
MORE ACCESSIBLE PROTECTION FOR DOMESTIC VIOLENCE VICTIMS: NEW DEVELOPMENTS IN PERSONAL SAFETY PROTECTION ORDER

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I. INTRODUCTION

It is generally believed that the personal safety protection order (“**order**”, “**protection order**”) system was first established by the United States in the late 1970s.¹ At present, more than 120 countries which have designated laws against domestic violence have established this system to offer timely protection for domestic violence victims.²

Personal safety protection order, also known as “restraining order”, was first introduced in mainland China by the Anti-domestic Violence Law (“**AVL**”) in 2016.³ The AVL stipulates that a personal safety protection order may prohibit the respondent from committing domestic violence; harassing, stalking, or contacting the petitioner and the relevant close relatives thereof; and order the respondent to move out of the petitioner’s residence, etc.⁴ Statistics from the Supreme People’s Court show that by December 31, 2021, courts nationwide had issued 10,917 protection orders.⁵

Over the past seven years, although the protection order system has indeed played an active role in protecting the victims of domestic violence, there are some unsatisfactory aspects of it. For instance, the threshold for the issuance of a protection order is rather high; the definition of “domestic violence” is vague; the duties and responsibilities of relevant authorities in the implementation of the protection order system are rather unclear.⁶

To strengthen the protection for domestic violence victims, in 2022, the Supreme People’s Court and other authorities issued two legal instruments on

¹ Liu Chunling (刘春玲), *Jiating Baoli Minshi Baohuling Zhidu* (家庭暴力民事保护令制度) [Civil Protection orders of Domestic Violence] 31 (2019).

² *Id.*, at 36.

³ Fan Jiating Baoli Fa (反家庭暴力法) [Anti-domestic Violence Law] (promulgated by the Standing Comm. Nat’l People’s Cong., Dec. 27, 2015, effective Mar. 1, 2016) (2015) (Chinalawinfo)[hereinafter “AVL”].

⁴ *Id.*, art. 29.

⁵ Wang Dan (王丹, second-grade senior judge of the First Civil Division of the Supreme People’s Court), *Renshen Anquan Baohu Ling Zhidu Ruogan Shijian Wenti Tanxi* (人身安全保护令制度若干实践问题探析) [Analysis of several practical problems of personal safety protection orders], 7 *FALÜ SHIYONG* (法律适用) [JOURNAL OF LAW APPLICATION] 11, 11 (2022).

⁶ See Zuigao Renmin Fayuan, Quanguo Fulia, Jiaoyu Bu Deng Guanyu Jiaqiang Renshen Anquan Baohu Ling Zhidu Guanche Shishi de Yijian (最高人民法院、全国妇联、教育部等关于加强人身安全保护令制度贯彻实施的意见) [Opinions of the Supreme People’s Court, the All-China Women’s Federation, the Ministry of Education and Other Departments on Strengthening the Implementation of the Personal Safety Protection Order System] (promulgated by Sup. People’s Ct., All-China Women’s Federation, etc. Mar. 3, 2022, effective Mar. 3, 2022) preamble (Chinalawinfo) [hereinafter *Opinions*].

the protection order system in concert with other authorities. These two documents were both drafted based on a petitioner-friendly principle with a focus on the protection of domestic violence victims.⁷

On 5 March 2022, the Supreme People's Court and six other relevant authorities jointly issued the *Opinions of the Supreme People's Court, the All-China Women's Federation, the Ministry of Education and Other Departments on Strengthening the Implementation of the Personal Safety Protection Order System* (“**Opinions**”).⁸ On 14 July 2022, the Supreme People's Court released the *Provisions of the Supreme People's Court on Several Issues concerning the Petition of Law in the Handling of Cases involving the Personal Safety Protection Order* (“**Provisions**”).⁹ To a large extent, these two legal documents have addressed the deficiencies in the personal safety protection order system.

Except for the Introduction and the Conclusion, this note is divided into the following four sections: the first section analyzes the new standard of proof applicable to the issuance of personal safety protection orders, which is a lower one than the general one for Chinese civil litigations; the second section introduces how the new updates on protection orders expand the scope of “domestic violence”; the third section discusses how the new legal instruments contribute to the establishment of a more comprehensive enforcement mechanism for the protection orders; the last section proposes that China may establish a temporary protection order system soon.

The author's suggestions and comments on the new updates are incorporated in the relevant sections.

