME OF STALKING:
A COMPARISON OF LEGISLATIVE APPROACHES
WITHIN THE EUROPEAN UNION

FINAL REPORT

EXECUTED BY

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The contents of this report represent the views of its authors and not necessarily those of the European Commission.

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The project has involved eight partners: University of Modena and Reggio Emilia (Italy), Coordinating Centre; Catholic University of Leuven (Belgium); University of Amsterdam (The Netherlands); Barnet, Enfield & Haringey, Mental Health Nhs Trust North London Forensic Service (United Kingdom); University of Maribor (Slovenia); Universitat Autònoma de Barcelona (Spain); National Bureau of Investigation of Vantaa, Süomi (Finland); Technical University of Darmstadt (Germany).

The research project has been directed by Salvatore Luberto, Full Professor of Criminology at the University of Modena and Reggio Emilia and co-ordinated by Laura De Fazio, Associated Professor of Criminology at the University of Modena and Reggio Emilia, with the collaboration of Gian Maria Galeazzi, Consultant Psychiatrist, Chiara Sgarbi, Criminologist and Raffaella Merafina, Criminologist.

The research group also included the members: Paolo Curci, Giovanni Neri (University of Modena and Reggio Emilia); Geert Vervaeke, Anne Groenen (Catholic University of Leuven); Paul Emmelkamp, Jan-Henk Kamphuis (University of Amsterdam); David James, Frank Farnham, Louise Preston (Barnet, Enfield & Haringey, Mental Health Nhs Trust North London Forensic Service); Gorazd Meško, Aleš Bučar-R. (University of Maribor); Marcelo Aebi, Marayca López (Universitat Autònoma de Barcelona); Helina Hakkanen (University of Helsinki); Hans Georg Voss, Jens Hoffman (Technical University of Darmstadt).

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This Final Report has been edited by the University of Modena and Reggio Emilia and the Modena Group on Stalking (MGS). The national chapters collected in the Appendix

have been written by national key-experts, including also members of the Modena Group on Stalking.

In particular we would like to express our gratitude to all the European key experts who collaborated in the development of this study (see the list in the Appendix at the end of the Report).

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The Modena Group on Stalking is a multidisciplinary European research group that includes psychiatrists, criminologists, forensic doctors, jurists, psychologists, engaged in research projects of multicentric type within the Daphne Programme.

- Project Daphne 03/143/W: Women victims of stalking and helping professions: recognition and intervention models.
- Project Daphne 04-1/091/W: Pathways to survive stalking for women victims.
- Project Daphne 05-1/125/W: Protecting women from the new crime of stalking: a comparison of legislative approaches within the European Union.
- Project Daphne 06-1/185/W: A course for professionals working with women victims of stalking

The MGS maintains a website: <http://stalking.medlegmo.unimo.it>

2. INTRODUCTION

This report contains the results of a project aimed at collecting and analysing available information on legal regulations on stalking across European Member States. The report includes information on available legal interventions in the civil and criminal justice systems in the EU Member States.

The development of the project derives from the experience and knowledge obtained from previous Daphne projects on stalking regarding in particular helping professions and pathways to survive for women victims of stalking. The study of the phenomenon, from the perspective of recognition and intervention and of the victims, showed that the majority of the Member States remain unable to offer substantial legal help to the victims of stalking and that the existing rules have generally a symbolic function and their effectiveness is disputed.

This research aims at providing legislators and policy makers with a knowledge base that could be useful in case of review of existing rules and regulations for the creation of new laws to protect women victims of stalking.

The report intends to give a comprehensive overview of the legal situation of each Member State, reporting similarities and/or differences in the existing laws, and obstacles and problems which hinder their implementation.

Through this study we have compared different European experiences of protecting victims from this form of violence in order to gather information that may be useful for possible future changes in the existing laws or creation of new laws.

The information here summarised was collected by key-experts in the EU Member States (names detailed at the end of the report) who completed a specimen questionnaire prepared by the Modena Group on Stalking (MGS). The information provided in the questionnaires was discussed and licensed in two plenary workshops with all key-experts, held in Modena, Italy, December 2nd-4th, 2006 and in Ljubljana, Slovenia, March 15th-18th, 2007.

The report on stalking legislation across EU Member States includes: a general outline of the issue; one chapter for each Member State reporting the respective national situation regarding stalking; a synopsis of the current legislation and practices in the European Union, reporting specific laws addressing the phenomenon and, when absent, laws under which stalking can be, albeit partially, prosecuted; an analysis of similarities

and differences across the Member States; a concluding section, which outlines and discusses problems in the available norms, providing some recommendations.

The report is organised as follows:

- Acknowledgements (chapter 1);
- Introduction (chapter 2);
- Project: aims and methodology (chapter 3);
- Main results (chapter 4)
- Legal situation on stalking among the European union Member States (chapter 5);
- Conclusions and recommendations (chapter 6);
- Appendix (chapter 7).

3. PROJECT: AIMS AND METHODOLOGY

This report provides the final results of the research project “Protecting women from the new crime of stalking: a comparison of legislative approaches within the European Union”, financed by the European Commission.

AIMS OF THE PROJECT:

In order to respond to the problem of a lack of comparative information on legal initiatives to target stalking in EU Countries, the project aimed to consolidate a network of researchers able to collect, compare and discuss existing legal frameworks under which stalking is, or could be, prosecuted. No such comparative, multi-national analysis has yet been conducted. The lack of such an analysis constitutes a serious barrier to the comparison of different European experiences of protecting victims from this form of violence and to future decisions regarding changes in the existing laws or creation of new laws.

The project aimed at collecting and analysing available information on legal regulations on stalking across European Member States. Through this study the researchers have compared different European experiences of protecting victims from this phenomenon in order to obtain useful information that may be useful for possible future changes in the existing laws or for the creation of new laws.

This research intended to provide legislators and policy makers with a knowledge base by which they can review existing rules and regulations or create new laws which offer more effective legal protection to women victims of stalking. The study has outlined and discussed positive and negative aspects of the existing regulations within the EU, trying to identify possible guidelines/recommendations.

The result is a final document with a comprehensive overview reporting the legal situation for each Member State, similarities and/or differences in the existing laws, and obstacles and problems which complicate their implementation. It is a comprehensive final report on stalking legislation across EU Member States.

METHODOLOGY

The results have been reached by the construction, completion and discussion of a structured grid collecting relevant information completed by a key expert selected in each European Union Member State.

The research project was developed through the following stages:

- a) Creation of the Grid for the collection of the data about legislation on stalking in the EU countries. After a bibliographic search on relevant papers, a first draft of the grid has been prepared, created by the coordinating centre, addressing in a detailed and analytical way the state of affairs concerning legal protection from stalking available in each country with particular emphasis on laws specifically targeting the issues and their essential elements. Then the partners have realized the final version of the grid, with 36 questions on the following issues: linguistic and conceptual issues; legislation; other aspects concerning prosecution of stalking behaviours; epidemiology; opinions; background aspects; other issues.
- b) Selection of a key expert for each EU country. The candidates have been contacted through a common e-mail of presentation of our team of research and by explaining our project in order to ask for their collaboration. Criteria of selection have been: experience in the field of study; possibility to guarantee contacts with relevant institutions and ministries (mainly of Justice); experience in similar field of study (women violence, harassment); members of victims or stalking associations; professionals in the legal field (lawyers, Judges, experts); knowledge of English language.
- c) Completion of the grid about current legislation and practice on stalking by each country's delegate and delivering of a national chapter on the basis of a common format.
- d) Collection and systematisation of all the provided material by the research group, in order to prepare a draft of the final report, sent to all the participants. The definitive version of the report was approved after the suggestions of the external evaluator. The questionnaire has made it possible to collect information in a structured format on how stalking is handled in national laws or, where there are no specific laws, details on laws that might be used to cover similar areas.
- e) Realization of the Final Report.

- f) After the finalization of the report, a copy was sent to relevant institutions of each single EU country.

4. MAIN RESULTS

4.1 Linguistic and conceptual issues

Table 1: Presence of a word or an expression which provides a translation for the English concept of “stalking” in the European Union Member States

	<i>Number</i>	<i>countries</i>
Yes	8	Austria, Belgium, Denmark, Ireland, Netherlands, Slovenia, Sweden, UK
No	17	Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Poland, Portugal, Slovakia, Spain

Comment: The table shows how in nearly all the countries with specific anti-stalking laws, a word or an expression exists that translates the English word stalking. Exceptions are Malta and Germany. Malta has had its own specific anti-stalking law since 2005. The legislative document refers generically to harassment, the parliamentary debate intended also including more specific stalking behaviours, but preferred to use the wider and more generic term of harassment in the law. Similarly, Germany, which has had a civil provision since 2002 and a more recent criminal law (2007), has preferred to use the term harassment (Severe harassment). Slovenia and Sweden, on the other hand, have a specific term to indicate the stalking concept but have not yet acquired a specific law.

Table 1.1.: Presence of a word or phrase that is a translation of stalking

<i>Countries</i>	<i>Word/phrase</i>
Austria	Beharrliche Verfolgung (persistent pursuit/stalking)
Belgium	Belaging (stalking)
Denmark	Forfølgelse (stalking)
France	Dioxis (harcèlement du troisien type/stalking)
Ireland	Stalking/harassment
Netherlands	Belaging (stalking)
Slovenia	Zalezovanje (stalking)
Sweden	Stalkning (stalking)
UK	Stalking

Table 1.2: Presence of a word that fully or partially cover the concept of stalking

<i>Countries</i>	<i>Word</i>
Cyprus	Parenohtisi (harassment)
Czech Republic	
Estonia	Ahistamine (harassment)
Finland	Harinta (harassment)
Germany	unerwünschtes Verfolgen und Belastungen (unwanted prosecution and harassment)
Greece	Parenochlisi (harassment)
Hungary	Molesztálás (harassment)
Italy	Molestia assillante (harassment)
Latvia	
Lithuania	Priekabiavimas (harassment)
Luxembourg	Harcèlement (harassment)
Malta	Fastidju (harassment)
Poland	Obsesyjne prześladowanie (Obsessive persecution/stalking)
Portugal	Assédio (harassment)
Slovakia	Obťažovanie, týranie, nevhodné zaobchádzanie (harassment)
Spain	Acoso (harassment)

Comment: All the European countries have a specific term for covering, totally or partially, the stalking concept, even though they do not have a specific legislation and even if the stalking concept has not yet entered academic language.

Table 2: Entering of the concept of stalking in scientific discourse as evidenced by academic contributions in the European Union Member States.

	<i>Number</i>	<i>countries</i>
Yes	11	Austria, Belgium, Denmark, France, Germany, Ireland, Italy, Netherlands, Portugal, Slovenia, Sweden, UK
No	14	Cyprus, Czech Republic, Estonia, Finland, Greece, Hungary, Latvia, Lithuania, Luxembourg, Malta, Poland, Slovakia, Spain

Comment: The stalking concept has entered academic language and debate in many countries, and not only those that have passed specific anti-stalking laws. This is the case of Italy, Slovenia, Sweden and Portugal.

Malta represents a singular exception: here parliamentary debate and legislative activities preceded academic activities in focusing attention on stalking. Even after the introduction of the anti-stalking law (2005), the scientific community has neglected studying the issue and preferred to concentrate more closely on problems related to domestic violence in general.

4.2 Legislation

Table 3: Member States with a specific law against stalking.

	<i>Number</i>	<i>countries</i>
Specific law provisions	8	Austria, Belgium, Denmark, Germany, Ireland, Malta, Netherlands, UK
No specific law	17	Cyprus, Czech Republic, Estonia, Finland, France, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Poland, Portugal, Slovakia, Slovenia, Sweden, Spain

Comment: Only 8 countries currently possess a specific anti-stalking law. Among the 17 countries without a specific anti-stalking law, one half feels the need to pass one (Italy, Portugal, Greece, Sweden, Finland, Cyprus, Luxembourg), while the other half (Estonia, Slovakia, Poland, Hungary, Lithuania, Spain, Slovenia) does not think it necessary or because they are satisfied of the existent laws or because in their countries the stalking problem is not particularly felt at social level.

Table 3.1: Member States with a specific law against stalking: entering into force and penalties.

<i>Countries</i>	<i>Date of entering into force</i>	<i>imprisonment</i>	<i>fine</i>	<i>restraining orders</i>	<i>others</i>
Austria	2006	Max. 1 year	-	Yes	-
Belgium	1998	Max. 2 years	-	Yes	-
Denmark	1933	Max. 2 years	Yes	Yes	-
Germany	2007	Max. 10 years	Yes	Yes	-
Ireland	1997	Max. 7 years	Yes	Yes	-
Malta	2005	Max. 6 months	Yes	Yes	-
Netherlands	2000	Max. 3 years	Yes	Yes	-
UK					
England,	1997	Max. 5 years	Yes	Yes	-
Wales,	1997	“	“	“	-
Scotland,	1997	“	“	“	Yes
Northern Ireland,	1997	“	“	“	Yes
Isle of Man	2000	“	“	“	Yes

Comment: In Scotland and Northern Ireland there is a civil remedy, a civil penalty for damages. Except for Austria and Belgium, where imprisonment only is envisaged, all the other countries sanction stalking with a fine as well. Germany, which acquired specific anti-stalking laws in 2007, appears to be the country with the most severe legal penalty.

Table 3.2: Elements of the conduct according to the law definition.

<i>Countries</i>	<i>anxiety by victim</i>	<i>fear by victim</i>	<i>expectation of violence by victim</i>	<i>Intent of the perpetrator</i>
Austria	-	-	-	-
Belgium	-	-	-	Yes
Denmark	Yes	-	-	Yes
Germany	-	-	Yes	Yes
Ireland	Yes	Yes	-	-
Malta	Yes	Yes	Yes	-
Netherlands	-	-	-	Yes
UK				
England,	Yes*	Yes*	Yes**	-
Wales,	Yes*	Yes*	Yes**	-
Scotland,	Yes	Yes	-	-
Northern Ireland, Isle of Man	Yes*	Yes*	Yes**	-

*For the lower level of offence

** For the higher level of offence

Comment: The reaction of the victim is considered as a qualifying element of the offence of stalking above all in the UK, Ireland and Malta. It is not however explicitly included in the definition of the crime in Austria, Belgium, and the Netherlands.

In the Dutch legislation, intent should be focused on “forcing a person to do something, to refrain from doing something or to instigate fear in that person”.

Table 4: Other legal ways of dealing with stalking behaviours in Member States without specific legislation against stalking:

<i>Countries</i>	
Cyprus	It is possible to prosecute stalking only when individual behaviours that are elements of it amount to crimes prosecutable under other legislation. A civil law suit can be filed against an offender for threatening behaviour.
Czech Republic	It is possible to prosecute stalking only when individual behaviours that are elements of it amount to crimes prosecutable under other legislation (e.g. abuse of person living in the same residence, bodily harm, restraining of personal freedom). Provisions against harassment are included in the laws on conditions of employment and workers' rights.
Estonia	It is possible to prosecute stalking only when individual behaviours that are elements of it amount to crimes prosecutable under other legislation: Penal Code includes a crime called “Unauthorised surveillance” (§ 137).
Finland	It is possible to prosecute stalking only when individual behaviours that are elements of it amount to crimes prosecutable under other legislation: (e.g. unlawful threat, assault or disturbance of domiciliary peace).
France	It is possible to prosecute stalking only when individual behaviours that are elements of it amount to crimes prosecutable under other legislation. Besides such provisions regarding domestic violence, other laws exist concerning sexual harassment and morality at the workplace and which fall

	within the context of the regulations on workers' rights and working conditions
Greece	It is possible to prosecute stalking only when individual behaviours that are elements of it amount to crimes prosecutable under other legislation: Article 361 of Penal Code "Insults"; Article 333 of Penal Code "Threats"; Article 381 of Penal Code "Damage to private property"; Article 330 of Penal Code "Unlawful Violence"; Articles 308-308A of Penal code "Bodily Harm"; Article 337 of Penal Code "Insult to Sexual Dignity".
Hungary	It is possible to prosecute stalking only when individual behaviours that are elements of it amount to crimes prosecutable under other legislation: Section 176 of Criminal Code "Trespassing"; Section 178 of Criminal Code "Violation of Secrecy of Correspondence"; Section 178/A of Criminal Code "Illicit Access to Private Information"; Section 179 of Criminal Code "Defamation"; Section 180 of Criminal Code "Slander", Section 151 of Petty Offences Act (1999) "Perilous Threat"
Italy	It is possible to prosecute stalking only when individual behaviours that are elements of it amount to crimes prosecutable under other legislation: article 660 of Penal Code "harassment or disturbance to persons"; article 610 of penal Code "Private Violence"; Articles 582 and 583 of Penal Code "Bodily Harm"; article 594 of Penal Code "Insults"; Article 612 of Penal Code "Threats"; Article 635 of Penal Code "Damage to private property".
Latvia	It is possible to prosecute stalking only when individual behaviours that are elements of it amount to crimes prosecutable under other legislation.
Lithuania	It is possible to prosecute stalking only when individual behaviours that are elements of it amount to crimes prosecutable under other legislation: article 145 of Penal Code ("if the person is systematically intimidated by using psychological violence")
Luxembourg	It is possible to prosecute stalking only when individual behaviours that are elements of it amount to crimes prosecutable under other legislation. There is a Law against domestic violence that came into force on 8 September 2003, that deals with stalking behaviours and includes also ex-partners.
Poland	It is possible to prosecute stalking only when individual behaviours that are elements of it amount to crimes prosecutable under other legislation: "Bodily harm"; "Threat"; Article 216 of Penal Code "Insults"; Article 288 of Penal code "Damages"; Article 189 of Penal Code "Deprivation of liberty"; Article 191 of Penal Code "Illegal duress (threat)"; Article 202 of Penal Code "Presentation of pornography"; Article 207 of Penal Code "Cruelty"; Article 212 of Penal Code "Imputation, aspersion"; Article 217 of Penal Code "Harm to somebody's inviolability"; Article 267 of Penal Code "Harm to somebody's privacy".
Portugal	It is possible to prosecute stalking only when individual behaviours that are elements of it amount to crimes prosecutable under other legislation: Article 143 of Penal Code "Simple offences to physical integrity"; Article 153 of Penal Code "Threat"; Article 152 of Penal Code "Physical or psychological ill-treatments of a spouse or analogous"; Article 154 of Penal Code "Coaction"; article 190 of Penal Code "Violation of home"; Article 192 of Penal Code "Inquest of the private life"; Article 199 of Penal Code "Illicit records and photographs".
Slovakia	It is possible to prosecute stalking only when individual behaviours that are elements of it amount to crimes prosecutable under other legislation: Article 208 of Criminal Code "Cruelty/maltreatment of close relatives"; Article 49 of False step (Act. Nr. 372/1990)
Slovenia	It is possible to prosecute stalking only when individual behaviours that are elements of it amount to crimes prosecutable under other legislation: (crimes against persons, offences against public order and peace, sex offences, crimes of passion, offences against reputation and good name). Article 6 of the "Public Peace and Order Act" (2006) prosecute elements of stalking behaviours.*
Spain	It is possible to prosecute stalking only when individual behaviours that are

	elements of it amount to crimes prosecutable under other legislation: Article 620.2 of Criminal Code “Misdemeanour of humiliation or coercion”; Article 172 of Criminal Code “Offence of coercion”; Article 173 of Criminal Code “Tortures and other offences against moral integrity”.
Sweden	It is possible to prosecute stalking only when individual behaviours that are elements of it amount to crimes prosecutable under other legislation: Section 4 (7) of Penal Code “Molestation”; Section 6 (10) of Penal Code “Sexual Molestation”; Section 4 (6) 1 st paragraph of Penal Code “Breach of peace in the home”; Section 4 (6) 2 nd paragraph of Penal Code “Unlawful intrusion”; Section 5 (3) of Penal Code “Insulting behaviour”; Section 4 (5) of Penal Code “Threatening behaviour”; Section 3 (5) of Penal Code “Assault”; Section 12 (1) of Penal Code “Criminal Damage”; Section 17 (10) of Penal Code “Interference in judicial proceedings”.

Comment: In all the states without specific anti-stalking legislation it is possible to prosecute stalking only when individual behaviours that are elements of it amount to crimes prosecutable under other legislation.

Table 5: Member States: presence of Restraining or Protection Orders.

	<i>Number</i>	<i>countries</i>
RO or PO specific to stalking behaviours	7	Austria, Denmark, Germany, Ireland, Malta, Netherlands, UK
RO or PO available for similar forms of conduct	17	Belgium, Cyprus, Czech Republic, Estonia, Finland, France, Greece, Hungary, Italy, Lithuania, Luxembourg, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden,

Comment: In recent years, many countries without anti-stalking laws have adopted specific laws on domestic violence, also introducing RO or PO to protect the victims. These orders are partially applicable in cases of stalking as well.

4.3 Other aspects concerning prosecution of stalking behaviours

Table 6: Services available for stalking victims in European Union Member States

		<i>Countries</i>
Yes	10	Belgium, Finland, Germany, Hungary, Ireland, Luxembourg, Portugal, Spain, Sweden, UK
No	15	Austria, Cyprus, Czech Republic, Denmark, Estonia, France, Greece, Italy, Latvia, Lithuania, Malta, Netherlands, Poland, Slovakia, Slovenia

Comment: Stalking victims can essentially make use of three different types of aid and support (of the social or psychological type). These are provided by the police, by volunteer associations and by the health service. Alongside forms of assistance specifically dedicated to stalking victims, which exist in some countries only, generic forms of support are provided for the victims of domestic violence.

All Member States have a system of safe refuges for women victims of domestic violence and voluntary organisations offering support or advice to victims of domestic violence.

No State provides specific training for judges and prosecutors in order to deal with stalking cases.

4.4 Epidemiology

Table 7: Presence of survey documenting the prevalence of stalking behaviours in European Union Member States

	<i>Number</i>	<i>Countries</i>
Yes	6	Belgium, Germany, Italy, Netherlands, Sweden, UK
No	19	Austria, Cyprus, Czech Republic, Denmark, Estonia, France, Finland, Greece, Hungary, Ireland, Latvia, Lithuania, Luxembourg, Malta, Poland, Portugal, Slovakia, Slovenia, Spain

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5. LEGAL SITUATION ON STALKING IN THE EUROPEAN UNION MEMBER STATES

5.1 Member States without specific laws against stalking

1) Cyprus

Legal ways of dealing with stalking behaviours	It is possible to prosecute stalking only when the behaviours that form part of it amount to crimes prosecutable under other legislation. A suit in civil law can be filed against an offender for threatening behaviour.
Presence of restraining or protection orders specific to stalking behaviours	No.
Presence of restraining or protection orders available for behaviours that share some elements with stalking	Yes. There is a restraining order for domestic violence.
Consequences for the violation	Imprisonment up to 2 months.

Description and general outlines of the Phenomenon of Stalking

In Cyprus there is no specific law on stalking and the concept has not entered in scientific discourse.

There is no precise term for stalking, but harassment is also used in Cyprus to describe partial stalking (in greek: *parenohtisi*).

It is possible to prosecute stalking only when the behaviours that form part of it amount to crimes prosecutable under other legislation. A suit in civil law can be filed against an offender for threatening behaviour.

There is a restraining order for domestic violence.