II. LOWERING THE STANDARD OF PROOF FOR THE ISSUANCE OF PERSONAL SAFETY PROTECTION ORDER

The *Provisions* stipulate that the court shall grant a petition for a personal safety protection order as long as “there is a *bigger possibility* that the petitioner suffers from domestic violence or faces the real danger of domestic violence”.¹⁰ (Emphasis added) The “bigger possibility” is lower than the general standard

⁷ Zheng Xuelin (郑学林), Wu Jingli (吴景丽), Wang Dan (王丹), *Guanyu Banli Renshen Anquan Baohu Ling Anjian Shiyong Falü Ruogan Wenti de Guiding de Lijie Yu Shiyong* (《关于办理人身安全保护令案件适用法律若干问题的规定》的理解与适用) [Understanding and Petition of the Provisions of the Supreme People's Court on Several Issues concerning the Petition of Law in the Handling of Cases involving the Personal Safety Protection Order], THE PEOPLE'S JUDICATURE (Jul. 19, 2022), <https://mp.weixin.qq.com/s/Cxp-dPPz4dRLruHeOhTww>. See *Opinions* art. 2.

⁸ *Opinions*.

⁹ Zuigao Renmin Fayuan Guanyu Banli Renshen Anquan Baohu Ling Anjian Shiyong Falü Ruogan Wenti de Guiding (最高人民法院关于办理人身安全保护令案件适用法律若干问题的规定) [Provisions of the Supreme People's Court on Several Issues concerning the Petition of Law in the Handling of Cases involving the Personal Safety Protection order] (promulgated by Sup. People's Ct. Jul. 14, 2022, effective Aug. 1, 2022) (Chinalawinfo) [hereinafter *Provisions*].

¹⁰ *Provisions*, art. 6.

of proof applied in Chinese civil litigations, the “high possibility”, thus alleviating the difficulties for the petitioners in obtaining an order.

A. General Standard of Proof Applied in Chinese Civil Litigations

The “preponderance of evidence” and the “high possibility” are two of the most commonly applied standards of proof in civil cases. The “preponderance of evidence” standard is defined as “the greater weight of the evidence, i.e., to tip a scale slightly is the criteria or requirement for the preponderance of the evidence”.¹¹ Therefore, if the fact finder holds that there is a greater than 50% chance that the claim is true, then the burden of proof will be satisfied. The “high possibility” standard, on the other hand, requires the fact finder to decide “whether the evidence submitted by the party [asserting the fact] is *obviously* more persuasive than the evidence submitted by the other party”.¹² Some Chinese scholar argues that the “high possibility” can only be satisfied when there is more than a 75% chance that the contested fact is true.¹³

While the “preponderance of evidence” is the general standard of proof for civil cases in common law countries, mainland China adopts the “high possibility” standard in civil cases instead unless a law provides otherwise.¹⁴ Although practice varies, since the AVL did not specify the standard of proof applicable to cases involving protection orders, many judges choose to stick to the “high possibility” standard in dealing with these cases before the issuance of the *Provisions*.¹⁵

B. Difficulties in Satisfying the “High Possibility” Standard in Family-related Cases

Nevertheless, in family-related cases, the “high possibility” standard seems to be too demanding for proving domestic violence. Even before the release of the AVL, it had already been very difficult for the victims to prove the existence

¹¹ Karch v. Karch, 885 A.2d 535, 537 (2005).

¹² Zuigao Renmin Fayuan Guanyu Minshi Susong Zhengju de Ruogan Guiding (最高人民法院关于民事诉讼证据的若干规定) [Several Provisions of the Supreme People’s Court on Evidence for Civil Actions] (promulgated by Sup. People’s Ct. Dec. 16, 2008, effective Dec. 31, 2008) art. 73.1 (Chinalawinfo) [hereinafter “*Provisions on Evidence*”] (This article was deleted in the 2019 version of this judicial interpretation. However, no new provisions in the 2019 version are against the understanding of “high possibility” in the 2008 version).

¹³ Dong Siwei (董思薇), *Woguo Minshi Susong Gaodu Gairan Xing Zhengming Biaozhun Fenxi Ji Juti Shiyong* (我国民事诉讼高度盖然性证明标准分析及具体适用) [Analysis and specific petition of standard of proof of high degree of probability in civil procedure], 6 GUANGDONG KAIFANG DAXUE XUEBAO (广东开放大学学报) [JOURNAL OF GUANGDONG OPEN UNIVERSITY] 50, 54 (2017).

¹⁴ Zuigao Renmin Fayuan Guanyu Shiyong Zhonghua Renmin Gonghe Guo Minshi Susong Fa de Jieshi (最高人民法院关于适用《中华人民共和国民事诉讼法》的解释) [Interpretation of the Supreme People’s Court on the Petition of the Civil Procedure Law of the People’s Republic of China] (promulgated by Sup. People’s Ct. Apr. 1, 2022, effective Apr. 10, 2022) art. 108 (Chinalawinfo).

¹⁵ Xiao Jianguo (肖建国), Ding Jinyu (丁金钰), *Renshen Anquan Baohu Ling Zhong de Zhengju Wenti Yanjiu* (人身安全保护令中的证据问题研究) [Research on evidence in personal safety protection orders], 7 FALÜ SHIYONG (法律适用) [JOURNAL OF LAW APPLICATION] 22, 27 (2022). Liu, *supra* note 1, at 187.

of domestic violence in traditional family litigations (not cases on protection orders). Research shows that the incidence of domestic violence in mainland China is 34.7%.¹⁶ However, among traditional family litigations which adopt the “high possibility” standard in which one party concerned alleges domestic violence, courts only find that domestic violence exists in about 10% of the cases.¹⁷ Considering that in families with disputes, the marital tension is usually higher and domestic violence should have been even more likely to occur, the low rates of finding domestic violence in family litigations clearly indicate the difficulty of meeting the “high possibility” standard.

The application of the “high possibility” standard also becomes an important obstacle for the victims to obtain a protection order after the AVL came into effect. Before the issuance of the *Provisions*, about 70% of the dismissed petitions for protection orders were dismissed for the lack of evidence.¹⁸

In a 2018 petition for a protection order, the petitioner submitted the following evidence: (i) Petitioner’s statement that her husband often quarrelled with and beat the petitioner; cohabited in the name of husband and wife with another woman; instigated his relatives to knock on the petitioner’s door and intimidate the petitioner late at night and in the early morning many times; cut off the power supply of the petitioner’s home after separation, etc.; (ii) Injury photos and medical records showing that the petitioner was recently injured twice in 20 days and was diagnosed as having multiple bruises over the whole body and neurogenic tinnitus caused by trauma, respectively; (iii) Statement from the police department that they had handled disputes between the two parties several times, ranging from emotional disputes to respondent’s willful cutting off the power supply in the petitioner’s home after separation.¹⁹

Despite the seemingly abundant evidence, the court rejected the petition, holding that since “The injury photos and medical records submitted by the petitioner . . . failed to show that the injury was caused by [the respondent’s] domestic violence”; “The petitioner did not claim that the respondent committed domestic violence in the previous divorce proceedings”; and “Statement from the police department could not reflect that [the respondent] have committed domestic violence”; therefore “The evidence submitted by the petitioner cannot prove that the respondent committed domestic violence

¹⁶ Luo Xiaohan (罗霄悍), *Renshen Anquan Baohu Ling: Yidao Falv Geli Qiang* (人身安全保护令：一道法律隔离墙) [*Personal Safety Protection Order: A Legal Dividing Wall*], RENMIN FAYUAN BAO (人民法院报) [PEOPLE’S COURT REPORT], Jan. 17, 2016, at 2.

¹⁷ Li Hanyan (李瀚琰), *Lun JiaTing Baoli Anjian Zhong Gaodu Gairan Xing Zhengming Biaozhun de Shixian* (论家庭暴力案件中高度盖然性证明标准的实现) [*On the realization of high possibility standard of proof in domestic violence cases*], 4 BEIJING HUAGONG DAXUE XUEBAO (SHEHUI KEXUE BAN) (北京化工大学学报(社会科学版)) [JOURNAL OF BEIJING UNIVERSITY OF CHEMICAL TECHNOLOGY (SOCIAL SCIENCES)] 39, 39 (2020).

¹⁸ Xiao & Ding, *supra* note 15, at 23.

¹⁹ Wangmou Yu Hongmou Caiding Shu (王某与洪某裁定书) [Rulings of Wang X v. Hong X], Nov. 22, 2018 (People’s Ct. of Guangling District, Yangzhou City, Jiangsu Province 2018).

against her.”²⁰ Although the court did not specify the standard of proof adopted in its ruling, a judge might have very likely granted the petition if the “preponderance of evidence” standard had been adopted. Hardly could any reasonable person based on the previous evidence conclude that more likely than not that the petitioner was seriously injured in just 20 days for other reasons instead of her husband’s domestic violence, especially when the husband did not even deny having beaten and intimidated her.