2) Czech Republic

<p>Legal ways of dealing with stalking behaviours</p>	<p>It is possible to prosecute stalking only when the individual behaviours that are part of it amount to crimes prosecutable under other legislation:</p> <p>Section §215 a) of Criminal code: “Abuse of person living in the same residence”;</p> <p>Section §197 a) of Criminal code: “Violence against the group of inhabitants or an individual”;</p> <p>Section §219 of Criminal code: “Murder”;</p> <p>Section §221-224 of Criminal code: “Bodily harm”;</p> <p>Section §231 of Criminal code: “Restraining of personal freedom”.</p> <p>Provisions against harassment are included in the laws on conditions of employment and workers’ rights too.</p>
<p>Presence of restraining or protection orders specific to stalking behaviours</p>	<p>No</p>
<p>Presence of restraining or protection orders available for behaviours that share some elements with stalking</p>	<p>Yes. There is a restraining order for domestic violence.</p>
<p>Consequences for the violation</p>	<p>-</p>

Description and general outlines of the Phenomenon of Stalking

In the Czech Republic there is no specific law on stalking and the concept of stalking has not entered into scientific discourse.

There is not an exact translation of the term stalking.

It is possible to prosecute stalking only when the behaviours that form part of it amount to crimes prosecutable under other legislation.

In 2007 restraining orders have been introduced in the criminal law, in particular for the harassment of former-spouse or former-cohabitant.

Provisions against harassment are included in the laws on conditions of employment and workers' rights too.

3) Estonia

Legal ways of dealing with stalking behaviours	It is possible to prosecute stalking only when the behaviours that are elements of it amount to crimes prosecutable under other legislation: Penal Code includes a crime called “Unauthorised surveillance (§ 137). *
Presence of restraining or protection orders specific to stalking behaviours	No.
Presence of restraining or protection orders available for behaviours that share some elements with stalking	Yes. In civil procedure in cases of infringements of inviolability of private life or other personal rights plaintiff may require a restraining order to protect his/her rights (Law of Obligations Act § 1055 Section 1).
Consequences for the violation	Violation of a restraining order is a crime if the violation causes a threat to a person’s life, health or property or the violator has violated the restraining order repeatedly. The crime is punishable by a pecuniary punishment or up to one year of imprisonment.

* It criminalizes acts of a person who without a lawful right to engage in surveillance observes another person in order to collect information relating to such person. The crime is punishable by a pecuniary punishment or up to 3 years imprisonment.

Description and general outlines of the Phenomenon of Stalking

In Estonia there is no specific law on stalking and the concept of stalking has not entered into scientific discourse.

Stalking is not a common term and is used occasionally only in limited spheres.

There is not an exact translation of the term and the concept is partially covered by the term “ahistamine” (harassment). It is possible to prosecute stalking only when the behaviours that form part of it amount to crimes prosecutable under other legislation, restraining orders are available in civil procedure.

4) Finland

<p>Legal ways of dealing with stalking behaviours</p>	<p>It is possible to prosecute stalking when the behaviours that are elements of it amount to crimes prosecutable under other legislation:</p> <p>Criminal Act 25:7§: Unlawful threat;</p> <p>Criminal Act 21:5-7§: Assault;</p> <p>Criminal Act 24:1-2§: Disturbance of domiciliary peace</p>
<p>Presence of restraining or protection orders specific to stalking behaviours</p>	<p>No.</p>
<p>Presence of restraining or protection orders available for behaviours that share some elements with stalking</p>	<p>Yes, in penal law.</p>
<p>Consequences for the violation</p>	<p>Violation of a restraining order is a criminal offence. The penalty is a fine or imprisonment for at most one year. In practice this is never ordered. Usually a fine is imposed.</p>

Description and general outlines of the Phenomenon of Stalking

In Finland there is no specific law on stalking and the concept has not entered into scientific discourse.

The term stalking has recently come to public attention through the media, due to a couple of high-celebrity stalking cases. There is no precise term for stalking.

It is possible to prosecute stalking only when the behaviours that form part of it amount to crimes prosecutable under other legislation.

In 1999 restraining orders have been introduced in the criminal law, in particular for the harassment of former-spouse or former-cohabitant. From the beginning of 2005 a restraining order can also be imposed to apply within the family.

5) France

<p>Legal ways of dealing with stalking behaviours</p>	<p>It is possible to prosecute stalking only when the individual behaviours that are part of it amount to crimes prosecutable under other legislation.</p> <p>Besides civil and penal provisions regarding domestic violence, other laws exist concerning sexual harassment and morality at the workplace and which fall within the context of the regulations on workers' rights and working conditions.</p>
<p>Presence of restraining or protection orders specific to stalking behaviours</p>	<p>No</p>
<p>Presence of restraining or protection orders available for behaviours that share some elements with stalking</p>	<p>Yes</p>
<p>Consequences for the violation</p>	

Description and general outlines of the Phenomenon of Stalking

In France there is no specific law on stalking and the concept has not entered the scientific discourse.

Alternative French terms for the phenomenon of stalking are “dioxïs” or “harcèlement du troisième type”.

It is possible to prosecute stalking only when the behaviours that form part of it amount to crimes prosecutable under other legislation.

Regulatory measures about domestic violence were taken in 2006, with the introduction of the law that reinforced prevention and the repression of violence committed within the couple or against minors. Besides civil and penal provisions regarding domestic violence, in France other laws exist concerning sexual harassment and morality at the workplace and which fall within the context of the regulations on workers' rights and working conditions, issued in 1992 and subsequently changed.

6) Greece

<p>Legal ways of dealing with stalking behaviours</p>	<p>It is possible to prosecute stalking only when the individual behaviours that are part of it amount to crimes prosecutable under other legislation:</p> <p>Article 361 of Penal Code “Insults”;</p> <p>Article 333 of Penal Code “Threats” *;</p> <p>Article 381 of Penal Code “Damage to private property”; Article 330 of Penal Code “Unlawful Violence”;</p> <p>Articles 308-308A of Penal Code “Bodily Harm”;</p> <p>Article 337 of Penal Code “Insult to Sexual Dignity”.</p>
<p>Presence of restraining or protection orders specific to stalking behaviours</p>	<p>No.</p>
<p>Presence of restraining or protection orders available for behaviours that share some elements with stalking</p>	<p>Yes. In civil Law. (Law on Domestic Violence 2006)</p>
<p>Consequences for the violation</p>	<p>Violation of a restraining order is a civil offence. Article 947 of the Code of Civil Procedure states that violation of a restraining order is punishable by a fine of up to 5.900 Euros and imprisonment of up to 1 year. These provisions do not apply specifically to stalking cases.</p>

* The new law dealing with domestic violence cases applies a heavier sanction for threats causing terror or anxiety to a member of the offender’s family or the cohabiting partner. Imprisonment of up to 5 years is possible in these cases.

Description and general outlines of the Phenomenon of Stalking

In Greece there is no specific law on stalking.

Stalking has not achieved public recognition in Greece and the concept of stalking has not entered into scientific discourse.

It is possible to prosecute stalking only if it involves behaviours that amount to crimes prosecutable under other legislation.

The law against domestic violence (2006) specifically states that a restraining order can be issued if this is deemed necessary for the protection of the victim's physical and/or psychological health. When the stalking behaviours insult one's personality (in the sense of psychological health) a restraining order can be issued.

7) Hungary

<p>Legal ways of dealing with stalking behaviours</p>	<p>It is possible to prosecute stalking only when the individual behaviours that are elements of it amount to crimes prosecutable under other legislation:</p> <p>Section 176 of Criminal Code “Trespassing”;</p> <p>Section 178 of Criminal Code “Violation of Secrecy of Correspondence”;</p> <p>Section 178/A of Criminal Code “Illicit Access to Private Information”;</p> <p>Section 179 of Criminal Code “Defamation”;</p> <p>Section 180 of Criminal Code “Slander”, Section 151 of Petty Offences Act (1999) “Perilous Threat”</p>
<p>Presence of restraining or protection orders specific to stalking behaviours</p>	<p>No.</p>
<p>Presence of restraining or protection orders available for behaviours that share some elements with stalking</p>	<p>Yes, in penal procedural law.</p>
<p>Consequences for the violation</p>	<p>Incarceration as last resort.</p> <p>If incarceration is not necessary: a procedural fine up to HUF 500.000 (about 2.500 euros)</p>

Description and general outlines of the Phenomenon of Stalking

In Hungary there is no specific law on stalking and a term to refer to stalking does not exist. The concept of stalking has not entered into scientific discourse and is not present in any political or social debate.

It is possible to prosecute stalking only when the behaviours that form part of it amount to crimes prosecutable under other legislation.

In penal procedural law there are restraining orders available for behaviours that share some elements with stalking.

8) Italy

<p>Legal ways of dealing with stalking behaviours</p>	<p>It is possible to prosecute stalking only when the behaviours that are elements of it amount to crimes prosecutable under other legislation:</p> <p>Article 660 of Penal Code “Harassment or disturbance to persons”;</p> <p>Article 610 of Penal Code “Private Violence”;</p> <p>Articles 582 and 583 of Penal Code “Bodily Harm”;</p> <p>Article 594 of Penal Code “Insults”;</p> <p>Article 612 of Penal Code “Threats”;</p> <p>Article 635 of Penal Code “Damage to private property”.</p>
<p>Presence of restraining or protection orders specific to stalking behaviours</p>	<p>No.</p>
<p>Presence of restraining or protection orders available for behaviours that share some elements with stalking</p>	<p>Yes. In civil law (only when one is victim of domestic violence).</p>
<p>Consequences for the violation</p>	<p>Violation of a restraining order is a criminal offence. Article 388 of Penal Code states that violation of a restraining order is punishable by a fine of up to 2 million lire (approx. 1000 Euros) and imprisonment for up to 3 years.</p>

Description and general outlines of the Phenomenon of Stalking

In Italy there is no specific law on stalking.

The term stalking has recently begun to achieve general public recognition thanks mainly to various stalking cases that have come to public attention through the media, and the concept of stalking has entered into scientific discourse.

Alternative Italian terms for the phenomenon of stalking are “molestie insistenti” or “molestie assillanti”, emphasising the protracted and distressing course of the harassment concerned.

It is possible to prosecute stalking only when the behaviours that form part of it amount to crimes prosecutable under other legislation.

Protection orders are in principle not an available option for victims of stalking as such, but they can be implemented when stalking occurs in the context of cohabiting partners, when one is a victim of domestic violence.

A first proposal of law was presented in 2004 and a second one in 2007 in the framework of a wider proposal on domestic violence.

9) Latvia

Legal ways of dealing with stalking behaviours	It is possible to prosecute stalking only when the individual behaviours that are part of it amount to crimes prosecutable under other legislation.
Presence of restraining or protection orders specific to stalking behaviours	No
Presence of restraining or protection orders available for behaviours that share some elements with stalking	-
Consequences for the violation	-

Description and general outlines of the Phenomenon of Stalking

In Latvia there is no specific law on stalking and the Lithuanian language does not have an exact term to refer to stalking.

The concept of stalking has not entered into scientific discourse, but the problem is also discussed.

It is possible to prosecute stalking only when the behaviours that form part of it amount to crimes prosecutable under other legislation.

10) Lithuania

<p>Other legal ways of dealing with stalking behaviours</p>	<p>It is possible to prosecute stalking only when individual behaviours that are elements of it amount to crimes prosecutable under other legislation:</p> <p>Article 145 of Penal Code “Threat to kill or to commit serious bodily injury of person or terrorization of person”.</p>
<p>Presence of restraining or protection orders specific to stalking behaviours</p>	<p>No.</p>
<p>Presence of restraining or protection orders available for behaviours that share some elements with stalking</p>	<p>Yes. In civil law.</p>
<p>Consequences for the violation</p>	<p>The consequences for the violation of restraining orders in the cases of domestic violence depend on the situation of the victim, if she agrees the penal measures are available. In the majority of cases public control or civil measures are used.</p>

Description and general outlines of the Phenomenon of Stalking

In Lithuania there is no specific law on stalking and the Lithuanian language does not have an exact term to refer to stalking.

The concept of stalking has not entered into scientific discourse, but the problem is also discussed.

It is possible to prosecute stalking only when the behaviours that form part of it amount to crimes prosecutable under other legislation and restraining orders are available in civil procedure.

11) Luxembourg

<p>Legal ways of dealing with stalking behaviours</p>	<p>It is possible to prosecute stalking only when the behaviours that form part of it amount to crimes prosecutable under other legislation.</p> <p>There is a Law against Domestic Violence that came into force 8 September 2003, that deals with stalking behaviours including also former-partners.</p>
<p>Presence of restraining or protection orders specific to stalking behaviours</p>	<p>No.</p>
<p>Presence of restraining or protection orders available for behaviours that share some elements with stalking</p>	<p>Yes. There is a restraining order for domestic violence.</p>
<p>Consequences for the violation</p>	<p>-</p>

Description and general outlines of the Phenomenon of Stalking

In Luxembourg there is no specific law on stalking and the concept of stalking has not entered into scientific discourse.

The term harcelèment is used to partially describe this behaviour. The term stalking is not frequently used.

It is possible to prosecute stalking only when the behaviours that form part of it amount to crimes prosecutable under other legislation.

The Law against Domestic Violence came into force 8 September 2003 and deals with stalking behaviours when former partners are involved.

There are restraining orders for domestic violence, but not all the cases are covered efficiently by the existing legislation.

The Ministry of Justice proposes to criminalize stalking in connection with the law on victims rights.

12) Poland

<p>Legal ways of dealing with stalking behaviours</p>	<p>It is possible to prosecute stalking only when the behaviours that are elements of it amount to crimes prosecutable under other legislation</p> <p>Article 156 of Penal Code “Bodily harm”;</p> <p>Article 190 of Penal Code “Threat”;</p> <p>Article 216 of Penal Code “Insults”;</p> <p>Article 288 of Penal Code “Damages”;</p> <p>Article 189 of Penal Code “Deprivation of liberty”;</p> <p>Article 191 of Penal Code “Illegal duress (threat)”;</p> <p>Article 202 of Penal Code “Presentation of pornography”;</p> <p>Article 207 of Penal Code “Cruelty”;</p> <p>Article 212 of Penal Code “Imputation, aspersion”;</p> <p>Article 217 of Penal Code “Harm to sb’s inviolability”;</p> <p>Article 267 of Penal Code “Harm to sb’s privacy”.</p>
<p>Presence of restraining or protection orders specific to stalking behaviours</p>	<p>No.</p>
<p>Presence of restraining or protection orders available for behaviours that share some elements with stalking</p>	<p>Yes. In civil Law.*</p>
<p>Consequences for the violation</p>	<p>In civil cases a court can levy a fine against a person violating a court order.</p>

* An article exists which guarantees a protection of personal interests (such as health, freedom, honour, privacy of correspondence, freedom from search of the dwelling). Everyone whose personal interests were violated can sue before the court for infringement of this article. In this case the court can issue any order suitable to circumstances of the case. It means that the court can also issue a restraining or protection order.

Description and general outlines of the Phenomenon of Stalking

In Poland there is no specific law on stalking.

In Poland the concept of stalking has not entered into scientific discourse. Stalking is still not considered a serious problem and is not present in any political or social debate.

There is no Polish term to refer to stalking and in the literature we can find terms like “obsessive persecution” (*obsesyjne przesladowanie*) or “emotionally motivated persecution” (*przesladowanie na tle emocjonalnym*).

It is possible to prosecute stalking only when the behaviours that form part of it amount to crimes prosecutable under other legislation.

There are no protection or restraining orders available for behaviours that share some elements with stalking, except a particular measure in civil law that guarantees protection of personal interest.

13) Portugal

<p>Legal ways of dealing with stalking behaviours</p>	<p>It is possible to prosecute stalking only when the behaviours that form part of it amount to crimes prosecutable under other legislation:</p> <p>Article 143 of Penal Code “Simple offences to physical integrity”;</p> <p>Article 153 of Penal Code “Threat”;</p> <p>Article 152 of Penal Code “Physical or psychological ill-treatments of a spouse or analogous”;</p> <p>Article 154 of Penal Code “Coaction”;</p> <p>article 190 of Penal Code “Violation of home”;</p> <p>Article 192 of Penal Code “Inquest of the private life”;</p> <p>Article 199 of Penal Code “Illicit records and photographs”.</p>
<p>Presence of restraining or protection orders specific to stalking behaviours</p>	<p>No.</p>
<p>Presence of restraining or protection orders available for behaviours that share some elements with stalking</p>	<p>No, but in the case of domestic violence, the law (article 152, number 6, of Penal Code) extends the protection to the victims of violence, considering an accessory penalty to the offender, the prohibition of the contact with the victim, and may include barring the offender from the victim’s house, for a period of 2 years. So it gives the power to the police to expel the offender from the victim’s dwelling in</p>

	extreme cases, when the victim's life is in danger.
Consequences for the violation.	Art. 203° of CPP (Violation of the imposed obligations). Other measures: payment of an amount of money (guarantee) or retaining other patrimonial goods.

Description and general outlines of the Phenomenon of Stalking

In Portugal there is no specific law on stalking.

The phenomenon of stalking has recently come to public attention through the media and the concept has recently entered into academic discourse too but there is not a precise term for stalking. Alternative Portuguese terms more frequently used to describe stalking acts are: "*perseguição obsessiva*", "*perseguição criminosa*", "*fixação doentia*", "*marcação cerrada*".

It is possible to prosecute stalking only when the behaviours that form part of it amount to crimes prosecutable under other legislation, restraining or protection order are not available in Portugal.

14) Slovakia

Legal ways of dealing with stalking behaviours	It is possible to prosecute stalking only when the behaviours that are elements of it amount to crimes prosecutable under other legislation: Article 208 of Criminal Code “Cruelty/maltreatment of close relatives”; Article 49 of False step law (Act. Nr. 372/1990) *
Presence of restraining or protection orders specific to stalking behaviours	No.
Presence of restraining or protection orders available for behaviours that share some elements with stalking	Yes, in the field of civil law about the protection of personality by the Civil Codex (the Law Nr. 40/1964).
Consequences for the violation	Immediate execution of pre-trial custody (detention pending trial).

* False step law of Slovakia (Act. Nr. 372/1990) which describes the false steps against the peaceful co-existence of inhabitants (for low level of damage or injury). One of the forms of false steps against the peaceful co-existence of inhabitants is the behaviour described by words: “..who knowingly and voluntary disturbs the peaceful co-existence of inhabitants by a rough behaviour”

Description and general outlines of the Phenomenon of Stalking

In Slovakia there is no specific law on stalking and the concept has not entered into scientific discourse.

Stalking is not a common term and is used occasionally only in limited spheres.

There is no Slovak term to refer to stalking.

It is possible to prosecute stalking only when the behaviours that form part of it amount to crimes prosecutable under other legislation and there are protection orders available in civil procedure.

15) Slovenia

Legal ways of dealing with stalking behaviours	It is possible to prosecute stalking only when the behaviours that are elements of it amount to crimes prosecutable under other legislation (crimes against persons, offences against public order and peace, sex offences, crimes of passion, offences against reputation and good name). Article 6 of the “Public Peace and Order Act” (2006) prosecute elements of stalking behaviours (Deed of daring and violent behaviour).
Presence of restraining or protection orders specific to stalking behaviours	No.
Presence of restraining or protection orders available for behaviours that share some elements with stalking	Yes. In criminal law (“Law on Petty Offences”).
Consequences for the violation	If the person is prosecuted as a minor offence the violator is punished with a fine. If the behaviour is prosecuted as a criminal offence, the punishment may be replaced with detention and/or fine.

Description and general outlines of the Phenomenon of Stalking

In Slovenia there is no specific law on stalking.

There is no precise term for stalking. An alternative term in the Slovenian language is “zalezovanje”. The concept of stalking has entered into scientific discourse.

It is possible to prosecute stalking only when the behaviours that form part of it amount to crimes prosecutable under other legislation.

In Slovenia elements of stalking behaviour were recognized as a petty offence in July 2006, punished with a fine. If the victim is a spouse, a relative or any other person living together with the perpetrator, the stalker will be punished with a higher fine.

The victim can apply for restrain order such as street and contact ban.

16) Spain

Legal ways of dealing with stalking behaviours	It is possible to prosecute stalking only when individual behaviours that are part of it amount to crimes prosecutable under other legislation: Article 620.2 of Criminal Code “Misdemeanour of humiliation or coercion”; Article 172 of Criminal Code “Offence of coercion”; Article 173 of Criminal Code “Tortures and other offences against moral integrity”.
Presence of restraining or protection orders specific to stalking behaviours	No.
Presence of restraining or protection orders available for behaviours that share some elements with stalking	Yes. Restraining orders are made by criminal courts and punished with criminal penalties.
Consequences for the violation	Violation of a restraining order is a penal offence.

Description and general outlines of the Phenomenon of Stalking

In Spain there is no specific law on stalking.

The phenomenon of stalking is beginning to achieve some general public recognition thanks to the media, as a type of victimization in the context of cases of domestic violence.

The concept of stalking has not entered into scientific discourse and political debate. It is possible to find some sparse references to stalking by researchers, but the phenomenon is not receiving attention yet. For the moment, the Spanish debate is focused on domestic violence.

There is no precise term for stalking. Alternative Spanish terms are “*acoso*” or “*hostigamiento*”, and less commonly “*persecucìon*”, and “*acecho*”.

It is possible to prosecute stalking only when the behaviours that form part of it amount to crimes prosecutable under other legislation, the court can impose a restraining order.

17) Sweden

<p>Legal ways of dealing with stalking behaviours</p>	<p>It is possible to prosecute stalking only when the individual behaviours that are part of it amount to crimes prosecutable under other legislation:</p> <p>Section 4 (7) of Penal Code “Molestation”;</p> <p>Section 6 (10) of Penal Code “Sexual Molestation”;</p> <p>Section 4 (6) of Penal Code “Invasion of privacy/breach of peace in the home”;</p> <p>Section 6 (6) of Penal Code “Unlawful intrusion”;</p> <p>Section 5 (3) of Penal Code “Insulting behaviour”;</p> <p>Section 4 (5) of Penal Code “Threatening behaviour/ unlawful threat”;</p> <p>Section 3 (5) of Penal Code “Assault/bodily harm”;</p> <p>Section 12 (1) of Penal Code “Criminal Damage”;</p> <p>Section 17 (10) of Penal Code “Interference in judicial proceedings”.</p>
<p>Presence of restraining or protection orders specific to stalking behaviours</p>	<p>No.</p>
<p>Presence of restraining or protection orders available for behaviours that share some elements with stalking</p>	<p>Yes (Restraining Order Act 1988).</p>

Consequences for the violation	Violation of a restraining order is a criminal offence. The sanction for a person who does not comply with a restraining order ranges between fines and imprisonment for a maximum period of one year, depending on the gravity of the violation (section 24, Restraining Order Act)
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Description and general outlines of the Phenomenon of Stalking

There is no specific law on stalking in Sweden, but several cases where famous people have been persecuted have come to public attention through the media.

The concept of stalking has entered scientific discourse and also in limited general use. The term stalking (in Swedish “stalkning”) is probably not, however, known to the general public.

There is no legally accepted definition of stalking.

Stalking behaviours can be prosecuted under several provisions in the Swedish Penal Code. In Sweden there is a specific law on restraining orders [Restraining Order Act (1988:688)].