C. The New “Bigger Possibility” Standard

The *Provisions* may significantly alleviate petitioners’ difficulty in satisfying the “high possibility” standard by lowering such standard to the “bigger possibility” standard.²¹ The term “bigger possibility” also appears in Article 86.2 of *Several Provisions of the Supreme People’s Court on Evidence for Civil Actions* (“**Provisions on Evidence**”), which stipulates that “For facts relating to procedural matters such as preservation or withdrawal in litigation, where a people’s court deems that there is a *bigger possibility* that the relevant facts exist after taking into account the statements of the parties concerned and the relevant evidence, it may affirm the existence of the said facts.”²² (Emphasis added)

PRC legal scholars view that the “bigger possibility” in the *Provisions on Evidence* equals the “preponderance of evidence” in common law countries, which is lower than the “high possibility”.²³ Since the wording used to describe “bigger possibility” in the *Provisions* and the *Provisions on Evidence* are nearly identical with only change in word order (“较大可能性” in the *Provisions*; “可能性较大” in the *Provisions on Evidence*), the same interpretation can be applied to the *Provisions*. This position is later confirmed by an article written by judges of the Supreme People’s Court, stating that because of the non-litigious characteristics of the cases on personal safety protection orders, the burden of proof of the petitioners is the “bigger possibility” which is the same as the “preponderance of evidence” and lower than the “high possibility”.²⁴

It is worth noticing that the “preponderance of evidence” is also the standard of proof for the petitioners for a regular protection order in many jurisdictions, which usually lasts for more than six months, such as the United States and Taiwan region.²⁵ In the author’s opinion, this lower standard of proof in the

²⁰ *Id.*

²¹ *Provisions*, art. 6.

²² *Provisions on Evidence*, art. 86.2 (Chinalawinfo).

²³ Shao Ming (邵明), Li Haiyao (李海尧), *Woguo Minshi Susong Duoyuan Hua Zhengming Biaozhun de Shiyong* (我国民事诉讼多元化证明标准的适用) [*Petition of diversity of standards of proof in civil actions in China*], 11 FALÜ SHIYONG (法律适用) [JOURNAL OF LAW APPLICATION] 13, 18 (2021).

²⁴ Zheng, Wu & Wang, *supra* note 7.

²⁵ Liu, *supra* note 1, at 185-187. E.g., *United States v. Elkins*, 780 F. Supp. 2d 473, 475 (W.D. Va. 2011), *aff’d*, 495 F. App’x 330 (4th Cir. 2012); *Drew v. Drew*, 971 F. Supp. 948, 950, 37 V.I. 61, 64 (D.V.I. 1997), *aff’d*, 176 F.3d 471 (3d Cir. 1999). Hong Yuanliang (洪远亮), *Huiying Minshi Baohu Ling Bufen Wenti*

Provisions is a more reasonable one to apply in the determination of the issuance of protection orders.

Firstly, different from general violence, domestic violence takes place privately inside the family where the party who commits domestic violence usually has strong control over the victim. Such control makes it unusually difficult for the victim to gather evidence to prove domestic violence.²⁶ For instance, the victim can be too afraid to secretly record the domestic violence for fear of being found and beaten more severely, making it almost impossible for the victims to obtain direct evidence.

Secondly, according to Articles 15 and 20 of the AVL, the police department should be responsible for the investigation and evidence collection of domestic violence cases.²⁷ However, influenced by the traditional idea that “The law shall not govern family issues” (“法不入家门”) and “An upright official cannot settle a family quarrel” (“清官难断家务事”), the police usually fail to actively handle domestic violence cases.²⁸ After receiving a report, they tend to treat domestic violence as a private dispute, being reluctant to record the violence or issue a letter of commission for forensic identification of injury.²⁹ This further prevents the victim from proving a causal link between the fact of the damage and the conduct.³⁰

Finally, since after receiving a petition, a people’s court shall issue a protection order or reject the petition within 72 hours (24 hours in an emergency),³¹ petitioners for a protection order have far less time to gather evidence compared with parties in traditional family litigations whose time limit for producing evidence is more than 15 days in the first-instance proceeding.³² The shorter time to produce and gather evidence will render it more difficult for the petitioners to satisfy the “high possibility” standard of proof.

As shown above, the *Provisions* ease the burden of proof on the petitioner and help to give full play to the role of personal safety protection orders. Nevertheless, the Interpretation of the Civil Procedure Law provides that only

(回应民事保护令部分问题) [*Responses to certain issues on civil protection orders*], 248 LÜSHI ZAZHI (律师杂志) [JOURNAL OF LAWYERS] 72, 77-79 (2000).

²⁶ Li, *supra* note 17, at 40.

²⁷ AVL, art. 15, 20.