At the moment a Governmental Commission is discussing the proposal of a new law on stalking.

5.2 Member States with specific law against stalking

1) Austria

Specific law provisions	Section 107a of Penal Code “Persistent pursuit”.
Date of entering into force	1.7.2006.
Legal definition of the conduct	The penal law criminalises four different forms of persistent pursuit, 1.seeking the victim’s proximity; 2. getting in touch with the victim by way of telecommunications, by using other means of communication or via third person; 3. ordering goods or services for the victim by using his or her personal data; 4. prompting others to contact the victim by using his or her personal data. If these acts happen unlawfully and are in addition likely to infringe upon private life of the victim, imprisonment up to one year may be imposed on the perpetrator.
Number of times that the behaviours in question must occur for the law	Persistent behaviour is necessary, but the law does not state a minimum of acts. Important is the general intent (dolus eventualis) of the perpetrator to continue his behaviour. If that intent is proven, even one single act can be punishable.
Elements of the behaviours (anxiety, fear, expectation of violence, malicious intent)	None.
Necessity of formal complaint for prosecution	No.
Penalties	Imprisonment for a maximum one year.
Other legal ways of dealing with stalking	Section 83 of Penal Code “Bodily injury”;

behaviours	Section 105 of Penal Code “Coercion”; Section 107 of Penal Code “Dangerous Threat”; Section 109 of Penal Code “Trespassing”; Section 125 of Penal Code “Vandalism”; Section 218 of Penal Code “Sexual Harassment”.
Presence of restraining or protection orders specific to stalking behaviours	Yes, in civil law. The victim may apply for a restraining order against the stalker at the civil court.
Consequences for the violation of the restraining order	The violation of a restraining order is a civil law offence. A fine or temporary imprisonment may be imposed on the stalker.

Description and general outlines of the Phenomenon of Stalking

According to Austrian law victims of stalking can opt for a penal and a civil law approach at the same time. On the one hand the Austrian Penal Code penalises “Beharrliche Verfolgung” (“persistent pursuit”), i.e. different forms of stalking behaviour in the Penal Code (Section 107a); on the other hand there are also civil law provisions.

After reporting the stalking behaviour to the police, criminal proceedings start ex officio, unless in cases where the perpetrator contacts the victim by way of telecommunications, by using other means of communication or via third persons, prosecution can only occur on the request of the person against whom the offence was committed.

The impact “persistent pursuit” has on the victim is not a criterion for making the behaviour a criminal act; the concrete reaction of the victims is not relevant. As long as an objective threshold is passed in a manner that the way of living of an average victim is unacceptably affected, Section 107a Penal Code can be enforced.

Furthermore the victim may apply for a restraining order at the civil court as stalking is now recognised as grounds for issuance of such an order. The restraining order is legally binding to the perpetrator and can be made effective through police forces.

By now, experiences made with the new law are positive and the combined approach of penal and civil law provisions proved to be highly efficient. Psychological and legal assistance provided by provisions in the Code of Criminal Procedure play an important role in this context by helping to avoid secondary victimisation of victims of this kind of violence.

2) Belgium

Specific law provisions	New Article 442 bis of Penal Code.
Date of entering into force	December 1998. The law was amended in 2002 and 2003.
Legal definition of the conduct	Belaging. “He, who has belaged (harassed) a person, while he knew or should have known that due to his behaviour he would severely disturb this person’s peace, will be punished...”.
Number of times that the behaviours in question must occur for the law	The behaviour can occur once or more than once. The term belaging can refer to a single act as well as to a pattern of the same behaviours or to a pattern of different behaviours.
Elements of the behaviours (anxiety, fear, expectation of violence, malicious intent)	Malicious intent, disturbance of peace.
Necessity of formal complaint for prosecution	Yes.
Penalties	Up to two years of imprisonment and/or a fine.
Other legal ways of dealing with stalking behaviours	In the Penal Code: Articles 510-520 “Arson”; Articles 528-534 “Destruction or damaging of food, merchandise or other personal property/vandalism”; Articles 538-542 “Kill/murder animals”; Articles 550 bis-550 ter “Crimes against confidentiality, integrity and availability of informatics and of data which can be stored or passed on”; Articles 398-410 “Intentional killing, not called homicide and intentional causing of

	<p>physical injury;</p> <p>Article 392 “Intentional killing, intentional causing of physical injury, torture, inhuman treatment and disgraceful treatment;</p> <p>Articles 434-442 “Attempt to personal freedom and to the indefeasibility of the residence;</p> <p>Articles 428-430 “Kidnapping and hiding of minors;</p> <p>Article 444 “Racism”;</p> <p>Articles 461-472 “Theft and extortion”;</p> <p>Articles 327-337 “Threats with respect to persons or to property and false information concerning serious attempts”;</p> <p>Articles 372-378 bis “Indecent assault and rape”.</p> <p>Harassment by phone, e-mail, text message (Law 1991), Violence at work (Law 2002), Anti-discrimination Law (2003).</p>
<p>Presence of restraining or protection orders specific to stalking behaviours</p>	<p>No. There are no specific restraining or protective orders for specific stalking behaviours. However restraining and protective orders can be taken to deal with several disturbing behaviours, like stalking behaviours. In particular restraining or protective orders can be taken for the renewal of the restraining or contact order, as warning or to introduce the complaint to court. A victim can obtain a street prohibition or a contact ban against the stalker.</p>

Consequences for the violation of the restraining order	-
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Description and general outlines of the Phenomenon of Stalking

The legal provision on stalking is included in the Penal Code.

The consequences for the victims are included in the definition of the crime. There is only a general consequence required - “severe disturbance of peace”: it is open for interpretation for the judge who can interpret for example anxiety or fear as severe disturbance of peace. With an increase of jurisprudence the sources for interpretation of the concept of severe disturbance of peace will increase.

The specific intent of the perpetrator is also mentioned as necessary to qualify the offence as such: the offender knows or should know that his conduct leads to a severe disturbance of peace for a reasonable person.

There are still existing problems emerging in the protection of victims of stalking. Since only the victim can lodge a complaint against the stalker the following gap is detected. Some people remarked that if the victim commits suicide the relatives can not file a complaint. As a consequence the stalker can get away with his conduct. The question is if it is possible to prove the causal relation between the stalking and the death of the victim.

Another problem regards the law, that is on the federal (national) level, but treatment is the responsibility of the communities. In the federal criminal code in general and in some circular letters on domestic violence magistrates are invited to orient the offender towards treatment but if the community does not invest in specialized treatment a possibility to stop stalking is lacking.

It is not easy to explain the positive and negative aspects of the law. The criminalization of stalking was realised in a very short time frame. Two critiques are the *vagueness* of the text of the law, meaning that the essence of what stalking is, is not or not clearly specified. A second critique questions the necessity of a separate anti-stalking law. When the value of a law is being questioned, it is indicated by the term ‘symbolic law’. The question if the Belgian law is a symbolic law appears to be not that easy to answer. On the one side, the law clearly has a symbolic meaning. For example, the importance of respect for one’s personal integrity in our society is clearly mirrored in the Belgian law. In other words, the law raises important questions about the nature of social interactions in our society. It is not allowed to consciously violate a person’s integrity. On the other hand, the law can fill the gaps in other existing laws. It gives for example an alternative to the civil legislation which requires major efforts from the victim to provide proof, and of which the effectiveness is unclear. Moreover the law can be considered to be a safety net, penalizing morally unacceptable behaviour that can not be curbed by other laws.

3) Denmark

Specific law provisions	Section 265 of Criminal Code.
Date of entering into force	Section 265 is included in the Criminal Code from 1930 and the law come into force in 1933. The article was amended in 1965 and 2004.
Legal definition of the conduct	Section 265 of Criminal Code: “Any person who violates the peace of some other person by intruding on him, pursuing him with letters or inconveniencing him in any other similar way, despite warnings by the police, shall be liable to a fine or to imprisonment for any term not exceeding 2 years. A warning under this provision shall be valid for 5 years” (“Violating peace of some other person” may imply threatening, dishonouring, intruding, but it may also imply continuous unwanted attention, e.g. frequently sending unwanted flowers).
Number of times that the behaviours in question must occur for the law	The molestations should usually be committed over a period of time. One incidence will normally not be sufficient for giving a warning.
Elements of the behaviours (anxiety, fear, expectation of violence, malicious intent)	Anxiety, malicious intent.
Necessity of formal complaint for prosecution	Yes.
Penalties	A fine or imprisonment not exceeding two years. The offender must “stalk” the victim after having been warned by the police in

	order to be fined or imprisoned. The restraining order is a prerequisite.
Other legal ways of dealing with stalking behaviours	No.
Presence of restraining or protection orders specific to stalking behaviours	Yes. In criminal law. The decision to giving a warning or a restraining order lies within the discretionary power of the police. However, the annoying/ molestations/ distresses must have a repetitive character. The warning shall be valid for five years.
Consequences for the violation of the restraining order	A fine or imprisonment not exceeding two years.

Description and general outlines of the Phenomenon of Stalking

The Danish term “*forfølgelse*” correspond fairly well to the English term “stalking”. “Forfølgelse” means pursuit, i.e. any act (communicatively as well as mere physically [i.e. “to follow, chase”]) apt to violate the peace of a person. The term implies repetition to some extent, although in the case of somebody following a person it need not to be done repeatedly but over a period of time. “Violating the peace of some other person” may imply threatening, dishonouring, intruding, etc. but it may also just imply continuous unwanted attention (e.g. frequently sending unwanted flowers).

The concept of “Forfølgelse” may be seen as a subcategory of the wider Danish concept of “kraenkelse” (harassment), i.e. any act (communicatively as well as physically) apt to annoy/insult the target. “Kraenkelse” does not imply repetition, though and it can be applied to a single instance or act.

The law against stalking has been included in the new criminal code since 1930 and came into force in 1933. However it appeared as early as 1912 in the draft of the criminal code, and it can be dated even further back in time since it was a codification of police practice.

The law has been amended since its introduction in 1965 and in 2004. Prior to amendment in 1965, section 265 aimed at incidences of less severe nature (insults, humiliations) but in practice it appeared that a significant part of the cases were of a serious nature (e.g. threats). Therefore the maximum sentence for the offence was raised. The amendment in 2004 was very similar to the one of 1965 as it also concerns an increase in the maximum sentence and as it was also motivated by the fact that many of the incidences were of a serious nature. Since many cases were rather similar to the ones covered by section 266 of the criminal Code (severe threats), it was proposed that the maximum punishment for section 265 should correspond to the one for section 266.

A warning or a restraining order must be imposed by the police before the person is liable to punishment. The procedure for giving a warning/restraining order states that when the police are requested to give a warning, the police will question the victim about the reason for the request and, if possible, they will also question the perpetrator. The criminal code does not include the prerequisites for giving a warning/restraining order, so the decision lies within the discretionary power of the police. However, the prerequisites for giving a warning/restraining order are probably as follows:

1. The annoying/molestations/distresses must have a repetitive character, yet the needed frequency depends on the seriousness of the molestation. Fear of being a victim of molestations is in itself not sufficient for giving a restraining order.
2. Normal rules of criminal procedure (i.e. evidence) are followed to determine the perpetrator's identity.
3. The molestations should usually be committed during a period of time. It is not required that the molestations be reported to the police before asking for a restraining order.
4. There has to be reason to believe that the molestations will continue unless action is taken (e.g. giving a restraining order).

It is noteworthy that the police are not to show reluctance in giving restraining order if the perpetrator previously has committed rape, serious assault or serious threats. The decision of the police to give or not to give a warning has to be motivated.

4) Germany

Specific law provisions	“Violence Protection Law” (1.1.2001) Article 238 of penal Code “Intense Harassment” (2007).
Date of entering into force	1.1.2001 and 2007.
Legal definition of the conduct	Severe harassment. “if someone is harassing a person in an unwarranted way by 1. seeking out physical proximity; 2. using telecommunications or other instruments of communication or using third parties to get in contact; 3. using her personal data improperly to order goods or services in her name or prompting third parties to get in contact with her; 4. threatening life, physical integrity, physical health of freedom of her or of persons close to her; 5. acting in a comparable way and impacting her personal freedom in a severe way will be punished with a prison sentence of up to 3 years or by fine.
Number of times that the behaviours in question must occur for the law	Not specified. The term is “fortgesetzt” (continuing acts of harassment). The term implies repetition and protracted course.
Elements of the behaviours (anxiety, fear, expectation of violence, malicious intent)	Expectation of violence, malicious intent.
Necessity of formal complaint for prosecution	Yes.
Penalties	Up to three years of imprisonment or money fine. When there are heavy physical injuries or danger of death (also applies to relatives or near friends of the

	victim): up to 10 years of imprisonment. At least three years when causing the death of the victim or a relative or a near friend.
Other legal ways of dealing with stalking behaviours	“Insult”, “Unwanted intrusion into one’s home”, “intimidation”, “Coercion”, “Harassment”.
Presence of restraining or protection orders specific to stalking behaviours	Yes. In civil law. Restraining order is possible according to the “Violence Protection Act”.
Consequences for the violation of the restraining order	Money fine, imprisonment for de-escalation.

Description and general outlines of the Phenomenon of Stalking

In Germany there is more than one law designed specifically to deal with stalking behaviours.

First, the German anti-stalking legislation according to civil law. This came into force on 1 January 2002. The Violence Protection Law states that a victim can sue out a restraining order for non contact personally or via telephone or other telecommunications if “...a person illegally and intentionally is bothering another person by repeatedly following her or contacting her using telecommunications against her declared will”.

The Violence Protection Act has had its merits in terms of bringing acts of personal intrusion and violence to the court, but soon it became clear that there were some weaknesses, the most serious one concerning the status of the law as a civil code, that is, victims had to bear the burden of proof which in many cases prevented victims bringing the case to court. Thus, criticism has led to a growing public discussion on how potential victims may best be protected against violent intrusions without running the danger of becoming secondarily victimized.

The new paragraph 238 (Severe harassment) of the Penal Code came into force in spring 2007. The article does not mention the term “stalking” explicitly, because stalking is the term most commonly used throughout the public scene and is now well established in everyday language.

The only consequence for the victims included in the definition of the crime is the substantial intrusion into other people’s lives and privacy.

The specific intent of the perpetrator is not mentioned in the law.

The new article of the criminal code can be evaluated in terms of providing more confidence in both victims and the political executive (e.g., police, official prosecutors, judges) when bringing the case to court. Since many female victims had resigned from further prosecution under the former law of violence protection, the future will certainly show an increasing number of cases by thus diminishing the dark field of this crime.

One also may be aware of the fact that many woman suffering from domestic violence do not come to the decision of leaving the relationship because of fear of stalking after separation. Thus, the new stalking law should also give confidence to these women, i.e., in future the extent of former-partner stalking may decline.

5) Ireland

Specific law provisions	Non-Fatal Offences Against the Person Act.
Date of entering into force	1997.
Legal definition of the conduct	Section 10 provides that any person who harasses another “by persistently following, watching, pestering, besetting or communicating with him or her, shall be guilty of an offence”. Harassment is defined as a person who, by their acts, “intentionally or recklessly, seriously interferes with the other’s peace and privacy or causes alarm, distress or harm to the other”.
Number of times that the behaviours in question must occur for the law	The word “persistently”, used in the law, requires more than one single act.
Elements of the behaviours (anxiety, fear, expectation of violence, malicious intent)	Alarm, distress or harm.
Necessity of formal complaint for prosecution	Yes.
Penalties	Imprisonment for up to seven years, or/and fine not exceeding 1,905 euros.
Other legal ways of dealing with stalking behaviours	Section 2 Non-Fatal Offences Against Person Act 1997 “Assault”; Section 5 Criminal Justice Act 1994 “Disorderly Conduct in public place”; Section 6 Criminal Justice Act 1994 “Threatening, abusive or insulting behaviour in public place”; Section 32 Employment Equality Act 1998 “Harassment at work”; Section 23 Employment Equality Act

	1998 “Sexual Harassment in the workplace”.
Presence of restraining or protection orders specific to stalking behaviours	Yes.
Consequences for the violation of the restraining order	The violation is a criminal offence. Fine not exceeding 1.905 euros and/or the imprisonment for a term not exceeding 12 month (on summary conviction); fine and/or imprisonment for a term not exceeding 7 years (on conviction on indictment).

Description and general outlines of the Phenomenon of Stalking

The offence of stalking was introduced along with many other criminal offences in the *Non-Fatal Offences Against the Person Act 1997*.

The *Non-Fatal Offences Against the Person Act 1997* does not specifically refer to stalking but rather speaks of the offence in terms of ‘harassment’. Section 10(1) provides that any person who harasses another “by persistently following, watching, pestering, besetting or communicating with him or her, shall be guilty of an offence”. Harassment in turn defined by subsection 2 as a person who, by their acts, “intentionally or recklessly, seriously interferes with the other’s peace and privacy or causes alarm, distress or harm to the other”, and the acts are such that a reasonable person would realise that the acts would seriously interfere with the other’s “peace and privacy or cause alarm, distress or harm to the other”.

For a prosecution to succeed there must be two or more acts involving unwanted intrusions that would cause a reasonable person alarm, distress or harm and that does impact on the victim.

Subsections 3 and 5 permit the court to make an order prohibiting the stalker from contacting the victim (restraining order), in addition to or as an alternative to other penalties. While this power is similar to the power of the courts in family law matters to impose safety, barring and protection orders, it is “rather novel in the context of criminal cases”. For the first time in this jurisdiction, the legislation allowed the court to grant an injunction to prevent a stalker from approaching the victim again. Notably, the court may exercise this power where the evidence is insufficient to convict- a person acquitted of an offence may still attract the penalty of a restraining order under the legislation.

It is not the intention of the stalker that defines the offence but rather it is the reaction of the receiver of such behaviour that converts the conduct into a crime. However, section 10 of the *Non-Fatal Offences Against the Person Act 1997* requires that the

conduct would cause a reasonable person to suffer emotional distress with the proviso that the victim does in fact suffer distress.

After a decade since the introduction of anti-stalking legislation, some problems persist in the prevention, detection and prosecution of stalking behaviour. The inadequacy of legislative reform alone in dealing with stalking behaviour warrants a shift in focus to other areas of the criminal justice system:

- Police training: there is currently training for police in how to respond to domestic violence and sexual offences, no training exists for the offence of stalking.
- Mandatory psychiatric evaluations: where assessments are carried out, the judiciary has few options in addressing the mental health concerns of the offender. The statute should assist the court by providing for extensive medical, psychiatric, psychological and neurological evaluations. Legislation should make provision for on-going monitoring and make counselling and reporting mechanisms to the court mandatory rather than leaving it to the discretion of the judge.
- Perpetrator intervention programmes: addressing the deviant behaviour of the stalker through perpetrator intervention programmes may help to prevent recidivism.
- Enforcing restraining orders: the efficacy of anti-stalking statutes can also depend on how restraining orders are enforced. Over reliance on the victim's assistance should be avoided and instead be carefully monitored by the police.
- Judges should consider other forms of sentencing in recognition that harsher sentences may be more appropriate in some contexts depending on the extent and nature of the stalking behaviour and the personal circumstances of the offender.
- Interdisciplinary approach: the complex nature of stalking, as a form of psychological violence, necessitates a focus on a number of practices within the criminal justice system and the health service.

6) Malta

Specific law provisions	Two Articles in the Criminal Code.
Date of entering into force	2005.
Legal definition of the conduct	<p>Harassment. Article 251A of the Criminal Code “Of threats, private violence and harassment”: “A person who pursues a course of conduct which amounts to harassment of another person, and which he knows or ought to know amounts to harassment of such other person shall be guilty of an offence under this article”.</p> <p>Article 251B of the Criminal Code “Of threats, private violence and harassment’’: “A person whose course of conduct causes another to fear that violence will be used against him or his property or against the person or property of any of his ascendants, descendents brothers or sisters or any person mentioned in this article 221(1)...”</p> <p>Article 251C of the Criminal Code “Of threats, private violence and harassment’’: “In articles 251A and 251B references to harassing a person include alarming the person or causing the person distress.”</p>
Number of times that the behaviours in question must occur for the law	Once is enough.
Elements of the behaviours (anxiety, fear, expectation of violence, malicious intent)	Anxiety, fear and expectation of violence.
Necessity of formal complaint for prosecution	No.

Penalties	Up to six months of imprisonment and fine.
Other legal ways of dealing with stalking behaviours	Chapter 481: Domestic Violence Act; Chapter 440: Data Protection Act. Chapter 399: Electronic communications (Regulation) Act; Chapter 254: Postal Services Act; Article 340 of the Criminal Code “Of contraventions against property”; Article 339 of the Criminal Code “Of contraventions against the person”; Article 330 of Criminal Code referring to unlawful entry into houses.
Presence of restraining or protection orders specific to stalking behaviours	Yes. In civil and criminal law (Protection Order).
Consequences for the violation of the restraining order	If a Protection Order is breached maximum imprisonment is for six month, the fine is of Lm 1,000 or both may be given.

Description and general outlines of the Phenomenon of Stalking

The specific legal provision on stalking is included in the penal Code.

The law deals specifically with harassment but according to the parliamentary debates, it is intended to include the act of stalking. In fact, since the word stalking does not exist in Maltese, the English word is used by the members of Parliament in the parliamentary debates. On the other hand, in the law itself, reference is made to harassment not stalking. In the parliamentary debates it is made clear that since harassment is a more generic term than stalking, they opted for that term so as not to exclude any acts that may constitute stalking.

Consequences for the victims are included in the definition of the crime: fear of violence and causing the person distress or alarming the person. It is worth noting that if a person causes another to fear that violence will be used not just against him/her but also against his/her property, or against the person or property of any of his/her ascendants, descendants, brothers or sisters or any person mentioned in article 222(1), he/she shall be guilty.

The specific intent in the perpetrator is not mentioned in the legal provision, but he/she “knows or ought to know”.

Protection orders specific to stalking behaviour are introduced in civil and in criminal law.

If a protection order is breached maximum imprisonment is for 6 months, the fine is of Lm1,000 or both may be given. When a person is charged with an offence, “the court may on reasonable grounds, for the purpose of providing for the safety of the injured person or of other individuals... or for the purpose of protecting the injured person or other individuals from harassment or other conduct which will cause a fear of violence, issue a Protection Order against the accused” (412C). Through this order, the court may impose any restrictions or prohibitions on the accused that appear necessary. The court may “prohibit or restrict the accused from approaching or following the movements of the injured person or any other individual specified in the order”. The court may also prohibit or restrict access by the accused for a period not exceeding six months or until final judgment, to premises in which the victim or any other person listed in the order, lives, works or frequents even if the accused has a legal interest in those premises. The court may also prohibit the accused from contacting or molesting the injured person or any other individual specified in the order. A Protection Order may remain in force for a period not exceeding three years as specified by the court but may be revoked or extended for further periods.

There are still existing problems emerging in the protection of victims of stalking.

The idea of using a more generic term has also resulted in some disadvantages. One might say that this has contributed to the fact that the concept of stalking is not so well integrated among the various professionals within the criminal justice system.

Due to the lack of data collection, it is difficult to analyse the incidence of stalking in Malta. Moreover, it is suspected that the lack of awareness on the subject leads to a considerable degree of underreporting on the victims' part. The general impression is that it is only when the situation escalates that a formal report is lodged. This lack of awareness and lack of reporting leads to a lack of services as the demand does not justify the expenses involved in setting up specific programmes and services for stalking offenders and victims.

More awareness and training is needed among the judiciary, police, lawyers, probation officers, psychologists, psychiatrists and other professionals who might come into contact with the victims of stalkers or with the stalkers themselves. In the case of police officers, it is also necessary since they are often the first professionals within the criminal justice system who come in contact with stalking victims.

A positive aspect is that, according to the Prosecution Unit within the Police Force, the recently enacted law has been used to successfully capture stalking behaviour. The idea of having the law using a more generic term has proven to be advantageous in the sense that it is catering for a variety of acts that constitute stalking behaviour.

7) The Netherlands

Specific law provisions	The “Dutch anti-stalking law”.
Date of entering into force	12.7.2000.
Legal definition of the conduct	Article 258b of Code of Criminal Law “Belaging”: “He who unlawfully, repeatedly, wilfully intrudes upon a person’s privacy with the intent to force that person to do something, to refrain from doing something or to instigate fear in that person will be punished as guilty of belaging to a prison term with a maximum of three years or a fine of the fourth category. Prosecution can only occur at the request of the person against whom the crime was committed.”
Number of times that the behaviours in question must occur for the law	Not specified, but the legal definitions imply repetition. That depends on the type of behaviour that is involved. It is the court that decides such questions.
Elements of the behaviours (anxiety, fear, expectation of violence, malicious intent)	The stalker’s intent should be focused on forcing a person to do something, to refrain from doing something or to instigate fear in that person.
Necessity of formal complaint for prosecution	Yes.
Penalties	Imprisonment with a maximum of three years, fine with a maximum of 11,250 euros.
Other legal ways of dealing with stalking behaviours	Article 138 of Criminal code “Disturbance of domestic peace”; Article 266 of Criminal code “Simple insult”; Article 284 of Criminal code

	<p>“Coercion”;</p> <p>Article 285 of Criminal code “Threat”;</p> <p>Article 300 of Criminal code “Ill-treatment”;</p> <p>Articles 301 to 306 of Criminal code “Specify types of ill-treatment”;</p> <p>Article 350 of Criminal code “Damage to property”;</p> <p>Article 426 bis of Criminal code “Annoyingly following on the public road”.</p>
<p>Presence of restraining or protection orders specific to stalking behaviours</p>	<p>Yes. In civil law. Restraining orders are available for, in principle, all types of crime. Nevertheless, they are most often claimed and awarded in situations of domestic violence and/or stalking. A draft for a new law has been submitted to Parliament that makes possible an eviction order in case of domestic violence.</p>
<p>Consequences for the violation of the restraining order</p>	<p>The offender may have to pay a damage compensation to the victim in case he invades the order. He may also be taken in custody for a short period of time. It is the victim’s responsibility to claim these measures in a civil court.</p>

Description and general outlines of the Phenomenon of Stalking

“Belaging” is the name that is given to stalking in the Dutch law. The Dutch anti-stalking law came into force on 12 July 2000.

The initiative law that led to the Dutch Anti-Stalking Law caused a great deal of debate. Particularly subject to debate were: the need to criminalize stalking, the difficulty of describing stalking behaviours, the ambiguity of the statutory regulation, its effectiveness and ways to enforce it. Some people believed that victims would be

unwilling to report incidents of stalking, because reporting would lead to an infringement of their own privacy. When reporting the incident, victims are expected to give the police certain, often intimate, information about their relationship with the stalker, and they may be reluctant to do so. Critics also consider it difficult for the Prosecution to find evidence of stalking, i.e. usually stalking takes place between two people with nobody else present. A single witness statement is insufficient proof of the alleged crime – a problem that also characterises most indecent assault and domestic violence cases. It would be difficult to gather sufficient evidence to reach a conviction in these cases. The large number of stalking cases that presently have been brought to the courts, indicate that problems as depicted here do not play the serious role that was expected.

The number of times that the behaviours must occur for the law is not specified. That depends on the type of behaviour that is involved. If the behaviour is highly invasive, like, for example, intruding in the victim's home, only two or three incidents within a short period of time may suffice for stalking, whereas for less serious types of stalking, like sending letters, more incidents are needed over a longer period of time. It is the court that decides such questions.

The specific intent of the perpetrator is mentioned as necessary to qualify the offence as such. The stalker's behaviour should be intentional and it should be focused on forcing another person to do something, to refrain from doing something or to instigate fear in that person. Thus, the stalker's intent should be focused on at least one of the consequences mentioned. However, it is not legally necessary for one of these consequences to have actually occurred: it is sufficient that the stalker's intent was directed to bringing about one or more of these consequences.

The consequences for the victims are included in the definition of the crime.

The restraining order can be imposed in case of a conditional sentence. The sentence is, in that situation, not executed under the condition that the offender refrains from visiting and / or contacting the victim. In case the offender violates this condition, the conditional (part of the) sentence can be executed. Restraining orders or protection orders are available for, in principle, all types of crime. Nevertheless, they are most often claimed and awarded in situations of domestic violence and / or stalking. A draft for a new law has been submitted to the Parliament that makes possible an eviction order in case of domestic violence.

The offender may have to pay a damage compensation to the victim in case he violates the order. He may also be taken into custody for a short period of time. It is the victim's responsibility to claim these measures in a civil court.

The measure of detention at Her Majesty's pleasure (TBS measure) can be imposed on stalkers (Article 37a Dutch Code of Criminal Law). Detention at Her Majesty's pleasure can be imposed in serious cases in which the stalker is totally or partially *non compos mentis* (declared to be of unsound mind), has no insight into his illness and at the same time poses a danger to the victim and/or others. Obviously, the judge can only impose such a measure provided that all criteria for the detention have been met. If such a detention is imposed, the judge will determine every one or two years if the detained person is still a danger to society. The detained person can appeal against the detention order. In case the offender cannot be held responsible for his actions at all for reasons of a mental disorder, he can also be mandatorily admitted in a psychiatric hospital. The law that is applicable in such situations is of a civil nature (*Bijzondere Opnemingen Psychiatrisch Ziekenhuizen, BOPZ*).

Positive aspects of the anti-stalking law.

○ The new law on stalking allows arrest some time after the crime was committed, as well as preventive custody in the event of stalking. This means that intervention is possible at the first signs of stalking or shortly after, which offers protection to the victim. Furthermore, the law enables sentencing the accused to detention at Her Majesty's pleasure (TBS-measure), which means that society is safe for a long period and, above all, the accused can be treated.

○ Questioning of the accused by the police and the preventive custody can have certain effects on the behaviour of the accused. An agreement could be made that as a condition of release out of the preventive custody, the accused agrees to a restraining order. One advantage of this method is that there is more chance that the accused will obey it, because he has consented to it himself. That means he agreed, possibly in combination with a bail sum, to keep his side of the bargain. A second advantage is that enforcing the restraining order is not the victim's responsibility but the Prosecution's, which can, in case of a violation, return the suspect to preventive custody.

○ Another advantage is that the criminal law enables other conditions to release from preventive custody besides a restraining order. A condition could be that the accused promises not to come in contact with the friends and family of the victim and not to bother the victim at work. The accused could also agree to electronic tagging or treatment. Criminalisation is not only an important symbol, it can also aid the protection of victims, because of the possibility of early intervention in various ways. On top of that, these methods emphasize the stalker's responsibility, potentially leading to a greater awareness on his side of what he did to the victim.

Negative aspects of anti-stalking law: the initiative law that led to the Dutch anti-stalking law has caused a lot of debate. Particularly subject to debate were the need to criminalise stalking, the difficulty in describing stalking behaviours and with that the ambiguity of the statutory regulation, its effectiveness and ways to enforce it. In the literature on the new stalking law, it has been said that it is too easy to opt for the law as a method of putting an end to stalking. One criticism of going straight to criminal law, which is seen as the '*ultimum remedium*' (last resort), is that other, possibly more effective solutions are ignored. Besides, there is unjustified optimism about the effectiveness of criminalisation; it is not evident whether prosecution helps victims under all circumstances. Some people believe that victims would be unwilling to report incidents of stalking, because reporting would lead to an infringement of their own privacy. When reporting the incident, the victims are expected to give the police certain, often intimate, information about their relationship with the stalker, and they would be reluctant to do so. This fear has appeared to be ungrounded: many cases go to court and proving stalking appears not to be highly problematic. Stalking behaviours materialise in so many forms that it is not difficult for the police to collect pieces of evidence. Stalkers harass their victims by making phone calls which may be recorded. They send letters which can be collected and presented to the police. They loiter near the home which may be witnessed by the neighbours. Some stalkers harass their victims at their place of work, where colleagues are present to witness the stalkers' actions. Few acquittals have been encountered during the study of stalking cases, at least no more than in other types of crime. In conclusion, stalking appears to be not highly difficult to prove, notwithstanding its 'private' character. The variety of behaviours may contribute to the finding of evidence of this crime.

8) United Kingdom

Specific law provisions	<p>ENGLAND AND WALES: “The Protection from Harassment Act”.</p> <p>SCOTLAND: “The Protection from Harassment Act”.</p> <p>NORTHERN IRELAND: “Protection from Harassment Order, Statutory Instrument No. 1180 (N.I. 9)”.</p> <p>ISLE OF MAN: “The Protection From Harassment Act”.</p>
Date of entering into force	<p>ENGLAND, WALES, SCOTLAND, NORTHERN IRELAND: 1997; ISLE OF MAN: 2000.</p>
Legal definition of the conduct	<p>A course of conduct of at least two episodes, where it was intended to harass or the person ought to have known that the conduct constituted harassment.</p> <p>ENGLAND, WALES, ISLE OF MAN, NORTHERN IRELAND: there are two levels of offence. The first is the offence of harassment. The references to harassing a person include alarming the person or causing the person distress. The higher level of offence is that of putting people in fear of violence.</p> <p>SCOTLAND: there is only one level of harassment offence. Harassment of a person includes causing the person alarm or distress.</p>
Number of times that the behaviours in question must occur for the law	<p>At least twice.</p>
Elements of the behaviours (anxiety, fear, expectation of violence,	<p>ENGLAND, WALES, ISLE OF MAN, NORTHERN IRELAND: for the first level</p>

malicious intent)	of offence: anxiety, fear; for the higher level of offence: expectation of violence. Neither level of offence concern malicious intent. SCOTLAND: anxiety and/or fear.
Necessity of formal complaint for prosecution	Yes.
Penalties	For the lower level offence of harassment: imprisonment up to 6 months and/or a fine; for the higher level offence: imprisonment up to 5 years and/or a fine. SCOTLAND: there is a civil penalty for damages too.
Other legal ways of dealing with stalking behaviours	No.
Presence of restraining or protection orders specific to stalking behaviours	Yes. ENGLAND, WALES, SCOTLAND, NORTHERN IRELAND: the restraining orders are made by criminal courts and punished with criminal penalties. SCOTLAND, ISLE OF MAN, NORTHERN IRELAND: have civil remedies too, introduced through the criminal law, specific to stalking situations. These do not exist in England and Wales. (SCOTLAND: The court can at the same time, issue an injunction or a “non-harassment order” with criminal penalties, but not both orders at the same time).
Consequences for the violation of the restraining order	ENGLAND, WALES, NORTHERN IRELAND ISLE OF MAN SCOTLAND: if the restraining order is broken, a 6 months sentence can be imposed by a

	lower court and/or fine. The matter can also be referred to the higher court, where a five-year sentence is possible and/or a fine.
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Description and general outlines of the Phenomenon of Stalking

Stalking behaviours have been prosecuted in the UK since 1997, when the “Protection from harassment act” came into force.

There are some differences between the legal provisions between the three principal legal jurisdictions of the United Kingdom:

- England & Wales
- Scotland
- Northern Ireland

- England and Wales. (Protection from harassment Act, 1997)

The legal definition concerns a course of conduct, which is defined in the Act as conduct on at least two occasions. Although there is a judgement suggesting that prosecutions should only be brought on the basis of two events in exceptional circumstance.

The course of contact must amount to “harassment of another”.

Harassment of another is (according to section 1(2) above) what a reasonable person in possession of the same knowledge would think of as constituting harassment. In other words, this is essentially a victim-centred definition.

Harassment is further defined at section 7(2): “*References to harassing a person including alarming the person or causing the person distress*”

There are two levels of offence. First of all, the offence of harassment. The references to harassing a person include alarming the person or causing the person distress.

The higher level of offence (under section 4) is that of putting people in fear of violence: “*A person whose course of conduct causes another to fear, on at least two occasions, that violence will be used against him is guilty of an offence if he knows or ought to know that his course of conduct will cause the other to fear on each of those occasions.*”

(2) For the purposes of this section, the person whose course of conduct is in question ought to know that it will cause another to fear that violence will be used against him/her on any occasion if a reasonable person in possession of the same information would think the course of conduct would cause the other to fear on that occasion.”

Neither level of offence concerns malicious intent.

The penalties for the lower level (section 2) offence of harassment: up to six month’s imprisonment, and/or a fine (up to level 5 on the standard scale, this currently being £5,000 = 7398 euros).

The Court can issue a Restraining order. If the restraining order is broken, then a six months sentence can be imposed by a lower court and/or a fine. The matter can also be referred to the higher court, where a five-year sentence is possible and/or a fine.

The penalties for the higher level offence of putting people in fear of violence (section 4): up to five years imprisonment, and/or a fine (up to level 5 on the standard scale, this currently being £5,000 = 7398 euros).

The Court can issue a Restraining order. If the restraining order is breached, a sentence of up to five years is possible, and/or a fine.

In England and Wales, in Scotland and in Northern Ireland, the restraining orders are made by criminal courts and punished with criminal penalties. In Scotland and in Northern Ireland, where there are both civil and criminal injunctions available in harassment cases, the civil injunction specific to harassment is punishable with criminal sanctions which are the same as those for criminal restraining order.

- Scotland (The Protection from Harassment Act, 1997)

The legal definition of the conduct is essentially the same as in England & Wales: a course of conduct of at least two episodes, where it was intended to harass or the person ought to have known that the conduct constituted harassment. In Scotland, it is spelt out that ‘conduct’ includes speech: 8. - (1) *Every individual has a right to be free from harassment and, accordingly, a person must not pursue a course of conduct which amounts to harassment of another and-*

(a) is intended to amount to harassment of that person; or

(b) occurs in circumstances where it would appear to a reasonable person that it would amount to harassment of that person. (3) For the purposes of this section- "conduct" includes speech; "harassment" of a person includes causing the person alarm or distress; and a course of conduct must involve conduct on at least two occasions.

However, one difference from England is the three-year limitation clause – a time-limit after the behaviour beyond which prosecution cannot take place

In Scotland there is only one level of harassment offence. In Section 8 of the act: *“harassment” of a person includes causing the person alarm or distress.* Therefore, Scotland has a level of offence equivalent to the section 2 offence in England and Wales.

The penalties are different from those in England and Wales in that a civil remedy of damages is incorporated into the Act –in what the Act terms *“an action of harassment”*. The court can, at the same time, issue an injunction or a “non-harassment order” with criminal penalties (but not both orders at the same time).

The damages which may be awarded in an action of harassment include damages for any anxiety caused by the harassment and any financial loss resulting from it.

The penalties: up to six month’s imprisonment at lower court, up to five years imprisonment at higher court, and/or a fine, and a civil penalty for damages.

If a non-harassment order is broken, the penalties are the same as in England and Wales for breaching a restraining order.

- Northern Ireland

(The Protection from Harassment Act 1997, Statutory Instrument 1997 No. 1180, N.I.9)

The Northern Ireland order introduces harassment to the Northern Ireland jurisdiction. Its terms are a form of hybrid of the situation in England and Wales and that in Scotland.

About the legal definition of the conduct, the precise form of words is slightly different from that in England and Wales, but the meaning is the same – at least two acts which the person knew, or ought to have known, amounted to harassment and which caused alarm or distress. And two levels of offence:

- Harassment

- Putting people in fear of violence

The lower form of offence is necessary to cause fear or anxiety. The higher form of offence: causing the person to fear that violence will be used against them.

The possible penalties for the lower offence: up to six months' imprisonment, and/or a fine not greater than standard level five (currently £5,000); for the higher offence: up to five years' imprisonment and/or a fine up to standard level 5.

In either of the above, the court can issue a restraining order, as in England and Wales, with the same penalties for its being broken. However, the law also specifies a civil remedy (*"damages may be awarded for (among other things) any anxiety caused by the harassment and any financial loss resulting from the harassment"*) in the case of the lower (harassment offence), similar to the legal position in Scotland. Where such a civil remedy is granted, the court can impose an injunction which (unlike most injunctions) carries criminal penalties, these being the same as for the breaking of a restraining order made by a criminal court.

- Legislation in the Isle of Man

The Isle of Man Parliament (The Tywald) passed The Protection from Harassment Act 2000 as a direct copy of the Protection from Harassment Act 1997 in force in England and Wales. Even the numbering of the sections is the same and therefore with two exceptions all the information on this site can be applied to the Isle of Man. The two exceptions being Section 7(3A) of the English Act which deals with collective harassment and section 12 which deals with National Security. Neither of these sections are reproduced in the Manx legislation. The Isle of Man legislation came into force on the 18th October 2000.

The main positive aspect of the law is the clever way in which the legislation is framed so that it has a broad coverage in terms of behaviours that may constitute harassment and stalking, without it being necessary to define them. The legislation appears to be comprehensive and effective.

The negative aspect is that the law can occasionally be stretched to uses for which it was not intended, but these appear to be unusual cases. The absence of the words "stalking" in the legislation may be one of its strengths, but also a weakness in that there is not such a strong public perception that an anti-stalking law exists as there would be if the term were included in the name.

6. CONCLUSIONS AND RECOMMENDATIONS

This chapter contains the conclusions of the study and a series of general recommendations intended to provide the European Member States, European and National Institutions and Women's Associations with general guidelines on stalking legislation in Europe.

Among the EU Member States, only 8 have specific anti-stalking legislation: Austria, Belgium, Denmark, Germany, Ireland, Malta and the United Kingdom.

Some countries have introduced a new article into the existing Penal Code, some others have passed a specific Act against harassment which is intended to cover not only such conduct but also stalking.

In the other European countries where there is not a specific law, it is possible to prosecute stalking only when the behaviours that form part of it amount to crimes prosecutable under other legislation.

The process of criminalization of stalking in Europe is characterised by a different procedure among the 8 Countries that have passed a specific law.

Denmark constitutes the most particular case in the legal panorama not only in Europe but in the world, considering that the Danish Penal Code which criminalizes stalking was passed in 1930 when the phenomenon was not seen as a social problem in other countries, and the draft of that code is even older as it dates back to 1912. The text of the law was amended in 1965 and in 2004 but the only revision consisted in the maximum amount of the penalty which was increased considering the existence of serious cases.

In Malta the criminalization of stalking was a direct choice of the legislators that included this behaviour in two articles of the Criminal Code.

In Austria stalking became a crime after a wide debate that involved legislators, judges and women's associations.

In the other European countries the process of criminalization was very rapid and more linked to the general and social interest for the phenomenon together with the media attention for stalking cases involving celebrities.

Concerning the legal definition of stalking in the 8 EU Member States the study showed a wide variety starting from the words used to refer to the crime.

None of the legislators used the term stalking in the definition of the law although it seems the most common and understandable: harassment, severe harassment, belaging, persistent pursuit are the words used in the legal definitions of the crime of stalking in the 8 countries.

Apart from Denmark, the first EU Member State that passed an anti-stalking legislation was UK in 1997. The Act considers two levels of offence with different seriousness depending on the reaction of the victim.

The recent legislation of Malta (2005) shows a similar structure and also includes the victim's reaction to the definition of the crime. The very new element is the consideration of the private property of the victims or of their relatives.

The Irish anti-stalking legislation was passed in 1997 and considers the victim's reaction in order to punish the crime. It is different from the two previously cited legislations because of the creation of a list of the criminally relevant behaviours of the stalker.

In Belgium the law adopted a very generic definition and used the term belaging instead of stalking. This criterion which apparently leaves more possibilities in the decision and interpretation of the law to the judges, created a lot of problems in the application of the law and constitutes a case of legal indeterminateness which also contributed to causing doubts about stalking at social and media level.

The anti-stalking laws of the Netherlands (2000) are based above all on the specific intent of the stalker, and introduce the crime of belaging into the Penal Code. This law, in particular, stands out for the great importance given to the privacy issue.

Austrian law (2006), on the other hand, is among the least generic ones. The crime of "Persistent pursuit" indicates 4 different ways of conduct, (1. seeking the victim's proximity, 2. getting in touch with the victim by way of telecommunications, by using other means of communication or via third person, 3. ordering goods or services for the victim by using his or her personal data, 4. prompting others to contact the victim by using his or her personal data). Nevertheless, unlike most of the other European legal provisions, it does not take into consideration the reaction of the victim as a constitutive element of the criminal offence.

The last country to pass an anti-stalking law (2007) was Germany, which took account of the laws passed by other European countries many years ago. From this point of view, it is interesting to see that this country too, the last in terms of time to criminalise stalking, has preferred to prosecute the phenomenon without expressly using the word

stalking. The definition of the law would seem to take as a model the Austrian law of 2006, and appears not at all generic and particularly careful to indicate the behaviours of the stalker that represent “severe harassment”. Five different behaviours are indicated (1. seeking out physical proximity; 2. using telecommunications or other instruments of communication or using third parties to get in contact; 3. using her personal data improperly to order goods or services in her name or prompting third parties to get in contact with her; 4. threatening life, physical integrity, physical health of freedom of hers or of persons close to her; 5. acting in a comparable way and impacting her personal freedom in a severe way will be punished...). The law is therefore based on the stalker’s conduct and makes little reference to the consequences for the victim (the only consequences for the victims included in the definition of the crime are the substantial intrusion into other people’s lives and privacy) and none at all to the specific intent of the perpetrator, who is not even mentioned in the law.

Many anti-stalking legislations require the presence of “persistent behaviour”, even when a minimum number of episodes is not indicated (Austria, Ireland, Germany, Denmark, The Netherlands). An exception to this is UK law that expressly indicates “a course of conduct of at least two occasions”. A single episode can be considered enough to constitute stalking in countries such as Belgium and Malta, while in other EU Member States even in the absence of a precise indication, the prevalent interpretation is to deem necessary at least two behaviours to consider stalking a crime.

From this study emerges a trend in the definitions adopted by the European legislations that have succeeded one another over the years. If the model of the English-speaking countries, which is-with the exception of Denmark-also the first in terms of time, provides an ample definition, accompanied by focus on the reactions of the victims (including in the very definition of the crime), the European model as it appears in the most recent laws, seems on the other hand to have opted for a less generic definition with more focus on the stalker’s ways of conduct. Nevertheless, the lists of behaviours making up the crime are never definitive and the method used by the law-makers aims at combining the determination of the conduct with the possibility of extending the ways of interpreting the endless ways that stalking can be put into practice.

This approach in the intentions of the law-makers should make it possible to consider a large number of behaviours of the stalker as important for purposes of defining the crime of stalking. Recent research has in fact shown how the stalkers show themselves capable of appropriating very quickly of any new instrument that lends itself to their

persecution campaign. Consider the spread of means of electronic communication and the new technologies and communication channels such as Internet or text messages.