²⁸ Li Mingshun (李明舜), Huang Jing (黄晶), Dan Shuhua (但淑华), Gong Quanli Ganyu Jiating Baoli de Shidu Xing Yanjiu (公权力干预家庭暴力的适度性研究) [Research on the Moderation of Public Power Intervening in Domestic Violence] 110 (2021).

²⁹ Wang Zhuqing (王竹青), Wang Zhuqing (王丽平), *Lun Shounüe Funü Zonghe Zheng Lilun Zai Jiating Baoli Anjian Shenli Zhong de Yunyong* (论受虐妇女综合症理论在家庭暴力案件审理中的运用) [*On the petition of battered woman syndrome theory in the trial of domestic violence cases*], 5 FUNÜ YANJIU LUNCONG (妇女研究论丛) [Women’s Studies Series] 50, 54 (2013).

³⁰ Li, *supra* note 17, at 40, 41.

³¹ AVL, art. 28.

³² Zuigao Renmin Fayuan Guanyu Shiyong Zhonghua Renmin Gonghe Guo Minshi Susong Fa de Jieshi (最高人民法院关于适用《中华人民共和国民事诉讼法》的解释) [Interpretation of the Supreme People’s Court on the Petition of the Civil Procedure Law of the People’s Republic of China] (promulgated by Sup. People’s Ct. Apr. 1, 2022, effective Apr. 10, 2022) art. 99.2 (Chinalawinfo).

law, which can only be developed by The National People's Congress or The Standing Committee of the National People's Congress, may alter the standard of proof of the will-be-proved facts in civil litigations.³³ The *Provisions* are only judicial interpretations issued by the Supreme People's Court, which are not entitled to make a such modification. Therefore, I suggest that the AVL soon incorporate this lower standard of proof into its amendment to avoid any doubt over the validity of this stipulation.

III. EXPANDING THE SCOPE OF DOMESTIC VIOLENCE

From the perspective of comparative law, the AVL adopted a relatively narrower definition of "domestic violence". Recently, both the definition of "domestic" and "violence" have been properly expanded. For instance, the *Provisions* expanded the definition of "violence" by confirming that "frequent insult, slander, threat" is also violence³⁴; and the revised Law on the Protection of Rights and Interests of Women impliedly expanded the definition of "domestic" by allowing women to petition for protection orders after the termination of a love relationship or divorce.³⁵

The author also holds that the definition of "domestic violence" and the applicable scope of protection orders can be further expanded in the future.

A. The Definition of "Violence"

In the AVL, the forms of domestic violence are relatively restricted. Article 2 of the AVL defines "domestic violence" as "the inflicting of physical, psychological or other harm by a family member on another by beating, trussing, injury, restraint and forcible limits on personal freedom, recurring verbal abuse, threats and other means."³⁶ Under the *Provisions*, the forms of domestic violence are expanded by enumeration, specifying that "freezing or hunger as well as a frequent insult, slander, threat, stalking or harassment, etc." are also domestic violence.³⁷

For one thing, some of the expansions do not seem too surprising. In fact, in 2013, the violent characteristic of "freezing or hunger" had already been confirmed by the Supreme People's Court, since they listed side by side with torture as illegal means to collect the confession of a defendant in criminal proceedings.³⁸ For another, the inclusion of "frequent insult, slander, threat" is

³³ *Id.*, art. 108.3. Lifa Fa (立法法) [Legislation Law] (promulgated by the Nat'l People's Cong., Mar. 15, 2000, effective Jul. 1, 2000) (2015) art. 7 (Chinalawinfo).

³⁴ *Provisions*, art. 3.

³⁵ Funü Quanyi Baozhang Fa (妇女权益保障法) [Law on the Protection of Rights and Interests of Women] (promulgated by the Nat'l People's Cong., Apr. 3, 1992, effective Oct. 1, 1992) (2022) (Chinalawinfo).

³⁶ AVL, art. 2.

³⁷ *Provisions*, art. 3.

³⁸ Zuigao Renmin Fayuan Yinfu Guanyu Jianli Jianquan Fangfan Xingshi Yuanjia Cuoan Gongzuo Jizhi de Yijian de Tongzhi (最高人民法院印发《关于建立健全防范刑事冤假错案工作机制的意见》的通知) [Notice of the Supreme People's Court on Issuing the Opinions on Establishing and Improving the Working

thrilling, reflecting the strong voice of the public.³⁹ This inclusion will also greatly ease the burden of proof of the victims since most of this violence can be recorded online in the chat history.