On the other hand, it must also be remembered how the adoption of such legislative method compared to the one which provides an ample and general definition of the crime, risks having to proceed with continuous updating of the law, precisely because of the aforementioned difficulty in classifying stalking behaviours. As regards the reaction of the victim, this is considered as a qualifying element of the crime of stalking above all in the UK, Ireland and Malta. It is not explicitly included in the definition of the crime in Austria, Belgium, Germany, Denmark and The Netherlands. These countries place more focus on the types of behaviour and/or the intent of the stalker or on concepts such as privacy or the disturbance of the peace.

The study also evidences the existence of Protection Orders and Restraining Orders as applicable instruments in cases of stalking.

As part of anti-stalking legislation, some countries have explicitly indicated the possibility of applying such order to stalkers, while other countries indicate these only for domestic violence, with limited applicability to only some stalking cases and consequent exclusion of those between strangers.

The study has also shed light on interesting differences within the situation that characterises the countries that do not currently have a specific legislation to punish stalking .

In some cases, the evolution of knowledge in the academic field and the contemporaneous social interest for the phenomenon have translated into initiatives tending to the creation of new and specific legal provisions for protecting stalking victims. It can therefore be stated that in some countries such as Italy and Switzerland where bills have been presented to combat stalking, the criminalisation process has in any case begun even though with different procedures and times.

While in the other Member States without specific laws, situations fluctuate from limited social and scientific interest in the phenomenon, even though a demand for change exists at legislation level, to other situations where times will be longer due to the scarce social importance attributed to the phenomenon.

At the end of this study it is possible to draft some recommendations to the Member States, European and National relevant Institutions and Women's Associations.

The recommendations are general and intend to give an outline of the legal problems concerning the process of criminalization of stalking in Europe.

1. Promotion of studies producing an information base for stalking in the European Member States.

The creation of new anti-stalking laws or changes to existing ones should be preceded by a greater knowledge of the phenomenon. In particular, empirical studies should be made on the prevalence and nature of stalking .

In the States where the process of criminalization of stalking was rapid, without knowledge of the phenomenon and following some sensational star-stalking case, the definition of the legal conduct appears more problematic and the law fails to give adequate protection to the victims.

2. To take into account the complexity of the legal definition of stalking.

Legislators have to take into account that stalking is a very difficult phenomenon to define because it is characterised by a pattern of different repeated and persistent behaviours not necessarily illegal.

The adoption of a broad and general definition of the crime of stalking or the classification of the behaviours of stalking in one list of prohibited acts although not limited, are the two techniques used by the EU legislators. The two approaches have showed positive and negative aspects that have to be considered in the framework of each national legal system.

3. Better understanding of concepts such as privacy and disturbance of the peace.

If the definition of the crime of stalking refers to concepts such as privacy or disturbance of the peace, it is important to deepen their content in order to avoid problems in the interpretation of the law.

The experience of some legislation showed that if concepts such as privacy or disturbance of the peace are part of the legal definition of stalking the lack of knowledge about their content could hamper the application of the law.

4. Evaluation of the impact and efficacy of the existing anti-stalking legislations in Europe

Member States which have an anti-stalking legislation should provide an evaluation of their impact and efficacy.

It will be very important to perform some evaluation of the impact and efficacy of the existing legislations in Europe considering that the oldest laws were created about 10

years ago and this activity could be very helpful for new laws or for revision of the existing legal regulations.

5. Evaluation of the application of restraining or protection orders against stalking in Europe.

Member States which have protection or restraining orders should provide an evaluation of their application.

It will be important to make an evaluation of the impact of the application of these instruments on stalking situations in the EU Member States. Apart from the difficulties that were pointed out also for the domestic violence situations, it will be interesting to evaluate their capacity to prevent stalking and the cases in which their application is contra-indicated because of the risk of worsening the situation.

6. Promotion of studies and research initiatives on stalking for countries without anti-stalking legislation.

It is important to improve the knowledge on stalking in the Member States without an anti-stalking legislation.

In some Member States stalking has not entered the scientific and social discourse and there is a lack of knowledge about this phenomenon.

7 APPENDIX

7.1. National Chapters

Austria

by Silvia Thaller

Recognising that stalking is a form of psychological violence an “Anti-Stalking-Bill” consisting of penal and civil law provisions was enacted by the Criminal Law Amendment Act 2006 which came into force in 1st July 2006.

Before the preliminary work for the creation of the new law started, a big awareness raising campaign was initiated during a conference organised by a victim support organisation in the Viennese city hall in 2003. This event marked the starting point for a wide discussion of the phenomenon, not only taking into account its legal aspects but also the psychological impact of stalking behaviour on the victim’s life. Big media coverage and a growing understanding for the different levels of threat stalking may pose to victims followed.

Cases of aggravated stalking were already criminalised by the Austrian Penal Code before the introduction of the new law e.g. as offences of bodily injury, threat, coercion, trespassing and vandalism. But provisions lacked in cases where this threshold was not passed as stalking can include a number of various at first sight not too grave behaviours intended to control and frighten the person being stalked. The fact that 50% of stalkers are intimate partners or ex-intimate partners of the victims made it clear that there is a strong link between stalking or criminal harassment and domestic violence and that not only celebrities but in most of the cases ordinary people are affected. Also politicians realised quite soon that stalking is a common problem and that legal measures are necessary.

In order to improve the position of victims exposed to stalking, in 2004 the Austrian Ministry of Justice appointed a working group consisting of representatives of victim support organisations, women’s help NGOs, the police force and civil and penal law experts who undertook the difficult task of specifying the requirements for a possible anti-stalking legislation. In October 2005 the Ministry of Justice conceived a draft bill

which underwent an examination by experts and after some small amendments was accepted by parliament in March 2006.

The new criminal offence “persistent pursuit” (“Beharrliche Verfolgung”) penalises persistent illegal behaviour which is likely to infringe upon the private life of the victim. As the invasion of the victim’s privacy represents the essential element of the offence, Section 107a of the Austrian Penal Code criminalises pursuing a person persistently for a longer time without lawful authority in a way, which is likely to affect unreasonably his or her way of living by 1. seeking the victim’s proximity, 2. making contact with the victim by way of telecommunications, by using other means of communication or via third persons, 3. ordering goods or services for the victim by using his or her personal data or 4. prompting others to take up contact with the victim by using his or her personal data. Criminal proceedings start *ex officio* unless in cases of indirect communication (2.), prosecution can only occur at the request of the person against whom the offence was committed. Stalking is punishable by a maximum term of imprisonment of one year which is comparable with possible sentences in case of threats or coercions and enables the examining judge to take the suspect into preventive custody.

The new anti-stalking law also contains civil law provisions. As stalking is now recognised as grounds for issuance of a civil restraining order, the victim can opt for a penal and a civil law approach at the same time, by reporting the stalking behaviour to the police and applying for a restraining order at the civil court. The restraining order is legally binding and can be made effective through police force, if the stalker disobeys it.

Psychological and legal assistance during criminal proceedings is guaranteed to victims who are strongly affected emotionally by stalking.

To make the law as efficient as possible training for police forces, judges and prosecutors is organised and a dialogue with victim support organisations is cultivated.

Belgium

by Geert Vervaeke & Anne Groenen

From the second half of the nineties onwards, the interest of the media in Belgium in the phenomenon of stalking cannot be denied. The first reports on stalking in Belgium date from the end of the eighties, and were based on the enormous interest of the media in the United States in so-called “star-stalking”, the stalking of celebrities. It is therefore not surprising that the first anti-stalking law was established in the United States of America. In 1997 and 1998, the Belgian media reported extensively on the harassment of the popular singer Koen Wauters by a female fan of his. The mobilization of politicians and specialists was very smooth. The establishment of the self-help group “Stichting Anti-Stalking” (SAS), for the victims of stalking, in 1997 was also very active in raising the attention in relation to the severe consequences of stalking and the importance of criminalisation of stalking.

This resulted in the introduction of a bill by politicians Cuyt and Landuyt. This bill anticipated a new article 460ter in the penal code, stating the following: “the repeatedly pursuing, watching or harassing of a person in a way this person perceives to be disturbing, worrying or tormenting, to be criminalised with a term of imprisonment of eight days to three months and/or with a fine of twenty six to one hundred francs”. Seven amendments were submitted, which thoroughly changed the contents of the law and specifically broadened its scope. This resulted in the introduction of a new article 442bis in the penal code of October 30 1998. The text of the law reads as follows: “He, who has harassed a person, while he knew or should have known that due to his behaviour he would severely disturb this person’s peace, will be punished with a term of imprisonment of fifteen days to two years and with a fine ranging from 50 euro to 300 euro or with one of those punishments. The behaviour described in this article can only be prosecuted on complaint of the person claiming to be harassed.” Two important characteristics of the Belgian law are on the one hand that a non-recurring disturbance of a person’s peace and quiet suffices to be classified as stalking, and on the other hand that the Belgian law prefers the term “belaging” instead of stalking.

Cyprus

by Andreas Kapardis

In Cyprus, at the moment, there is no specific law on stalking.

There is no precise term for stalking, but harassment is also used in Cyprus to describe partial stalking (in greek: *parenohtisi*).

The concept of stalking has not entered scientific discourse.

No epidemiological data are available concerning the extent of stalking in the general population.

It is possible to prosecute stalking only when the behaviours that form part of it amount to crimes prosecutable under other legislation. A suit can be filed against an offender for threatening behaviour.

There is a restraining order for domestic violence and if a man still stalks a woman and violates her, the punishment provided is imprisonment (up to 2 months).

Not all the cases are covered efficiently by existing legislation. There are situations where the protection of the victims of this form of violence is hindered by the lack of a specific legislation. In Cyprus a specific anti-stalking law appears necessary.

Czech Republic

by Modena Group on Stalking

No specific law exists in Czech Republic applicable to cases of stalking and the offence can only be prosecuted by making reference to existing laws governing similar behaviours.

In 2003, the Czech Academy of Science conducted a survey entitled International violence Against Women, according to which 59 percent of respondents have experienced violence at least once during their lives, 38 percent while in a partner relationship. Very few women reported incidents to the police, but those who did said that police recommended specialized treatment and legal advice in addition to writing a required police report. The survey showed that most victimized women report incidents only to friends, 23 percent did not tell anyone.

The Government amended its Criminal Code in 2004 (amendment of act No.140/1961) to recognize domestic violence as a distinct crime. According to the new law, those who commit violence against relatives or domestic partners may receive up to 3 years in prison; if the extent of the domestic violence is severe, prolonged, or involves multiple victims, the prison sentence is 2 to 8 years. If domestic violence is committed against a person under the age of 18, a pregnant woman, the elderly, or the seriously ill or handicapped, the sentence may be longer.

In January 1st 2007, a new act “Expulsion of Perpetrator” was enacted. This law allows the Police to place a restraining order on a woman’s abusive spouse. The perpetrator of domestic violence is excluded from the flat or house for a period of 10 days.

Provisions against harassment are included in the laws on conditions of employment and workers’ rights too. In fact, in this country sexual harassment is a continuous problem in the field of employment. The definition of the sexual harassment was enacted by the Czech legislature in a new Labour law (No. 46/2004 in 2004), in connection with entering the European Union.

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Denmark

by Britta Kyvsgaard

The Danish term “*forfølgelse*” corresponds fairly well to the English word “stalking”. “Forfølgelse” means pursuit, i.e. any act (communicatively as well as mere physically [i.e. “to follow, chase”]) apt to violate the peace of a person. The term implies repetition of the behaviour or that the behaviour happens over an extended period of time.

“Forfølgelse” or stalking has been punishable in Denmark since 1930 when it was included in the new criminal code that came into force in 1933. However, the proposal for criminalizing stalking appeared as early as 1912 in the draft of the criminal code, and it can be dated even further back in time since the criminalization in 1930 was a codification of police practice.

It is section 265 in the Danish Criminal Code that deals with stalking. It says: “Any person who violates the peace of some other person by intruding on him, pursuing him with letters or inconveniencing him in any other similar way, despite warnings by the police, shall be liable to a fine or to imprisonment for any term not exceeding two years. A warning under this provision shall be valid for five years”.

“Violating the peace of some other person” may imply threatening, dishonouring, intruding etc. but it may also just imply continuous unwanted attention (e.g. frequently sending unwanted flowers).

A warning or a restraining order must be imposed by the police before the person is liable to punishment. The procedure for giving a warning/restraining order is as follows: When the police are requested to give a warning, the police will question the victim about the reason for the request and, if possible, they will also question the perpetrator. The criminal code does not include the prerequisites for giving a warning/restraining order, so the decision lies within the discretionary power of the police.

However, the prerequisites for giving a warning/restraining order are probably as follows:

1. The annoying/molestations/distresses must have a repetitive character, yet the needed frequency depends on the seriousness of the molestation. Fear of being a victim of molestations is in itself not sufficient for giving a restraining order.
 2. Normal rules of criminal procedure (i.e. evidence) are followed to determine the perpetrator’s identity.
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3. The molestations should usually be committed during a period of time. It is not required that the molestations be reported to the police before asking for a restraining order.
4. There has to be reason to believe that the molestations will continue unless action is taken (e.g. giving a restraining order).

The decision of the police to give or not to give a warning has to be motivated. The decision can be referred to the local Crown Prosecutor, and the decision of local Crown Prosecutor can furthermore be brought before the Ombudsman. Finally, the legality of a warning can be referred to the court

Also in 2005 the police were requested to give a warning 1,700 times, and 567 warnings were given. In case a warning is not given, the police may instead admonish the perpetrator. Also in 2005, section 265 of the criminal code was reported violated 935 times and 840 charges were raised. Most cases resulted in a fine.

Estonia

by Jaan Ginter

In Estonia “stalking” is not a common term and is used occasionally only in limited spheres. There is no Estonian term to refer to stalking and the English term “stalking” is employed. In Estonian the concept of stalking is partially covered by the term “ahistamine” = “harassment”, i.e. any act (usually a communication, such as a phone call or verbal approach in a public place, but may include unwanted physical contact) apt to annoy the target. The term “ahistamine” is used in common parlance. The concept of stalking has not entered scientific discourse in Estonia. There have been only occasional references to the issue.

Domestic violence issues have been addressed much more thoroughly than the issues of stalking. Although there are no dedicated domestic violence policing units, there is a system of safe refuges for women who have been subjected to domestic violence and voluntary organisations and groups offer support or advice to victims of domestic violence.

There are no legal instruments in Estonia that are specifically framed to deal with stalking behaviours. There have not been any stalking cases where existing laws not specifically dealing with stalking have been used to prosecute the perpetrator.

There are no legal instruments that introduce restraining or protection orders, specific to stalking behaviours. There are restraining orders available in civil procedure in cases of [...] infringements of inviolability of private life or other personality rights, when the plaintiff may require restraining order to protect his/her rights. Violation of a restraining order is a crime if the violation causes a threat to a person’s life, health or property or the violator has violated the restraining order repeatedly. The crime is punishable by a pecuniary punishment or up to one year of imprisonment.

There are other legal ways of dealing with stalking behaviours, e.g., the Penal Code includes a crime called “unauthorised surveillance”. It criminalizes acts of a person who without a lawful right to engage in surveillance observes (engages in surveillance of) another person in order to collect information relating to such person. The crime is punishable by a pecuniary punishment or up to 3 years’ imprisonment. No new law proposals regarding stalking behaviours have been put forward.

No specific training or specialisation is required before judges or prosecutors are permitted to deal with stalking cases. Social work and psychological assistance is available to victims of stalking through the police, victim support organisations and the health service, like to other victims. But the offered assistance is not focused on stalking.

There have been no surveys documenting the prevalence of stalking behaviours in Estonia. No statistics on complaints of stalking behaviour are available. There have been very few cases of unauthorised surveillance (Penal Code § 137). None of these have been related to stalking behaviours.

In Estonia the first step to address the issues of stalking should be to raise awareness about stalking behaviour and threats to the victim. The next step should be specific training for the police about the threats of stalking behaviour and the specific needs of stalking victims for assistance. Social and health services should be provided with information about the specific needs of stalking victims for psychological support and treatment. And after the awareness about the threats of stalking has risen the specific crime of stalking should be introduced into the Penal Code.

Finland

by Helina Hakkanen

At the time of writing (2007), in Finland, the term stalking is beginning to achieve general public recognition due to a couple of high-celebrity stalking cases that have come to public attention through the media. Also, the media has increasingly notified the scope of the problem and some general articles on stalking have been recently published in the national newspapers. In Finland however, there is no precise term for stalking; an alternative term for the distressing phenomenon would be 'ahdistelu', 'häirintä' or 'vainoaminen'.

No epidemiological data are available concerning the extent of stalking in the general population in Finland. Its extent can be estimated only indirectly through studies in specific (e.g. student) populations or through official statistics regarding issuance of restraining orders. Annually, approximately 1700 restraining orders are issued. Statistics regarding convictions for associated criminal offences (e.g. unlawful threat, assault or disturbance of domiciliary peace) would not provide a reliable estimate of the extent of stalking.

To date, no specific law against stalking exists, making it possible to prosecute stalking only when the behaviours that form part of it amount to crimes prosecutable under other legislation. However, since 1999 restraining orders have been an available option for the victims of stalking. By a restraining order, the life, health, liberty or inviolability of a person may be protected by prohibiting another person from making contact with him or her. The purpose of the Act is to prevent offences and to improve the possibilities to intervene in a case of serious harassment. Typical cases in which a restraining order can be applied are harassment of ex-spouse or ex-cohabitant, and situations where a grown child attempts to press an aged relative for money. A petition for a restraining order may be filed by anyone who has justified grounds for feeling threatened or harassed by someone else. The Finnish police are well educated to recognise the phenomenon and its seriousness.

The Act was complemented at the beginning of 2005 so that a restraining order can also be imposed to apply within the family, in which case the person against whom the restraining order has been issued, must stay away from the common residence. In 2005 the police dealt with altogether 120 cases of intra familial restraining orders, half of

which were temporary restraining orders entering into force immediately. Also the prosecutor, the police or the social welfare authorities may petition for the issue of a restraining order, if the threatened person himself or herself is too intimidated to do so. In general, a petition for a restraining order is filed with the police or directly with a district court; the petition may be written or oral. An interim restraining order, effective immediately, can be issued by a senior police officer or by a prosecutor. In this event, the interim order is at once submitted to the district court for review. The district court hears matters of restraining orders as urgent matters. The parties are summoned to a court session in which any evidence is examined and both parties, and witnesses, are heard.

The restraining order shall remain in force for the period laid down by the district court, at most (also usually in practice) one year. The order may be renewed, if necessary. This however requires new proof. A restraining order inside the family can be imposed for a maximum of three months. The violation of a restraining order is a punishable offence. The penalty is a fine, or imprisonment for at most one year. The violation is an offence subject to public prosecution. In 2002 it was estimated that in approximately 30 % of the cases the restraining order were violated.

France

by Modena Group on Stalking

No specific law exists in France applicable to cases of stalking and the offence can only be prosecuted by making reference to existing laws governing similar behaviours.

The research and study activity is limited to a few general contributions of a psychiatric nature providing an overview of main English-speaking literature.

In the last 20 years in France, regulatory measures have succeeded one another that tend to adapt national legislation on violence and discrimination against women to international legislation. Nevertheless, only in 1994, with the coming into force of the new Penal Code, did the condition of the spouse or cohabitant become a specific aggravating circumstance in the case of violent crimes and the punishment was increased for cases of sexual violence between married or cohabiting couples. Previously, starting in 1990, sexual violence between married couples had been recognised as a crime at jurisprudence level only.

Further regulatory measures were taken in 2006, with the introduction of the law that reinforced prevention and the repression of violence committed within the couple or against minors. This law has made various amendments to the existing Penal Code, also in order to bring existing provisions within the situations assimilated to the spouse (cohabitation, CSP, marriage)

In France, both the provisions of the Penal Code, which govern violent crimes, and those of the civil code, that regulate divorce, and which also envisage emergency measures such as protection orders, apply to domestic violence.

Besides such provisions regarding domestic violence, in France other laws exist concerning sexual harassment and morality at the workplace and which fall within the context of the regulations on workers' rights and working conditions, issued in 1992 and subsequently changed.

Loi n° 2006-399 du 4 avril 2006 renforçant la prévention et la répression des violences au sein de la couple ou commises contre les mineurs.

Loi n° 1992-1179 du 2 novembre 1992 relative au harcèlement sexuel

Loi n° 2001-1066 du 16 novembre 2001 relative aux discriminations sur le lieux de travail

Loi n° 2002-73 du 17 janvier 2002 de modernisation social (harcèlement moral)

Germany

by Hans-Georg Voss & Jens Hoffmann

The identification of stalking as a major social, legal, and health problem with the potential of destroying both the physical and psychological well-being of many people, mostly women, captured the attention of scholars and practitioners not before the end of the nineties when several spectacular cases of harassment of prominent persons were recognised by the mass media. In 2002, a journalist, Susanne Schumacher, published a book on “Love Obsession” (*Liebeswahn*) and also launched a web-site which both came to the attention of a broader audience. The legal aspects of stalking with special reference to the first draft of a stalking-law in The Netherlands appeared in 1999 (von Pechstaedt). The rising concern about acts of violence and harassment first culminated with the appearance of the so called “Violence Protection Act” (*Gewaltschutzgesetz*) on January 1, 2002. Until this date, acts of violence had been prosecuted under different articles of the German penalty code, such as harassment, insult, intimidation, coercion and sometimes also mobbing. Undoubtedly, The Violence Protection Act has had its merits in terms of bringing acts of personal intrusion and violence to the court, but soon it became clear that there were some weaknesses, the most serious one concerning the status of the law as a civil code, that is, victims had to bear the burden of proof which in many cases prevented victims from bringing the case to court. Thus, criticism has led to a growing public discussion of how potential victims may best be protected against violent intrusions without running the danger of becoming secondarily victimized.

In 2001, a research group at the Psychological Institute of the University of Darmstadt started a research project on “stalking in Germany – from the perspective of both victims and offenders” which in part became supported by the German “White Ring” (*Weisser Ring*), a well-known non-profit organization of helping and supporting people after having been victimized. The study comprised a large scale collection of data on stalking behaviours and related problems. 550 victims and 98 offenders anonymously reacted to the questionnaire being available via internet (the site still exists: www.stalkingforschung.de). The results of this study were published in 2006 (Voss, Hoffmann & Wondrak, 2006).

A second study to be mentioned here has been conducted by Dressing, published in 2005 (Dressing, Kuehner, & Gass, 2005). Data were based on population of about 2000

persons living in the larger area of the city of Mannheim. Stalking, according to the definition of the authors (at least two different stalking behaviours shown for at least 14 consecutive days) appeared in 11.6 percent of the respondents, at least once in their life. Congruent to the findings of Voss et al (2005), about 85 to 87 percent of the victims were women, and in about 50 percent of all cases, stalking was directed to an intimate partner after relationship breakdown.

Both public interest and scientific enterprise (there is also the comprehensive volume on stalking by Hoffmann, 2006) have supported the idea of bringing the stalking issue back to the plane of politically motivated activities in establishing a law on stalking which now should be incorporated into the general Penal Code. After a period of discussion on different versions of the new paragraph 238 of the Penal Code, the final article was passed by the German Parliament (*Bundestag*) in December 2006 and was also approved by the *Bundesrat* (the chamber of federal countries) in that period. Although the article does not mention the term “stalking” explicitly – instead the topic is on “intense harassment”, stalking is the term most commonly used throughout the public scene and is now well established in everyday language.