However, an important form of violence, economic abuse, has been left out of the current scope of “violence”. According to the report of the National Coalition Against Domestic Violence, “between 94-99% of domestic violence survivors have also experienced economic abuse.”⁴⁰ Economic abuse generally includes but is not limited to the following forms: (i) Controlling (nearly) all the money in the family and refusing to provide family members with household necessities; (ii) Refusing to bear family expenses or the responsibility of paying alimony and child support; (iii) Encroaching on other family members’ property, or asking for money due to gambling or personal extravagance; (iv) Concealing property; (v) Destroying the property of other family members, etc.⁴¹

Economic abuse is recommended by the United Nations to be legislated as a part of the “comprehensive definition of domestic violence”⁴² and many countries, such as South Korea,⁴³ India⁴⁴ and Malaysia,⁴⁵ have already defined economic abuse as a kind of domestic violence in their legislation.⁴⁶ The AVL has already recognized that the infliction of psychological harm on a family member shall be defined as “domestic violence”.⁴⁷ Since the psychological harm associated with economic abuse is consistent with other “domestic violence” under the current definitions,⁴⁸ this note would suggest

Mechanisms for the Prevention of Miscarriages of Justice in Criminal Cases] (promulgated by Sup. People’s Ct. Oct. 9, 2013, effective Oct. 9, 2013) art. 8 (Chinalawinfo).

³⁹ Li Ying (李莹), *Guanyu Zhonghua Renmin Gonghe Guo Fanjia Tingbao Lifa (Cao An) de Xiugai Jianyi* (关于《中华人民共和国反家庭暴力法(草案)》的修改建议) [Suggested Amendments to Draft of Anti-domestic Violence Law of China] in *Fan Jiating Baoli Fa de Lifa Changdao yu Shijian* (《反家庭暴力法》的立法倡导与实践) [Legislative Advocacy and Practice of the Anti-domestic Violence Law] 233 (Li Ying (李莹), Feng Yuan (冯媛) eds., 2019).

⁴⁰ National Coalition Against Domestic Violence, *What is Domestic Violence?*, https://assets.speakcdn.com/assets/2497/domestic_violence_and_economic_abuse_ncadv.pdf.

⁴¹ Feng Yuan (冯媛), Ming Sixin (明四新), *Wanshan Zhonghua Renmin Gonghe Guo Fanjia Tingbao Lifa (Cao An) de Xiugai Jianyi* (完善《中华人民共和国反家庭暴力法(草案)》的建议) [Suggestions on Improving the Draft of Anti-domestic Violence Law of China] in *Fan Jiating Baoli Fa de Lifa Changdao yu Shijian* (《反家庭暴力法》的立法倡导与实践) [Legislative Advocacy and Practice of the Anti-domestic Violence Law] 268 (Li Ying (李莹), Feng Yuan (冯媛) eds., 2019).

⁴² *Handbook for Legislation on Violence against Women*, Department of Economic and Social Affairs, Division for the Advancement of Women, (May. 11, 2010), <https://www.un.org/womenwatch/daw/vaw/handbook/Handbook%20for%20legislation%20on%20violence%20against%20women.pdf>.

⁴³ Act on Special Cases Concerning the Punishment of Crimes of Domestic Violence, Act No. 11002, art. 2 (2011) (Legislation of South Korea).

⁴⁴ Protection of Women from Domestic Violence Act, art. 3 (2005) (Legislation of India).

⁴⁵ Domestic Violence Act, art. 2 (1994) (Legislation of Malaysia).

⁴⁶ See generally Feng & Ming, *supra* note 41, at 268.

⁴⁷ AVL, art. 2.

⁴⁸ Laura Johnson, Yafan Chen, Amanda Stylianou, et al., *Examining the Impact of Economic Abuse on Survivors of Intimate Partner Violence: A Scoping Review*. BMC Public Health (May 19 2022), <https://doi.org/10.1186/s12889-022-13297-4>. “Researchers found that economic abuse is associated with

future PRC legislation adopt a more comprehensive definition of “domestic violence” which includes economic abuse. Such expansion in the definition would allow for more comprehensive protection for the victims.