The new article of the criminal code can be evaluated in terms of providing more confidence in both victims and the political executive (e.g., police, official prosecutors, judges) when bringing the case to court. Since many female victims had resigned from further prosecution under the former law of violence protection (see above), the future will certainly show an increasing number of cases by thus diminishing the dark field of this crime. One also may be aware of the fact that many woman suffering from domestic violence do not come to the decision of leaving the relationship because of fear of stalking after separation. Thus, the new stalking law should also give confidence to these women, that is, in future rates of ex-partner stalking may decline.

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Greece

by Maria Sapouna

Although in the last couple of years there is a growing number of voluntary groups and organisations which offer support to victims of domestic violence and a new law against domestic violence was passed in October 2006, stalking has not achieved public recognition in Greece, partly because there is no direct translation of the term in the Greek language and also due to lack of serious stalking cases brought to public attention through the media. No epidemiological data is available concerning the extent of the problem in the general population in Greece. To date, there is no specific law against stalking, which means that stalking can be prosecuted only if it involves behaviours that amount to crimes prosecutable under other legislation.

The most common criminal law provision used in stalking cases involves behaviours covered by article 361 of the Penal Code ‘Insults’, which states ‘Whoever attacks a person’s honour by words or acts or in any other way is punished by a pecuniary penalty (150-15.000€) or imprisonment of up to 1 year’.

If stalking behaviours amount to threats which cause terror or anxiety to the victim, article 333 of the Penal Code ‘Threats’ can be used. This crime is punishable by a pecuniary penalty (150-15.000€) or imprisonment of up to 1 year. The new law dealing with domestic violence cases applies a heavier sanction for threats causing terror or anxiety to a member of the offender’s family or the cohabiting partner. Imprisonment of up to 5 years is possible in this case.

When, during stalking, damage to private property is caused, victims can be protected under article 381 of the Penal Code which is sentenced with up to 2-years imprisonment.

When stalking involves forcing a partner to restore a relationship, prosecution can be justified under article 330 of the Penal Code ‘Unlawful Violence’ which states ‘Whoever compels another person to do, omit or suffer something, for which the victim has no obligation, by using bodily violence or threat of bodily violence or any other unlawful act or omission is punished by imprisonment of up to 2 years, regardless of whether the threat is addressed against the victim himself/herself or his/her next of kin’.

In most serious cases, prosecution can be justified under articles 308 and 308A of the Penal Code ‘Bodily Harm’ if it is possible to demonstrate that the victim suffered a

depressive/anxiety disorder or a post-traumatic stress disorder as an immediate result of the offender's stalking behaviours. Imprisonment is possible depending on the severity of the psychological damage caused.

If stalking behaviours involve obscene gestures or proposals which relate to obscene acts that insult unlawfully one's sexual dignity, article 337 of the Penal Code 'Insult to Sexual Dignity' can be used. This crime is punishable by a pecuniary penalty (150-15.000€) or imprisonment of up to 1 year. If these behaviours occur in the workplace against employees or people who are in search of a job (= sexual harassment) a heavier sentence of minimum 6 months and up to 3 years combined with a pecuniary penalty of at least 1.000€ (maximum 15.000€) is imposed.

Civil law provisions can also be used since stalking is regarded by courts as an injury to personality and, therefore, protection orders are an available option for victims. Non-compliance with the order is liable to punishment by a fine of up to 5.900€, paid to the victim, and imprisonment of up to 1 year. When stalking occurs between family members, divorced couples or cohabiting partners, the 2006 law against domestic violence can be implemented. In this case, the offender may be forbidden from approaching the victim or be obliged to keep a certain distance from the victim's residence or workplace.

Hungary

by Miklós Ligeti

When writing the Hungarian report on stalking for the Daphne Project (end of 2006, early 2007), stalking or the phenomenon thereof was not recognised in Hungary. This results on the one hand in total lack of anti-stalking legislation of whatsoever kind. On the other hand this non-recognition also holds true for public understanding or acceptance of the concept of stalking. At the end of a long track struggle, sexual harassment and domestic violence have been put on the agenda, yet even these topics are much debated. A large percentage of the population shows very little understanding towards law-enforcing these issues. In Hungary, what happens in a family is considered part of the private sphere. (Rape of a woman by her own husband did not qualify as a crime until as late as 15th of September 1997) The smaller community you look into, the wider the range of the private sphere is. In major cities, private sphere is restricted to dwellings serving as homes, while in little villages and townships everything qualifies as act of the private sphere that happens among relatives or family members, even in case such happenings take place in public. This approach is a huge hindrance that has prevented the legislator from passing a law against domestic violence and it also often keeps law-enforcers from intervening in domestic violence cases. Stalking is in an even worse situation, it is simply neglected. There are simply no initiatives to move stalking out of the private sphere into the controlled and if necessary prosecuted public sphere. According to Hungarian public opinion no law-enforcement shall take place for acts of the private sphere, stalking is not at all an issue for the judiciary.

Press and media reflect public opinion and also have a huge impact on it. Yet even journalists show very little interest towards stalking cases. Some celebrity news programs deal with stalking of movie or media stars, of course exclusively that of females. Yet these very few cases are interpreted in the framework of being celebrities and regarded as collateral damage. This approach convinces the public that stalking is something extra-ordinary that happens only to *vedettes* or celebrities and not to common ordinary people.

Of course, Hungary does not have any legislation to cope with stalking. (However, anti domestic violence legislation does not exist either, and the fight against sexual harassment is only on the safe side because the Hungarian Criminal Code has

acknowledged such an act as a crime for ages.) This means that stalking is still regarded as an act of the private sphere not at all to be prosecuted. To bring such an act to justice is possible only in case a crime is perpetrated, of which law-enforceability and punishability are beyond doubt. As a result, some stalkers are actually prosecuted if they commit acts like Trespassing, Violation of Secrecy of Correspondence, Illicit Access to Private Information, Slander or Defamation. Yet these crimes are by far not meant to cover stalking cases. As a matter of course, if the stalker goes mad and commits a more serious act (like a crime against life or limb, sexual assault, rape, etc.) he / she is undoubtedly taken to court. Supposedly a number of homicides, crimes against bodily health and integrity, rapes and other different violent actions are the climaxes of a protracted stalking campaign yet in lack of anti-stalking legislation there is no real chance to intervene any earlier. In some rare cases the very crime of Constraint (forcing somebody to do, to suffer or to omit something and as a result causing him / her serious injury of interests) may cover stalking cases, but Hungarian criminal judicature looks at constraint as a form of non-violent sexual crime (previous name of Constraint was Sexual Racketeering), which differs a lot from the phenomenon of stalking. If not criminally law-enforced, acts of stalking may also be civil law-enforced as breaches of inherent rights or prosecuted as administrative offences (petty offences) yet these ways are even more unlikely to work out.

Ireland

by Catherine-Ellen O’Keeffe

The offence of stalking was introduced along with many other criminal offences in the *Non-Fatal Offences Against the Person Act 1997*. In parliamentary debates on the Non-Fatal Offences Against the Person Bill 1997, the Minister of State in the Department of Social Welfare commented:

“We are all aware of high profile cases of stalking, but of course such behaviour is not necessarily peculiar to people in the spotlight. It can unfortunately occur in everyday life when a person, usually a woman, becomes the object of the stalker's affection — perhaps “obsession” is a better word — and that person is subjected to sustained harassment and intimidation in a perverted attempt by the stalker to gain the attention or affection of the unfortunate person concerned. This harassment can have a profoundly detrimental effect on the life of the victim.”¹

The *Non-Fatal Offences Against the Person Act 1997* does not specifically refer to stalking but rather speaks of the offence in terms of ‘harassment’.² Section 10(1) provides that any person who harasses another “by persistently following, watching, pestering, besetting or communicating with him or her, shall be guilty of an offence”. Harassment in turn defined by subsection 2 as a person who, by their acts, “intentionally or recklessly, seriously interferes with the other’s peace and privacy or causes alarm, distress or harm to the other”, and the acts are such that a reasonable person would realise that the acts would seriously interfere with the other’s “peace and privacy or cause alarm, distress or harm to the other”.³

For a prosecution to succeed there must be two or more acts involving unwanted intrusions that would cause a reasonable person alarm, distress or harm and that does impact on the victim.⁴ In turn the defendant may plead lawful authority, reasonable excuse or that they did not engage in the acts alleged to constitute stalking. Subsections 3 and 5 permit the court to make an order prohibiting the stalker from contacting the

¹ Seanad Éireann - Volume 151 - 07 May, 1997 Non-Fatal Offences Against the Person Bill, 1997: Second Stage. Minister of State at the Department of Social Welfare (Mr. Durkan): 676.

² Seanad Éireann - Volume 151 - 07 May, 1997 Non-Fatal Offences Against the Person Bill, 1997: Second Stage. Minister of State at the Department of Social Welfare (Mr. Durkan): 676 : “Section 10 provides for the very important new offence of harassment, which is aimed at what is commonly called “stalking”.”

³ Section 10(2)(b) of the *Non-Fatal Offences Against the Person Act 1997*.

victim (restraining order), in addition to or as an alternative to other penalties. While this power is similar to the power of the courts in family law matters to impose safety, barring and protection orders, it is “rather novel in the context of criminal cases”.⁵ For the first time in this jurisdiction, the legislation allowed the court to grant an injunction to prevent a stalker from approaching the victim again. Notably, the court may exercise this power where the evidence is insufficient to convict- a person acquitted of an offence may still attract the penalty of a restraining order under the legislation.

As is common with many privacy-related concepts, it could be argued that the nature of stalking is a subjective one that is overly dependent on its consequences. It is not the intention of the stalker that defines the offence but rather it is the reaction of the receiver of such behaviour that converts the conduct into a crime. However, section 10 of the *Non-Fatal Offences Against the Person Act 1997* employs an objective test, in conjunction with a subjective one, to prevent over sensitive or vindictive victims from invoking the law on a whim. This requires that the conduct would cause a reasonable person to suffer emotional distress with the proviso that the victim does in fact suffer distress.

It has been a decade since the introduction of anti-stalking legislation and it can be said that some problems persist in the prevention, detection and prosecution of stalking behaviour. The inadequacy of legislative reform alone in dealing with stalking behaviour warrants a shift in focus to other areas of the criminal justice system:

- Police training in how to respond to stalking behaviour can have an impact on the reporting levels of stalking behaviour, prevention of persistent stalkers, and overall public confidence in the criminal justice system. Although there is currently training for police in how to respond to domestic violence and sexual offences, no training exists for the offence of stalking.⁶
- The criminal justice system does not have mandatory psychiatric evaluations for the offence of stalking. Where assessments are carried out, the judiciary has few options in addressing the mental health concerns of the offender. It is in the best interests of the state, the victim, the public and the offender that he/she is individually assessed

⁴ This is an interpretation of the term ‘persistently’ used in section 10(1) of the *Non-Fatal Offences Against the Person Act 1997*.

⁵ I Bacik, “Non-Fatal Offences Against the Person Act” in *Irish Current Statutes Annotated* (London, Roundhall, Sweet & Maxwell, 1997) at page 26-13.

and receives psychiatric help if required. The statute should assist the court by providing for extensive medical, psychiatric, psychological and neurological evaluations.⁷

- Legislation should make provision for on-going monitoring and make counselling and reporting mechanisms to the court mandatory rather than leaving it to the discretion of the judge.
- Addressing the deviant behaviour of the stalker through perpetrator intervention programmes may help to prevent recidivism.⁸
- The efficacy of anti-stalking statutes can also depend on how restraining orders are enforced. Over reliance on the victim's assistance should be avoided and instead be carefully monitored by the police.
- Judges should consider other forms of sentencing in recognition that harsher sentences may be more appropriate in some contexts depending on the extent and nature of the stalking behaviour and the personal circumstances of the offender.

The criminal law can be an effective tool in addressing stalking behaviour. Its impact is however not simply affected by its legal definition. The complex nature of stalking, as a form of psychological violence, necessitates a focus on a number of practices within the criminal justice system and the health service.

⁶ Organisations such as Women's Aid and Dublin Rape Crisis Centre provide training for police, health professionals and frontline services responding to domestic violence and sexual offences.

⁷ Such an evaluation may assist the courts in determining the efficacy of medical and legal intervention. It may also be of assistance to the courts in an application for bail. The evaluation can also play a role in helping the person confront his behaviour.

⁸ Repeat offending can be common among certain types of stalkers.

Italy

by Laura De Fazio & Chiara Sgarbi

At the time of writing (Feb 2007), in Italy, the term stalking has begun to achieve general public recognition thanks mainly to various stalking cases that have come to public attention through the media.

This media attention was the result of episodes of serious violence against victims of protracted harassment campaigns. Alternative Italian terms for the phenomenon of stalking is “molestie insistenti” or “molestie assillanti”, emphasising the protracted and distressing course of the harassment concerned.

Increasing attention is now being given to this topic by public Institutions and volunteer associations tackling violence against women and offering victim support services. This is in conjunction with the appearance of some informative material in magazines and newspapers, and on websites and radio and TV programs.

In Italy, the only official data available are those produced by the recent “Indagine Multiscopo sulla sicurezza delle donne” conducted by the National Institute of Statistics (ISTAT, 2007), an investigation that has measured violence (physical, sexual and psychological) and mistreatment of women, inside and outside the family. The survey sample consisted of 25,000 women aged between 16 and 70, interviewed over the phone between January and October 2006.

The episodes of violence found as part of stalking behaviours refer to episodes perpetrated by former partners at the time of separation, which involved 2 million and 77 thousand women, equal to 18.8% of the total. And in particular, it appeared how 48.8% of the women victims of physical and sexual violence by former partners also suffered persecutory behaviours.

To date, no specific law against stalking has been passed, making it possible to prosecute stalking only when the behaviours that form part of it amount to crimes prosecutable under other legislation.

The most common legal provision that can be used in stalking cases in Italy involves behaviours covered by article 660 of the Penal Code “Molestie o disturbo alle persone” (harassment or disturbance to persons). This article aims to safeguard the public peace from the effect that the disturbance caused may have on public order. The crime can be punished with a sentence of up to six months imprisonment, with an alternative of paying a fine of up to 516 euros.

For harassment to be considered as such under 660 article of Penal Code, the behaviours concerned must be directed at the target in public places or spaces open to the public, or comprise communications sent through means such as the telephone, mail or text messages, showing malicious intent or considered to be driven by inappropriate motives, by common judgment.

In cases of serious stalking campaigns, prosecutors have resorted to using other articles of the Penal Code to bring stalkers to justice. For example, some stalking campaigns can justify prosecution under art. 610 of the Penal Code “Violenza Privata” (Private Violence), which entails compelling someone to do, suffer or omit something. Sometimes, this article can be applied to rejected partners who aim, by stalking the victim, at compelling him/her to restore the relationship.

In the most serious cases, the crime of “Lesioni Personali” (bodily harm), art. 582-583 of the Penal Code has also been used, when it has been possible to demonstrate a causal link between the stalking campaign and an illness in the victim, commonly a depressive and/or anxiety disorder or a post-traumatic stress disorder. Of course, when during the stalking specific behaviours amount to insults, threats or damage to private property, victims can get legal restitution under the relevant articles of the Penal Code (594, 612 and 635).

Protection orders are in principle not an available option for victims of stalking as such, but they can be implemented when stalking occurs in the context of cohabiting partners, when one is a victim of domestic violence. In this case, the 2001 civil law on protection orders allows the imposition of an injunction enforcing separation for the violent partner.

Media and public attention has prompted the presentation of various draft laws targeting stalking as a specific crime, the first of which was presented in Parliament, but not discussed, in the year 2004.

In January 2007, as part of a broader bill on violence against women, currently being examined by the Italian Parliament (House of Deputies, Nr. 2169; www.camera.it), the new crime of “persecutory acts” has been outlined.

Latvia

by Modena Group on Stalking

No specific law exists in Latvia applicable to cases of stalking and the offence can only be prosecuted by making reference to existing laws governing similar behaviours.

In recent years Latvia has experienced problems with regard to domestic violence and has struggled to combat the problem. There have been initiatives at governmental, NGO and local government level to expose the extent of the problem, to provide social measures targeted to the victims and potential victims of violence as well as informative measures targeted to the overall society.

Gender equality policy and measures to promote gender equality so far is being developed by particular actors and in particular spheres without having political support and long-term development strategy with appropriate financial means. The Cabinet of Ministers accepted the *Programme for Gender Equality Implementation 2005-2006* in September 2004. The Programme is a mid-term policy planning document and has four main directions of action – awareness raising about gender equality in all levels of education system, creating for work and family life reconciliation friendly environment, prevention and rehabilitation of violence, awareness raising and capacity building about gender equality issues in governmental institutions.

The direction - prevention and rehabilitation of violence includes four measures: awareness raising among general public about violence and related risks, raising the awareness of judges about causes of violence and about victims, providing informative support about available assistance and rights to receive protection for victims of violence and their relatives, educating specialists dealing with problem of violence and developing multi-sectoral cooperation.

In the frames of the Nordic Baltic Cooperation in 2004 a Latvian national strategy On combating violence against women was elaborated.

Although legislation prescribes penalty for physical violence, psychological violence at the work place and in the family is not in the focus of attention in Latvia, and it is not discussed in legislation. Domestic violence that is regarded as a very serious problem in Latvia has remained under the responsibility of non-governmental organisations, which provide psychological consultations, assistance and rehabilitation for victims of violence.

In recent years several information campaigns and projects have been carried out

addressing the problem of violence. However the society still tolerates violence and specially domestic violence, and as result hesitates to interfere, report to respective authorities and seek for assistance. The issues of violence are closely related to perception about the roles of women and men in society and family. It is known that often violence goes hand in hand with drug, alcohol and gambling addiction.

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Lithuania

by Genovaite Babachinaite

Among many kinds of interpersonal relations in the society, we can find so-called “persistent unwanted attention”. I think, this kind of behaviour has existed for many thousands of years and is recognized as such in every society, in modern Lithuania as well. Of course there are many levels of intensity of such behaviour. And there are different levels of tolerance with respect to persistent unwanted attention in each society.

In Lithuanian society most of such cases are solved through usual social control. Our society is not much involved into popular culture, I mean, the cult of film or television stars, cult of sex consumption, that is one part of coin. That’s why the other part of this coin, that is the persecution of film or television stars, or of any other famous people, does not have much following in our country yet.

However, the problem of persistent unwanted attention to our politicians, especially to our political leaders has been discussed in the Lithuanian media for the last few years. The discussion is how to find harmony between the people’s right to be informed and the right of politicians to their privacy. As you see, it is not precisely a debate about stalking.

In the Lithuanian language we do not have an exact term for the English term “stalking”. But we have many words to describe any kind of persistent unwanted attention (“įkyrus dėmesys” – bebaguering attention; “persekiojimas” – persecution; “priekabiavimas” – harassment, sexual harassment; and even “asmens terorizavimas” – the terrorization of person). All those words are common and comprehensible to each member of our society. But there are no support groups or special interest groups, working in the name of victims of stalking or even the victims of persistent unwanted attention. Maybe this is partly because of the lack of attention to this problem in the society and among politicians and scientists, partly because of absence of the problem itself in Lithuania. That’s why the police are not specially educated to recognize the phenomenon of stalking, but the police are educated to recognize domestic violence, because they are always asked to help the victims of physical violence and interrupt such behaviour of the person against another member of his family or spouse against each other. This problem is considered very important in our country. In case of

domestic violence all aspects of human behaviour are taken into consideration including unwanted attention.

Lithuania has no special law mainly because there is no need. After the penal law reform, the new Penal Code came into force in Lithuania on 1st of May, 2003. Article 145 of the Penal Code describes deeds which are closest to stalking. The title of this article is: “Threat to kill or to commit serious bodily injury to person or terrorization of person”. The Penal Code of Lithuania (Part 2, art. No. 145) describes it in such a way: “if a person is systematically intimidated by using psychological violence”. “Systematically” – means “persistent”. In that case the perpetrator is punished by imprisonment for four years. Part 3 art. No. 145 indicates, that the perpetrator is prosecuted and tried only if there is a victim’s complaint or the prosecutor’s demand. As a result of article 145 533 people were convicted in 2004 and 563 people in 2005.

In Lithuania, in cases of domestic violence, when persistent unwanted attention occurs in the context of cohabiting partners or ex-spouses, the problem is solved according to the consequences. Consequences refer to a certain article in the Penal Code, protecting human life, health, freedom, inviolability of person or sexual freedom. If deeds are done against property, the situation is the same – according to the consequences.

Luxembourg

by Isabelle Klein & Brigitte Schmitz

The *stalking* phenomenon, outside the sphere of domestic violence, is not very widespread in Luxembourg.

The term «stalking» is not commonly used in the language and media. A more commonly used word is «molestation». Women who are victims of molestation can contact women's advisory bureaus to obtain help. These services are subsidised by the Ministry of Equal Opportunities. Men who are victims of molestation can contact the advisory bureaus subsidised by the Ministry of the Family and Integration.

In order to better protect victims, the Ministry of Justice has decided to introduce the crime of *stalking* into the Luxembourg penal code as part of the preparatory work for the law on victims' rights.

According to the provisions of law 8 September 2003 on domestic violence, the law courts can adopt special urgency procedures.

Article 1017-8 of the law reads:

When a person attacks or threatens to attack a nearby person or behaves towards such person in a way such as to seriously harm his/her physical safety and make any sort of meeting intolerable, the presiding judge of the court can, at the request of the person involved, issue, in full or in part, the injunctions or the prohibitions listed below as long as these do not harm the fundamental and legitimate interests of the defendant:

- No contact with plaintiff;
- No sending messages to plaintiff;
- No coming within a certain distance, to be defined, from plaintiff;
- No living in the same quarter as plaintiff;
- Keeping away from certain places;
- No following certain itineraries;
- For a period of time set by the presiding judge, no housing of children or seeing them outside a specialised facility while awaiting a decision as to their custody and right to visit children;
- Permission for the plaintiff to access the common place of domicile to fetch personal items.

Authorised to file such application are:

1 – the husband/wife or divorced husband/wife, the person with whom the defendant lives or has lived regularly, the legitimate, natural or adopted ascendants, the legitimate, natural or adopted descendants;

2 – the legitimate, natural or adopted ascendants, the legitimate, natural or adopted descendants who are minors or affected by handicaps, of the husband/wife or divorced husband/wife or of the person with whom the defendant lives or has regularly lived.

Malta

by Mariella Camilleri

In Malta the issue of stalking came to the fore when the Domestic Violence Act was being planned. In fact in 1997 a committee was set up to work on a proposal regarding domestic violence. In 1998 a White Paper entitled 'Proposals for amendments to Maltese Legislation to provide for better protection to victims of domestic violence' was put forward for discussion. In July 2005 the Standing Committee for the consideration of Bills took up the issue of stalking while discussing the Domestic Violence Bill. The issue was brought up during such discussions as the domestic violence lobby pointed out that several victims of domestic violence ended up being stalked.