B. The Definition of “Domestic”

According to the current definition of “domestic violence” in the PRC law, in principle, domestic violence can only occur between family members,⁴⁹ which refers to “spouses, parents, children and other immediate family members living together.”⁵⁰ Also, under Article 37 of the AVL, “This Law shall apply, *mutatis mutandis*, to the violence inflicted between those living together who are not family members.” Consequently, strictly constructed, the PRC law does not recognize the eligibility of petitioners who have divorced or terminated the romantic or cohabitation relationship because they are neither a family member nor living together with the respondent, thus falling out of the scope of Article 37 of the AVL. This position has been affirmed by an article explaining the *Provisions* written by the Supreme People’s Court judges.⁵¹

It is worth noticing that violence after divorce, romantic or cohabitation relationship is not uncommon in real life and is still greatly influenced by the power structures in previous intimate relationships. Violence during a marriage or a relationship does not always stop with a divorce or a breakup and therefore requires continuing intervention by the judicial and executive authorities. However, under current law, whether a petitioner can successfully obtain a personal protection order against former spouses or cohabitants would greatly depend on the discretion of the specific court. For instance, while a Jiangsu Province court held that violence by an ex-husband also constitutes domestic violence with reference to Article 37 of the AVL,⁵² a Shaanxi court ruled that “The marriage between the petitioner and the respondent has been dissolved and the petitioner no longer meets the conditions for a personal protection order.”⁵³ The different interpretations of “domestic violence” created uncertainty for victims seeking protection.

The good news is that this uncertainty has been partly resolved by the revised Law on the Protection of Rights and Interests of Women, which entered

increased depression, anxiety, suicidal ideation, and PTSD. These are consistent with the mental health outcomes associated with other forms of [intimate partner violence].”

⁴⁹ *Id.*

⁵⁰ Minfa Dian (民法典) [Civil Code] (promulgated by the Nat’l People’s Cong., May 28, 2020, effective Jan. 1, 2021) art. 1045.3 (Chinalawinfo).

⁵¹ Zheng, Wu & Wang, *supra* note 7.

⁵² Zhoumou ji Ziniu Shenqing Renshen Anquan Baohu Ling An (周某及子女申请人身安全保护令案) [Case on Petition by Zhou X and His Children for Personal Safety Protection Order] (People’s Ct. of Haizhou District, Lianyungang, Jiangsu Province) (The third of the ten typical cases on personal safety protection orders jointly issued by the Supreme People’s Court and the All-China Women’s Federation and the China Association of Women Judges).

⁵³ Liao Dehua yu Xu Lianfeng Renshen Ziyou Quan Jiufen Minshi Caiding Shu (廖德花与许连锋人身自由权纠纷民事裁定书) [Civil Ruling concerning the Dispute between Liao Dehua and Xu Lianfeng] (People’s Ct. of Hanbin District, Ankang, Shaanxi Province 2020).

into effect on Jan. 1, 2023.⁵⁴ Article 29 of Law on the Protection of Rights and Interests of Women expands the applicability of personal safety protection order by stipulating that “It is prohibited to pester or harass women or to disclose or disseminate women’s privacy or personal information . . . after the termination of a love relationship or divorce”; and “A woman suffering from the said infringement or facing the real risk of the said infringement may apply to a people’s court for a personal safety protection order.”⁵⁵

Regrettably, although the revised law provides better protection for women, it also creates certain inequality between male and female victims. The author suggests that future legislation on domestic violence clarify that domestic violence can also occur between former spouses, cohabitants and close relatives regardless of their gender.

Some may argue that such expansion may not be necessary, since any person can apply for a personality right injunction from the court under the Civil Code to order the infringer to stop the infringement regardless of the relationship between them.⁵⁶ This note holds the opposite opinion. Despite being a type of personality right injunction, the personal safety protection order is regulated separately. There is a good reason behind such an arrangement. The issuance and enforcement of personal safety protection orders will inevitably intrude into the family domain, a very sensitive area where public power is traditionally reluctant to intervene.⁵⁷ This means that only with stricter and more detailed regulations as well as a comprehensive enforcement mechanism can the injunctions related to family disputes be properly enforced in China. For instance, the *Provisions* require the people’s court to issue a personal safety protection order or reject the petition within 72 hours after accepting the petition, which is not a requirement for courts reviewing the petition for a general injunction.⁵⁸ Without this provision, courts in practice are likely to keep delaying the review of petitions for protection orders, leaving the victims of domestic violence unprotected.

Considering that it is not irregular that former spouses, cohabitants and close relatives co-parent children or often visit each other, the relationship between them is still considered “intimate” or “domestic” in Chinese society. Unless the victim in such a relationship is considered a victim of domestic violence, he or she cannot be properly protected. What’s more, there is extremely limited judicial practice on personality rights injunctions compared with that personal safety protection orders. The lack of judicial practice may

⁵⁴ Law on the Protection of Rights and Interests of Women, *supra* note 35.

⁵⁵ *Id.*, art. 29.