There were lengthy discussions regarding stalking on whether to include a specific term or a more generic one in the law itself. The translation of the term stalking into the Maltese language also posed a problem. During the parliamentary debates the English word "stalking" was borrowed but it was decided to use the Maltese word "*fastidju*" in the law itself. This word is a translation of the word harassment. Ultimately it was decided that in the law, it would be better to include the more generic concept of harassment, in order not to exclude any aspect of stalking. The reason being that a broader interpretation could prove to be a better tool for the judiciary when encountering any new variations of the same crime.

Three points worth mentioning are:

- (1) Where the law speaks of a person who ought to know that his conduct amounts to harassment, the test introduced by the law itself is that of the reasonable person, that is to say that if a reasonable person in possession of the same information (that is, faced with the same circumstances as the alleged victim has been faced with) would think that the conduct amounted to harassment then the charge stands.
- (2) The defences stated in the Criminal Code which a person charged may bring, in the law regarding harassment, that his conduct was in pursuance of preventing or detecting a crime, or to prevent another person from falling into harm, reflect the fact that the legislator had stalking specifically in mind when drafting it.

- (3) Besides mentioning the victims themselves, the law speaks of the property of victims, their (legitimate or natural) ascendants, descendants, brothers or sisters or their property.
- (4) According to the Law, the court may issue a protection order. It may also issue a treatment order, together with or separately from a protection order. The treatment order may be issued with or without the consent of the convicted person. Consent is necessary when the offender is not yet convicted of the offence in question.

The concept of stalking is a recognised phenomenon in popular culture but on a superficial level it is more of an imported concept rather than a local one. Still, more awareness would surely help to reveal a more consistent trend of stalking in Malta, especially within the domestic violence domain.

In Malta more awareness needs to be created regarding the issue of stalking. The idea of having the law using a more generic term may be considered advantageous in the sense that it may cater for a variety of acts, old and new, that may constitute stalking behaviour. On the other hand, the idea of using a more generic term has also resulted in some disadvantages. One might say that this has contributed to the fact that the concept of stalking is not so well understood among the various professionals within the criminal justice system.

Moreover, due to the lack of data collection, it is difficult to analyse the incidence of stalking in Malta. It is also suspected that the lack of awareness on the subject leads to a considerable degree of underreporting on the victims' part. The general impression is that it is only when the situation escalates that a formal report is lodged. This lack of awareness and the lack of reporting leads to a lack of services as the demand does not justify the expenses involved in setting up specific programmes and services for stalking offenders and victims.

More awareness and training is needed among the judiciary, police, lawyers, probation officers, psychologists, psychiatrists and other professionals who might come into contact with the victims of stalkers or with the stalkers themselves. In the case of police officers, it is also necessary since they are often the first professionals within the criminal justice system who come in contact with stalking victims.

The Netherlands

by Marijke Malsch

As in various other countries, the debate in the Netherlands on the question whether a new law would be desirable, started as a consequence of both a number of stalking incidents of a celebrity or other public figures, and the media reporting on such cases. The stalking law that came into force in the year 2000, therefore is based primarily on celebrity stalking. At present, it has become clear that most stalking concerns the harassment of former-partners. Stalking of individuals who do not know the stalker personally, does not happen very often or does not come to the attention of the legal system.

The initiative law that led to the Dutch Anti-Stalking Law caused a great deal of debate. Particularly subject to debate were: the need to criminalize stalking, the difficulty of describing stalking behaviours, the ambiguity of the statutory regulation, its effectiveness and ways to enforce it. Some people believed that victims would be unwilling to report incidents of stalking, because reporting would lead to an infringement of their own privacy. When reporting the incident, victims are expected to give the police certain, often intimate, information about their relationship with the stalker, and they may be reluctant to do so. Critics also consider it difficult for the Prosecution to find evidence of stalking, i.e. usually stalking takes place between two people with nobody else present. A single witness statement is insufficient proof of the alleged crime – a problem that also characterises most indecent assault and domestic violence cases. It would be difficult to gather sufficient evidence to reach a conviction in these cases. The large number of stalking cases that presently have been brought to the courts, indicate that problems as depicted here do not play the serious role that was expected.

The Dutch Anti-Stalking Law came into force on 12 July 2000.⁹ The new Article 285b Code of Criminal Law states:

- 1. He, who unlawfully, repeatedly, wilfully intrudes upon a person's privacy with the intent to force that person to do something, to refrain from doing something or to instigate fear in that person will be punished as guilty of*

⁹ Proposal for a new law by Dittrich, Swildens-Rozendaal and O.P.G. Vos (criminalization of *belaging* (stalking)), Staatsblad 2000, 282, TK, 1997-1998, 25 768.

belaging (stalking) to a prison term with a maximum of three years or a fine of the fourth category.

2. *Prosecution can only occur on the request of the person against whom the crime was committed.*

The Explanatory Memorandum on the stalking law does not analyse the different types of stalking or how often they occur. It is primarily based on a number of incidents that received full media coverage. The legislative process in the United States did exert substantial influence on the lawmaking process in the Netherlands. One of the Dutch legislators had suffered from stalking himself, while he was a practicing lawyer. This legislator was one of the persons who took the initiative to create a new law on stalking. 'Belaging' is the name that is given to stalking in Dutch law. The contents of this term are about equal to 'stalking', with the difference that no reference is made to the activity of hunting, whereas the term 'stalking' does, originally, refer to hunting.

Stalking has been a general phenomenon in Dutch popular culture, such as magazines, television dramas, newspapers and report. The attention for stalking fluctuates over time. When a high profile stalking case is dealt with by a court, media attention increases, and it drops when there is no news about stalking cases.

Recently, two books have appeared in the Netherlands about stalking. One of them was written by an author who suffered from very serious stalking by a female. The other was written by a man who was himself convicted for stalking.

The actors in the criminal justice system are increasingly aware of stalking and the need to combat it (see Malsch & Smeenk, 2005). The police and the prosecution are instructed on types of stalking and ways to recognise it. Guidelines have been developed on how to treat stalking cases and when to institute criminal prosecution. These guidelines and the instructions to the officials often include both domestic violence and stalking situations. Some guidelines even consider stalking as a form of domestic violence. This obscures the fact that stalking, in the Netherlands, does not necessarily include violence. Such a combination of the two crimes complicates fact finding and research into stalking.

The judiciary is dependent on the prosecution and the police with respect to the cases they have to decide. I am not aware of instructions to the judiciary specifically focused on stalking.

Stalking has been recognised by politicians, as a new law came into force. As far as I know, no changes in the new law have been proposed since its coming into force, so I cannot make any confident statements about the present awareness of politicians of problems relating to stalking.

We do not have any prevalence figures of stalking in the Netherlands, because the police and the prosecution until recently did not register stalking as a separate crime. The only figures we have are based on not highly reliable assessments. These assessments are not very different from figures from the US and the UK.

Figures about stalking cases dealt with by Dutch courts do exist, however. Recently obtained statistics show that since the coming into force of the new law against stalking (in the year 2000), 1947 cases in which stalking was charged, have been tried by Dutch courts. Of these cases, 1811 ended in a conviction for stalking. In the year 2005, approximately 650 stalking cases were tried by Dutch courts.

A number of websites and support groups exist for victims of stalking.

Thanks to the scientific research that has been conducted on stalking, the phenomenon is now recognised as a problem that primarily concerns former-partners. Before, during the legislative process, stalking was predominantly considered to be a problem that regarded public figures in the first place. The media attention was, by that time, more focused on harassment of celebrities. A shift has taken place in this respect.

Criminal prosecution has been made possible by the stalking law of the year 2000. Both imprisonment (maximum three years), a fine (maximum 11.250 euros), and certain conditions to a conditional sentence may be imposed. Community service is also made possible. Before, imposing restraining orders, both of a criminal and a civil nature were possible, and these orders can still be applied.

The law provides the possibility for the examining judge to take a suspect into preventive custody. During the preventive custody, the social services can contact the accused. Arrest some time after the crime was committed has also been made an option in the new law.

During the preventive custody and possibly an imprisonment, the director of the Institution where the accused is held has a number of options to prevent the accused from contacting the victim. These include refusing to post letters and forbidding telephone calls and other written communication with the victim. This might stop stalking activities from detention. The attention that is given to means to prevent the stalker from contacting the victim during his time in detention is not without reason.

Various research has shown the persistence of stalking behaviour. A large percentage of stalkers continue to harass their victims while in detention, and they constantly find new means of continuing their stalking after other stalking methods have been made impossible. How far the authorities actually endeavour to make stalking, while in a prison or psychiatric institution, impossible is unknown. What has become apparent from interviews with stalking victims is that some stalkers still manage to phone the victim from one of the institutions mentioned.

The measure of detention at Her Majesty's pleasure (TBS) has been made available to apply to stalkers by submission of article 285b in article 37a Dutch Code of Criminal Law, the article that states for which crimes a TBS can be imposed. Detention at Her Majesty's pleasure can be imposed in serious cases in which the stalker is totally or partially *non compos mentis* (declared to be of unsound mind), and at the same time poses a danger to the victim and/or others. Obviously, the judge can only impose such a measure provided that all criteria for the detention have been met. If such a detention is imposed, the judge will determine every one or two years if the detained is still a danger to society. The detained can appeal against the detention order. The detainee is treated in the TBS institution with the aim of preparing him to return to normal life in society.

Remedies provided by the Dutch insanity law (BOPZ) have been made possible for stalking cases as well. Offenders who have been found of unsound mind, may be mandatorily placed in a psychiatric hospital. As a non-legal remedy against stalking, an alarm system has been made available to victims of stalking in a number of towns in the Netherlands. This system (AWARE – Abused Women's Active Response Emergency), has been developed in Canada and is used both in this country, the United States, the United Kingdom and the Netherlands. An evaluation of the project in the Netherlands has revealed that the system has increased the women's general feeling of safety. It also showed, however, that some former partners of the women aggravated their stalking behaviour after the woman's home had been connected to the alarm system. The system, therefore, seems to have a number of serious negative side-effects.

Australian authors state that management and therapy of stalkers, although problematic, should focus on improving the social supports and networks. Medication (pimozide or other antipsychotics) have been claimed to be effective. Offender therapies are being developed at present, and the first results are promising.

Literature in English about the Dutch stalking legislation

Smeenk, W. & Malsch, M. (eds.)(2005). *Family violence and police response. Learning from research, policy and practice in European countries*. Aldershot: Ashgate.

Malsch, M. (2003). Anti-stalking legislation in the Netherlands: history and implementation. In *Konferenz 2003 Bericht* (p. 35-45). Wien: Stadt Wien. (www.psychoterror.konferenz.wien.at).

Malsch, M (2007). Stalking: do criminalisation and punishment help? *Punishment and Society, 1* (forthcoming).

Poland

by Dagmara Wozniakowska

In Poland stalking is still not considered as a serious problem. We do not have any specific legal regulations of this problem and we do not have any public debate on this matter. Police and other public services do not have any training about stalking behaviours and legal ways of dealing with such cases.

In the Polish language there is no official word for stalking. In criminological literature we can encounter such words as “stalking” (pronounced [stalking]), “obsessive persecution” (“obsesyjne prześladowanie”) or “emotionally motivated persecution” (“prześladowanie na tle emocjonalnym”).

The problem of stalking is not a recognized phenomenon in popular culture. Sporadically some plots can be found in Polish soap operas and magazines.

Police, lawyers, judiciary and other services are not aware how they can use existing procedures in cases of stalking. Usually they do not recognize it as a crime and inform the victim that they need to wait until behaviour of the perpetrator has features of other particular criminal activity (e.g. Battery or threat). Moreover we do not have any special training about stalking which could help the police officers to recognize the problem of stalking and to deal with it properly.

The problem of stalking is not present in any political debate.

In Poland there is no research study about stalking. It cannot be found in any police statistics because there is no such a crime and nobody tried to address this phenomenon at this scale..

A victim of stalking can try to find support in non-governmental organizations, however there are no special organizations dealing with stalking itself. Usually organizations available are targeted to victims of domestic violence.

In Poland we can deal with stalking behaviours if the individual activities committed by a stalker fulfil attributes of a prohibited act (when the activity is penalized itself). These behaviours a stalker commits are for example: infringement of somebody’s privacy, assaults, malicious upsetting (annoying someone), harm to somebody’s bodily inviolability. Some activities can be penalized if they are taking place in work: mobbing and sexual harassment, which can be indications of stalking, are penalized only in labour law and if these activities take place between co-workers. If stalking activity

does not fulfil attributes of a prohibited act, it cannot be punished and the police cannot take action.

The problem is not the lack of a proper law, but some rules of criminal procedure. Some crimes (e.g. harm to someone's bodily inviolability), are prosecuted upon private accusation. This means that a victim has to gather all evidences and support an accusation act in court and the state does not help with it. We do not really need to have a new anti-stalking law, but we have to elaborate proper mechanisms of use of existing law.

Portugal

by Carla Alexandra dos Santos Paiva

In Portugal, the phenomenon of stalking is mainly divulgated by films, magazines and some reports in newspapers. Public attention to stalking is not strong, even though some cases of severe violent episodes are reported in newspapers and television, some of them with a stalking nature.

Stalking shares some characteristics with harassment and “mobbing” which are more common in working settings, but in Portuguese we do not have a specific term to define it. The terms emphasising the protracted and distressing course of the harassment concerned are “*perseguição obsessiva*”, “*perseguição criminosa*”, “*fixação doentia*”, and “*marcação cerrada*”.

Some cases clearly recognisable as stalking are described for example in judicial reports, clinical reports and also in informal conversations of people, namely with friends.

No epidemiological data concerning the extent of this problem in the general population is found. There are studies of domestic violence, dating violence and harassment through which some indicators of the phenomenon can be gauged, and official statistics regarding convictions for associated criminal offences.

The absence of a specific law directed towards this phenomenon and its unawareness among the public in general, make an efficient intervention process by social control agents more difficult.

Stalking behaviours endanger the protection of some juridical aspects, namely, the breaking of a confidence relationship between partners, the disturbing of peace and calmness, right to personal liberty, the protection of health and physical integrity, addressed in some legal dispositions of the Portuguese law (labour, civil and penal).

Inside the scope of labour law, there are normal disciplinary and labour procedures which can be applied to stalking.

In a civil law frame, a conduct of this type violates a person’s personality right, which can originate the obligation to have an indemnity to the patrimonial and non patrimonial losses resulting from that violation (once the necessary assumptions have been proved).

In penal law, in the absence of a specific legal frame for stalking, the dispositions contemplated in articles 143º, 152º, 153º, 154º, 190º, 192º, 199º can cover some of the

types of acts of stalking or resulting from it: simple offences to physical integrity (article 143^o) with a penalty up to 3 years of imprisonment or a fine; physical or psychological ill-treatments of a spouse or analogous (article 152^o) with a penalty between 1-5 years of imprisonment; Coaction (article 154^o) up to 3 years of imprisonment or a fine, Threat (article 153^o), Violation of home (article 190^o), Intrusion into private life (article 192^o); Illicit Records and photographs (article 199^o), each punishable with up to 1 year imprisonment or a fine.

When the argued defendant and the complainant have a conjugal or analogous relationship, this can be framed considering the article 152^o, which however has a restricted range of appliance, not entirely matching with what is known as “stalking”, but considering the behaviours that include the psychological ill treatments of a spouse or similar and includes a statement of a coaction measure for the offender. Presently this article is under revision and it will also allow the inclusion of the former-spouses or analogous.

The article 143 of the Portuguese Penal Code (simple offences to physical integrity) only punishes those ways of conduct directed to inflict offences to the body or to the health of another person. The necessary reference to the body makes application to this article for psychological injuries debated. Nevertheless, it seems to be accepted that whenever psychological integrity injuries cause simultaneously a physical effect, by the way through which they takes place, or by their intensity, these must be considered to be included in this disposition. The law does not oblige to have an explicit number of acts, the practice of a conduct able to produce the described effect is enough. It is not a case of a crime of continual nature, considering the offences to physical integrity simple, but the legislator imposes a certain reiteration or protraction regarding the crime of ill treatment and infraction of security rules.

If the agent is prosecuted under the article 58^o of the Penal Procedures Code, a coaction measure can be applied, provided for by article 200^o of the same code, which is named “prohibition of protract, absence and contacts”. In this legal frame, the accused can be moved out of the domicile of the complainant or where he/she lives and prohibited to have contact with the victim. Nevertheless, the application of this measure requires that the crime be punished with imprisonment for a period of at most 3 years, which is not the case for example of the article 190^o, n^o 2, of the Penal Code (*“1. Whoever without consent enters the home of another person after being forced to go away, is punished with 1 year’s imprisonment or imprisonment of 240 days; 2. anyone incurs in the same*

sentence who, with the intention to disturb the private life, the peace and calmness of another person, telephones to his/her home” (or mobile phone, new redaction proposal)”. It can be applicable if the conduct has been framed as “simple offences to physical integrity” (article 143º) a cause of disturbing the health of the victim. In the course of the penal process the victims can ask to benefit from the measures reported in the law of protection of testimony (law 93/99, of 14 July) but that measures are more suitable to the complainant that needs to participate in the process than to the accused or suspected agent (that means that for example they can move residence).

Some changes are contemplated in the new Penal Code proposal; it is predicted that the protection options of the victims of ill treatment and domestic violence will be enlarged, equating to conjugal relationship analogous relationships (e.g. dating) and new penalties are under consideration, such as, for example using electronic control devices to monitor that the stalker does not come close to the victim. The legal crime will be expressly defined as a crime of domestic violence (the Portuguese Penal Code is presently under revision).

Slovakia

by Robert Dobrovodsky

The Slovak Republic is a unitary state with a uniform criminal code. The Slovak Republic legal system was created by the Constitution of the Slovak Republic which was accepted in September 1, 1992 and by acts and legal regulations connected to the Constitution and accepted by the Slovak National Council. It was also influenced by the acts and legal regulations valid from the time of the Federation.

The legal system of the Slovak Republic is coherent with those of the group of countries with a continental-European classical legal system. That is, it operates as a closed legal system strictly with the codes and statutes.

There is neither felony nor delinquency specifically framed to deal with stalking behaviours.

Only one felony (criminal offence) includes a behaviour which could be connected with stalking, that is the felony (criminal offence) of the cruelty /maltreatment/ of close? relatives in accordance with Art. 208 of Criminal Code. But it is only one form of perpetrator's behaviour belonging to the stalking-behaviour namely: *constant monitoring (direct pressure)* which could be subsumed under regulation of Art. 208 of Criminal Code.

The Slovakian criminal code is not the only source of delinquency law in the Slovakia. There are many special laws (for example: the fishing law, anti-air-pollution law etc.) regulating the consequences following the violation of the duties and obligations in the field of administrative law. But the most important act regulating the general conditions of administrative responsibility is the false step law of Slovakia (Act. Nr. 372/1990).

We can debate also about the Art. 49 of False step law of Slovakia (Act. Nr. 372/1990) which describes the false steps against the peaceful co-existence of inhabitants. One of the form of the false steps against the peaceful co-existence of inhabitants is the behaviour described by words: "*whoever knowingly and voluntary disturbs the peaceful co-existence of inhabitants by making of deliberateness or by other form of rough behaviour*". The sanction: max financial penalty: 3.000 Slovakian crowns approximately: 88 €.

Slovenia

by Gorazd Mesko & Alès Bucar

At the present moment stalking is not an important issue in Slovene society – at least not if we take into consideration media attention towards this phenomenon. We can say that the general public opinion considers stalking as something that is happening only to celebrities (this is probably the consequence of some media stories about one Slovene television host who was a victim of stalking).

At a present moment no specific law against stalking has been passed in Slovenia, but since 21st July 2006 elements of stalking behaviour have been recognized as a petty offence, but Slovenian law prefers the expression »following« with different forms of unpleasant situation for the victim.

The article 6 of the Public Peace and Order Act defines stalking in the following way:

Deed of Daring and Violent Behaviour

The article 6/1:

He, who behaves himself in a bold, violent, shameless, offensive or any other way like this or is following someone and with this kind of behaviour disturbs someone to feel humiliated, endangered, hurt or frightened, will be punished with a fine ranging from 250 € to 500 €.

The article 6/4:

If the victim of this petty offence is a spouse, a relative, an adoptee, an adoptive parent, a guardian, a foster child, a fosterer or any other person living together with the perpetrator, the stalker will be punished with a fine ranging from 625 € to 1250€.

As in the first paragraph »following« is defined as a kind of petty offence including stalking. The perpetrator acts badly, violently, offensively or in any other way while the victims affected by his behaviour feel humiliated, endangered etc.. Intimately the victim is frightened and/or humiliated.

The second and the third paragraph of this article define other petty offences which are irrelevant for this research.

The fourth paragraph is meant to protect specific groups of people, which are relatives or have other kinds of affiliations. For this kind of stalking higher fines are stipulated and it is qualified as an aggravated form of petty offence.

The other legal ways of dealing with stalking are:

- The Law on Petty Offences:

The victim can apply for a restraint order such as street and contact ban. This is meant to keep the stalker away from the victim and provide a basis for potential legal intervention if the perpetrator violates the prohibition ban.

- Civil law measures:

Article 179 of the Code of Obligations defines monetary compensation for inflicted damage (i.e. for defamation).

Criminal Code: in many cases stalking is followed by several criminal offences and presents the acts of preparation (Crimes against persons, Offences against public order and peace, Sex offences

Offences against the family and children, Crimes of passion, Offences against reputation and good name).

No reliable epidemiological data is available concerning the extent of the problem in the general population in Slovenia. Statistical data for stalking behaviour are not clear and transparent and we can not present official statistical data for prosecution or judicial statistics for cases of stalking.

We think that the precise implementation of existing legislation would be adequate for dealing with cases of stalking behaviour, but the system has to improve in the following areas:

- Providing information about what victims can do (leaflets, internet pages, public discussions, brochures etc.);
- Training of policeman for dealing with victims and for a better understanding of specific authorities and possible measures that can be used in the cases of stalking behaviour;
- Formation of a statistical database system that shows the data for reported stalking cases.
- Establishment of a specialised support system for women victims of stalking and presentation of information about these help programs.

Spain

by Marcelo Aebi & Marayca López i Ferrer

The phenomenon of stalking (defined as the unwanted interference of one person in the life of another through unwanted communications, unwanted physical intrusions and/or unwanted interferences with services) is not a new one, being the history of stalking behaviour as old as the history of human relationships. However, what is new about it is that, until recently, it was never labelled as a separate and distinct class of deviant behaviour.

In the late 1980s and early 1990s, numerous high-profile cases involving celebrities began to catch the attention of the media and public policy leaders in the United States. Stereotypically linked by much of the general public with the “rich and famous”, most information concerning stalking came from movies on stalkers and news reports on celebrity stalkers. Only then did such behaviour gain social consciousness, and begin to be described as "stalking", translated into the Spanish speaking world primarily as "acoso" or "hostigamiento", and less commonly as "persecución", "acecho" and "intimidación".

Specifically in Spain, stalking can be considered a relatively new phenomenon that, like in many neighbouring countries, started to catch public attention thanks to media accounts of horrific stories of harassing behaviour in the context of intimate relationships. Although these kinds of behaviours have heightened social awareness, yet in Spain there is not a separate category of behaviours that can be called “stalking”. As such, so far in Spain there is no legal recognition of stalking as a specific type of crime. Moreover, there is a lack of a research community engaged in making a contribution to the larger social movement in order to criminalize and respond more effectively to the stalking phenomenon in Spain. The few publications available in Spanish contain mainly epidemiological data concerning the prevalence of stalking in other countries.

The phenomenon of stalking is beginning to achieve some general public recognition as a type of victimization in the context of cases of domestic violence. However, violence against women must be understood as different from other forms of violence that, like stalking, have their particular characteristics and nature, and therefore require a different law enforcement and criminal justice response. Only when stalking is perceived as a specific type of crime, will researchers be able to study its specificities and measure its

prevalence in Spain. Until then, its extent can be gauged only indirectly through official statistics regarding convictions for associated criminal offences in the framework of a dependent relationship, such as an intimate or an affective one, prosecutable under other legislation.

Currently, stalking behaviour could be (and in some cases is being) prosecuted through three different legal provisions:

- 1) Misdemeanour of humiliation or coercion (art. 620.2 of the Criminal Code);
- 2) Offence of coercion (art. 172 of the Criminal Code);
- 3) Torture and other offences against moral integrity (art. 173 of the Criminal Code).

In that context, it must be mentioned that, according to the Spanish Criminal Code, there are three types of offences: misdemeanours, less serious crimes, and serious crimes. Misdemeanours are minor offences which are punished with non-custodial sanctions and measures. Less Serious Crimes are punishable with imprisonment up to 9 years. Serious Crimes are punishable with imprisonment for more than 9 years.

Misdemeanour of humiliation or coercion (art. 620.2 of the Criminal Code)

Art. 620.2 of the Criminal Code (misdemeanour of humiliation or coercion) is the most common legal provision used in stalking cases in Spain. According to this article, threatening someone, or causing that person a coercion, offence or unfair humiliation of minor degree of seriousness can be prosecuted as a misdemeanour. The prohibited behaviour consists in humiliating someone through jokes, threats, insults or offensive criticisms.

The sanction foreseen by the article is a fine from 10 day to 20 day. According to the Spanish legislation, the amount of the fine is calculated in “day fines”. The amount of each day fine goes from 2 to 400 Euros. Courts must fix the amount in each case according to the economic resources of the person convicted.

As can be seen, this article includes only a partial description of stalking. Moreover, it punishes only minor forms of the offence.

The Provincial Audience of Cáceres applied this article in a sentence pronounced on 5 March 2001 regarding a case of stalking through telephone calls: “the fact of calling on the phone another person repeatedly, insistently, without consent and knowing that the other person disapproves the phone calls, constitutes a behaviour that must be punished as a humiliation as foreseen in the article 620.2 because it is unjustified and has caused uneasiness, anguish, and has worried the person who received the phone calls.”

The different situations envisaged in this article require the absence of an intimate or work-related relationship, or sexual aspirations between the stalker and his/her victim. The reason is that there are specific offences foreseen in the Criminal Code for such cases: domestic violence when there is an intimate relation between the offender and the victim, mobbing when there is a work-related relationship between them, and sexual harassment when the offender has sexual intentions.

Offence of coercion (art. 172 of the Criminal Code)

According to this article, a person who, without legitimate authorization, uses violence to impeach someone else to do something that is not forbidden by the law, or forces the person to do something fair or unfair will be punished with imprisonment from six months to 3 years or with day fines going from 12 month fines to 24 month fines.

As can be seen, the article foresees violent situations which usually go beyond the definition of stalking. However, one could invoke the fact that forcing a person to see his/her stalker is a way of forcing him/her to do something.

Torture and other offences against moral integrity (art. 173 of the Criminal Code)

In serious cases of stalking, prosecutors have also invoked art. 173 of the Criminal Code. This article, located within the Title VII of the Penal Code headed as “tortures and other offences against moral integrity”, typifies the crime of serious humiliating treatment, defined as a humiliating treatment that undermines the moral integrity of the victim. The sanction foreseen is imprisonment from six months to two years. The sanction is aggravated when it takes place in the domestic environment (see the next chapter on “protective or restraining orders” for a definition of the persons included in such environment). This article is being used with growing frequency to face specific episodes of domestic violence, personal harassment, or manifest and persistent threats implying situations that cause serious and excessive humiliation to the victim. However, the applicability of this provision is reserved only to the most serious cases.

One example of the use of it can be found in a sentence (#150) of the Provincial Audience of Seville from 2004. The case concerned a man who in 2001 met a woman in a supermarket where both used to do their shopping. Occasionally, during their brief encounters at the supermarket, they would exchange a few words. A few months later the man invited the woman to take a coffee. She did not accept. As a consequence, the man started prowling around her place of work, sending her gifts that she always

refused, leaving her notes on her car windscreen, and calling her on the phone repeatedly and at every hour. He would insult her on the phone calling her a whore and a bad woman, wishing her to get a cancer, and telling her that he would make a formal complaint to the police about her and her brother. He would also insult her personally whenever he crossed her on the streets. On May 2002, the man went to the place where she was working, cleaning a staircase, took her by the arm and placed her against a wall. She reacted by hitting him with her broom.

As a consequence of these facts, the first instance court sentenced the man and the second instance court (Provincial Audience of Seville) confirmed the sentence pointing out that even if former jurisprudence used to apply a restricted definition of the concept of “humiliating treatment” (applying it only to tortures and inhuman treatment), it seems clear that the expression has a broader meaning involving every behaviour against the dignity of the person. The court pointed out that article 173 acts as a broad type that can be invoked whenever the rest of the articles protecting the person’s dignity cannot be applied. The court also mentioned that the behaviour clearly exceeded y that sanctioned as a misdemeanour by art. 620.2 of the Criminal Code.

Protective or restraining orders

Whenever one of the three preceding articles of the Criminal Code is used to sanction stalking, the court can impose a restraining order. The duration of the order varies according to the article applied: the upper limit is 6 months when the behaviour is sanctioned as a misdemeanour, and 5 years when it is sanctioned as a crime.

On the contrary, whenever the behaviour takes place in the domestic environment and is sanctioned as a crime, the court must impose a restraining order. In the domestic environment, the Criminal Code (art 173.2) includes the relationships between married or previously married partners as well as analogous relationships, ancestors, descendants, brothers, minors living in the household or any other person living in the same household.

Sweden

by Lena Schelin

In Sweden, several cases where famous people have been persecuted, have come to public attention through the media. The term stalking (in Swedish “stalkning”) is probably not, however, known to the general public.

The phenomenon was described in an article in one of the leading papers in Sweden in 2003. Following data presented in some American studies, it was estimated that thousands of people are victims of different kinds of repeated and unwanted persecution in Sweden each year. The need for a more stringent legislation was proposed in a parliamentary motion on stalking in 2004, but it was felt that more knowledge was required regarding the prevalence and nature of stalking, before any discussions on changing the legislation could be taken. The National Council for Crime Prevention carried out a prevalence study in 2005. About 4 000 people between the ages of 18 and 79 were then interviewed.

Nine percent stated that they, at some time in their lives, had been subjected to repeated harassment by the same person. Approximately three percent stated that this occurred during the last year. Two percent experienced these events as quite or very frightening. If this figure is scaled up to the population of the country, more than 100 000 people are victims of stalking behaviours, which they experience as quite or very frightening, in Sweden each year.

The prevalence study shows that the most common victim of stalking is a woman, who knows the perpetrator. In a quarter of the cases the perpetrator was a partner or former-partner. It was almost as common that someone like a friend, acquaintance, neighbour, work colleague or fellow student was involved. The study also shows that the closer the relationship, the worse the harassment. Physical persecution, threats and violence were most commonly reported from victims who had a previous close relationship to the perpetrator. About one third of the interviewees had reported the incident to the police. One fifth of these led to prosecution and some kind of sanction.

There is no specific law on stalking in Sweden, but stalking behaviours can be prosecuted under several provisions in the Swedish Penal Code. In the prevalence study, the offences were often classified as threatening behaviour or assault. The most common legal provision, however, is probably molestation, section 4 (7) of the Penal

Code. Molestation can be invoked if a person obviously harasses another person by some form of reckless conduct. There is no requirement that the action should be experienced as frightening or has caused anxiety in the victim. The sentence ranges from fines to one year of imprisonment. The court is also to impose a penalty based upon the accumulated criminal culpability, section 29 (1) in the Penal Code. Special consideration is to be given for example to the intentions or motives behind the acts. The Swedish legislation also makes it possible to impose a restraining order in stalking cases as there is no prerequisite in the Restraining order Act (1988:688) of a specific relationship between the parties or that a criminal offence must have been committed (even if this is a circumstance which is considered in the decision-making process) in order for someone to receive a restraining order.

The general picture is that incidents of stalking reported to the police have low priority, especially if they do not include clear threats or actual violence. A more active knowledge-based attitude from police and prosecutors would probably increase the percentage leading to legal proceedings considerably, even under current legislation.

However, at the time of writing, the need to strengthen the legal protection of those exposed to stalking behaviours is considered in a Governmental commission. The commission report is to be submitted to the government at the latest on 30th of September 2008. The Minister of Justice has recently (autumn 2006) stated that someone will be commissioned to consider if there is a need for changes in the legislation even before that date.

United Kingdom

by David James

The Protection from Harassment Act came into force in June 1997. In common with similar legislation in other jurisdictions, it does not deal with stalking as such.

The provisions prohibit two forms of anti-social behaviour, “harassment” (section 2) and “putting people in fear of violence” (section 4):

1. Harassment “includes alarming the person or causing the person distress” and actions are harassment “if a reasonable person in possession of the same information would think the course of conduct amounted to harassment”. At least two episodes of harassment are necessary for it to qualify as an offence. Harassment can be punished with a prison sentence of up to six months, or a fine of £5,000 (approximately 7,400 euros), or both.
2. “Putting people in fear of violence” concerns a person “whose course of conduct causes another to fear, on at least two occasions, that violence will be used against him”. The same “reasonable person” test applies. The maximum sentence is five years’ imprisonment, or an unlimited fine, or both.

Both levels of offence allow for immediate arrest and for the searching of the victim’s property for any evidence of obsession with the victim.

The act allows the imposition of a restraining order against those convicted of the offence in question. The order may also come into force after a prison sentence has been served, concomitant with all the other provisions made by the law for these cases.

Until 1997, it was difficult to prosecute people who stalked, because many stalking behaviours did not constitute a criminal offence.

Victims have had recourse to:

- injunctions through the civil courts;
- there have been criminal prosecutions for grievous bodily harm, in which it has been successfully argued by the prosecution that the law encompasses psychological as well as physical harm (Offences against the Person Act, 1861);
- existing criminal laws concerning communications (Malicious Communications Act; Post Office Act; Telecommunications Act).

7.2 Questionnaire

Modena Group on Stalking



Daphne Project n. 05-1/125/W

“Protecting women from the new crime of stalking: a comparison of legislative approaches within the European Union”

Questionnaire

Respondent (Name and Surname)

Country

Date of completion of questionnaire ___/___/___ (day/month/year)

Discipline/Background

Organisation or affiliation

Telephone number

E-mail address

Please, complete the questionnaire and send back before **November 20, 2006**

To (mail address): stalkingleg@unimo.it

If you have any doubts or queries, please contact the researchers (the Modena Group on Stalking):

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INSTRUCTIONS

The following questions are aimed at identifying and exploring laws or legal instruments that have been introduced in your Country specifically to enable the prosecution of those engaged in stalking behaviours.

The phenomenon of stalking is defined as “a pattern of repeated and unwanted attention, communication, or contact causing anxiety or fear in the target”. It differs from harassment in terms of its more repetitive nature and protracted course.

However, some countries have introduced laws against harassment specifically in order to allow the legal prosecution of stalking behaviours, as it is easier to frame legislation against harassment than it is against stalking. Our interest here is to capture information about all laws introduced with the specific intention of prosecuting stalkers, whether the measures are nominally entitled laws against stalking or laws against harassment.

A. LINGUISTIC AND CONCEPTUAL ISSUES

- 1) Is there a word or an expression in your country which provides an exact translation for the English concept of “stalking”, which means “a pattern of repeated and unwanted attention, communication, or contact causing anxiety or fear in the target”?

Yes

No

If so, what is it?

- 2) If stalking is not a common term in your Country, please list other terms used that fully or partially cover the concept of stalking as defined above :
(Please specify in which ways the precise meaning differs from that of the English term “stalking”):

(For example, in Italian: “*Molestia*” = harassment, i.e. any act (usually a communication, such as a phone call or verbal approach in a public place) apt to annoy the target. The term does not imply repetition or a protracted course and can be applied to a single instance or act of harassment. If the content and/or aim of the harassment is sexual, this is specified as “*molestia sessuale*”).

For each of the terms that you list and explain, please specify the following:

Is the particular expression quoted one that is

- a. in common parlance
 b. in limited general use
 c. used only in specialist or academic fields

- 3) Has the **concept** of stalking (as opposed to any specific linguistic term) entered scientific discourse in your Country as evidenced by academic contributions (journal papers, academic books, and/or presentations at conferences, congresses or symposia in disciplines such as law, criminology, psychiatry, sociology, or psychology)?

Yes

No

B) LEGISLATION

- 4) Are there laws, acts or legal instruments in your Country which were specifically framed to deal with stalking behaviours?

Yes

No

- 5) Is there more than one law designed specifically to deal with stalking behaviours?

Yes

No

If yes, please specify and elaborate:

- 6) Are there differences in the legal regulations concerning stalking behaviours in different parts of your Country (e.g. if your Country is a Federation of States)?

Yes

No

If your answer is yes, please elaborate:

If more than one specific law against stalking behaviours exists in your country, or different laws apply in different areas, please make as many copies of questions 7 to 14 as necessary to describe all the different relevant laws. Please preface each set of answers by the name of the region(s) to which the legal regulations described apply (where the law applies to all regions, please say so).

For each law, please complete separately questions 7) to 14) below. Remember to specify the name or number of the law/legal regulation or code concerned.

- 7) What is the legal definition of the conduct concerned?

- 8) How many times must the behaviours in question occur in order to bring them within the scope of the law?

- 9) Is it necessary for the behaviour concerned to cause any of the following in order to be illegal?:-

i) anxiety

Yes

No

ii) fear
Yes

No

iii) expectation of violence
Yes

No

iv) malicious intent
Yes

No

10) In which year did the law come into force?

11) Has the law been amended since its introduction?

Yes

No

If Yes, please specify year, reasons for, and nature of the amendments

Year _____

Reasons _____

Nature of the amendments

12) Does the law allow for prosecution in cases where the victim was unaware that he/she was being subjected to stalking behaviour? (Some jurisdictions in the world do not require this: e.g. the obsessive following of someone by a perpetrator who took clandestine pictures of them, but did not betray his or her presence, could be prosecuted under anti-stalking legislation).

Yes

No

13) Is a formal complaint by the person claiming to be the victim of stalking behaviours a requirement to enable police and Court to prosecute a stalking case?

Yes

No

14) What are the possible penalties to which a convicted stalker can be sentenced? (Where there is more than one level of offence specified in the legislation, please complete this question separately for each

Imprisonment
max. number of years _____

Fine

Restraining order

Others

Please specify:

Also, please describe in words the various penalties available and the circumstances necessary for each to be applied:-

15) If no specific law or other official legal regulation has been introduced to deal with stalking behaviours, are you aware of any stalking cases where existing laws not specifically dealing with stalking have been used to prosecute the perpetrator? (e.g. laws against causing physical harm being used to encompass psychological harm: laws against malicious communications etc.)

Yes

No

Please list the specific legal measures concerned and give examples of any specific cases of which you are aware:

16) Are there laws, acts or legal instruments which introduce restraining or protection orders, specific to stalking behaviours?:

a) In civil law?

Yes

No

Yes

b) In criminal law?

No

17) If not, are there restraining or protection orders available for similar forms of conduct? Or for behaviours that share some elements with stalking (e.g. domestic violence, unwanted contact etc.)?

Yes

No

If Yes, please specify

18) If restraining or protection orders are available in your Country applying specifically or partially to stalking behaviours, what are the consequences for the stalker if he/she violates them? (e.g. is violation a civil or a criminal offence? What penalties apply in each or either case?)

Please specify

19) Are there other legal ways of dealing with stalking behaviours? (Please complete, even if the answers to this question appear to duplicate those to Question 12)

Yes

No

If Yes, please list the offences under which behaviours which occur in stalking can be prosecuted

20) Have any proposals for new laws regarding stalking behaviours been put forward in your Country?

Yes

No

If Yes, please specify:

Year _____

Content _____

C. OTHER ASPECTS CONCERNING PROSECUTION OF STALKING BEHAVIOURS

21) Is any specific training or specialisation required before judges or prosecutors are permitted to deal with stalking cases?

Yes

No

22) Is Social work or psychological assistance available to victims of stalking lodging a complaint with the Police?

a) Through the police themselves or a specifically police-linked organisation?

Yes

No

b) Through voluntary organisations or victim support organisations?

Yes

No

c) Through the health service?

Yes

No

Please describe the forms of service available and the means through which they can be accessed.

23) Are psychiatric assessments of those convicted of stalking behaviours mandatory for the Court before sentence in your Country?

Yes

No

24) Does your legal system allow for mental illness in the stalker to be taken into account in the criminal process in the following manner:

a) to diminish or abolish criminal responsibility in the stalker?

Yes

No

Not applicable in the legal system concerned

Explain any necessary requirements for this to occur (e.g. whether or not the mental illness needs to be thought to relate specifically to the offending behaviour):

b) to determine admission to psychiatric hospital as a sentencing disposal

Yes
No

Explain any necessary requirements for this to occur (e.g. nature or degree of illness):

c) Any other way in which mental illness may be taken into account in the Court process?

Please specify and explain.

D. EPIDEMIOLOGY

25) Are you aware on any survey documenting the prevalence of stalking behaviours in your Country?

Yes

No

Give source and precise reference (if possible attach report/summary of main findings)

26) Please provide any official statistics on the number of complaints of stalking behaviours reported to the Police in your Country (for most recent available year)

- 27) Where a law against stalking behaviours is available in your country, please provide any official statistics on the number of cases convicted in Court under this legislation in the most recent year for which figures are available. Please specify the legislation concerned. Where more than one specific law against stalking behaviours has been introduced, give separate figures for each.

- 28) If official statistics on stalking in your Country are not available, please report relevant information about associated crimes, where available:

E. YOUR OPINION

- 29) What are the steps that you think should be taken in your Country to better address the needs of stalking victims? Please consider this question from three angles:

- a) Need for advice as to what to do if you think you are being stalked:

- b) Need for specific help and advice from the police

- c) Need for psychological or medical help to prevent or treat the psychological sequelae of being a stalking victim

- 30) When no such laws exist in your country, do you think a specific law addressing stalking would be useful in your Country?

Yes

No

Not applicable

31) If a law addressing specific stalking behaviours is available, please briefly sketch its story

32) If a law targeting stalking behaviours in your Country already exists, what would you describe as its positive and negative aspects? (Consider, for instance, whether it is effective in capturing stalking behaviour? And whether it is being used to prosecute forms of behaviour for which it was not originally intended?)

Positive

Negative

F. BACKGROUND ASPECTS

33) Do police stations in your country have dedicated domestic violence policing units?

Yes

No

34) Is there a hostel movement in your country (a system of safe refuges for women that have been subject to domestic violence)?

Yes

No

35) Are there voluntary organisations and groups in your country to offer support or advice to victims of domestic violence?

Yes

No

36) What is the basis of your legal system? (e.g. Roman law? Legal codes? Statute law? Case law? etc.)

(By domestic violence is meant physical violence against one partner by another in a couple situation).

G. OTHER ISSUES

Please use this section to detail any relevant information that you think has not been captured by the above questions:-

7.3 Grids

7.3.1 Grid for countries which have specific regulation on stalking

COUNTRY:

EXPERT:

For Netherlands, Belgium, Denmark, Malta, Germany, UK, Austria , Ireland

Any specific legal provision on stalking?

0 Yes
0 No

If Yes, is this provision included in a legal Code?

0 Penal
0 Civil
0 not applicable, we do not
have a code
→ give details if not already given

or is it a specific Act?

0 Yes
0 No
→ give details if not already given

or it is a section of another Act covering wider conducts, or specifically stalking conducts?

0 Yes
0 No
→ give details if not already given

**PLEASE GIVE TRANSLATION OF THE DEFINITION OF THE OFFENCE(S)
(IF NOT ALREADY GIVEN):**

**CONSEQUENCES FOR VICTIMS included/mentioned in the definition of the
crime ?**

0 No
0 Yes

WHICH KIND OF CONSEQUENCES included?

0 subjective distress (e.g. mentioned as distress, fear, anxiety, annoyance, etc)

0 other?

If SUBJECTIVE DISTRESS, which are the subjective consequences mentioned?

Please elaborate and specify on subjective consequences mentioned

1) if more than one of consequence are mentioned, need all be present together? or is one of them interchangeable with others?

2) Subjective consequences are mentioned as part of a definition that indicated they are not necessarily met in every case

IF OTHER consequences are included in the definition, what are they?

0 EXPECTATION OF VIOLENCE

How defined?

0 needs to be fulfilled in every case

0 its fulfilment is accessory, just represent a specific way to endorse the definition of stalking next to possible others which do not involve it

0 please elaborate, e.g. assessment relies on evaluation of what the “common person” would expect, etc.

INTRUSION into OTHER PEOPLE’S LIVES/PRIVACY

How defined?

0 needs to be fulfilled in every case

0 its fulfilment is accessory, just represent a specific way to endorse the definition of stalking next to other possible ones which do not involve it

OTHER consequences for the victims?

0 yes

0 no

if yes, which ones?

SPECIFIC INTENT IN THE PERPETRATOR

0 Not mentioned

0 Mentioned as necessary to qualify the offence as such

0 Not necessary but making the offence more severe (or a more serious offence)?

How mentioned? How defined?

SINCE THE LAW HAS BEEN AVAILABLE, HAS ANY KIND OF EVALUATION BEEN CARRIED OUT?

0 No

0 Yes

If yes specify:

CONSIDERING THE NEW LAW, ARE THERE STILL EXISTING PROBLEMS EMERGING IN THE PROTECTION OF VICTIMS OF STALKING DESPITE ITS APPLICATION, WITH POSSIBLE LEGAL IMPLICATIONS (e.g. because the law does not allow specific interventions, because it allows some stalker to get away with some behaviours)

WHICH DEFECTS CAN BE POINTED OUT (e.g.: too broad or too specific definition, contact between victim and stalker is mandatory by the law, serving of sentence is not exempted because prisons are full, etc.)

7.3.2 Grid for countries which do not have specific regulation on stalking, but some elements of it are covered by existing legislation.

COUNTRY:

EXPERT:

Think of the following view emerged in the discussion of this morning

“Stalking is a complex phenomenon. It is linked with sufferings of persons and can be conceived as a form of violence. Some Countries have made specific new laws addressing this phenomenon with the idea that existing laws were not enough”

A) Can you imagine situations where the application of the existing law of your Country is not efficient in addressing from the legal point of view the violence of stalking, because of the lack of a specific law?

0 No, all cases are covered efficiently by existing legislation, albeit not specific.

0 Yes, there are situations where the protection of rights of victims of this form of violence is hindered by the lack of a specific legislation, for example when

B) What should be done about it?

C) Please provide details of difficulties encountered by helping agencies in supporting victims of stalking, in the lack of a specific legislation (REAL example, while for question A also consider theoretical situations)

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