⁵⁶ Civil Code, *supra* note 50, art. 997. “Where a party to civil legal relations has evidence to prove that an actor is committing or will commit an illegal act of infringing upon his personality rights, and, if failing to guard his lawful rights and interests in a timely manner will lead to irreparable damages, he has the right to apply to the people’s court in accordance with the law for taking the measure of ordering the actor to cease the relevant behavior.”

⁵⁷ Li, Huang & Dan, *supra* note 28, at 1.

⁵⁸ AVL, art. 28.

further increase the difficulty of obtaining an injunction for the victims. As a result, expanding the definition of “domestic” for “domestic violence” is necessary.

IV. ESTABLISHING A MORE COMPREHENSIVE ENFORCEMENT MECHANISM

Whether the protection order can be strictly enforced is extremely crucial to its functioning. If there lacks a strict and comprehensive mechanism for the enforcement of protection orders, the orders could easily reduce to a paper declaration with no real effect.

An article written by a judge of the Supreme People’s Court points out that there exist difficulties in the service and enforcement of protection orders, and the punishment for the respondent’s violation of the orders is also not severe and effective enough.⁵⁹ The above deficiencies in the enforcement mechanism hugely weaken the deterrent force of the protection orders.

The note following finds that the *Opinions* and the *Provisions* have to a great extent facilitated the enforcement of the protection orders by clarifying the responsibility of relevant organs in the enforcement mechanism, establishing a more effective service system, and specifying the applicable crimes for the violators, but there are still difficulties to be overcome.

A. Responsibility of the Relevant Organs in the Enforcement Mechanism

Pursuant to Article 32 of the AVL, the people’s courts are responsible for servicing and enforcing personal safety protection orders, while the police department, residents’ committee or villagers’ committee, and other organs shall assist with the enforcement of the orders.

Before the release of the AVL, there were controversies as to who should be the responsible organ for the enforcement of personal safety protection orders. The court system generally held a view that personal safety protection orders should be enforced by the police department; whereas the common view in the police system was that the people’s courts should be responsible.⁶⁰ The dispute reflects the organs’ reluctance to assume the responsibility of enforcing protection orders and getting involved in family issues. Since the AVL fails to specify the exact roles of different authorities in the enforcement of protection orders, it will not be too hard to imagine that the police department and other organs are usually reluctant to assist the court to enforce the orders in practice.⁶¹

The *Opinions* promote an anti-domestic violence working mechanism featured by coordination by all departments with the detailed scope of responsibility of each.⁶² For instance, the *Opinions* clarify that during the

⁵⁹ Wang, *supra* note 5, at 11.

⁶⁰ Zeng Jianfei (曾建飞), Jin Cong (金丛), *Renshen Anquan Baohu Ling Zhidu Ruogan Wenti Yanjiu* (人身安全保护令制度若干问题研究)[*Study on some issues of personal safety protection order system*], 7 RENMIN SIFA (YINGYONG) (人民司法(应用))[THE PEOPLE’S JUDICATURE (APPLICATION)], 15, 19 (2017).

⁶¹ Wang, *supra* note 5, at 14.

⁶² *Opinions*, art. 5.

validity period of a protection order, the police department shall assist in urging the respondent to obey the protection order; in case the respondent violates the order, upon receipt of the report, the police shall dispatch police immediately to stop the illegal act; it shall, upon receipt of the report, give assistance to and protect the victim, and collect and fix evidence, etc.⁶³

As for the responsibility of the other departments during the validity period of a protection order, the *Opinions* state that the residents' committee, villagers' committee, women's federation, or school shall pay return visits regularly to the petitioners, track and record relevant circumstances; in case the respondent violates the order, they shall criticize and educate the respondent and complete the feedback form, and help the victim contact the people's court and the police promptly.⁶⁴

Moreover, Article 19 of the *Opinions* encourages relevant departments to explore the introduction of psychological counselling mechanisms when handling family disputes.⁶⁵ This article is incorporated into some local legislation. For instance, the Anti-domestic Violence Regulations of Jiangsu Province provide that the personal safety protection order may order the Respondent to accept psychological counselling for correction.⁶⁶ On 24 May 2022, two months after the release of the *Opinions*, the People's Court of Tianning District, Changzhou City, Jiangsu Province, issued a special protection order, ordering the respondent to receive psychological counselling during the validity of the personal safety protection order.⁶⁷ After the issuance of the order, a psychological consultant was assigned by the Changzhou Women and Children Public Welfare Psychological Counseling Service Center for the abuser's psychological counselling and correction service.⁶⁸ This order is the first protection order nationwide to request the abuser to accept mandatory psychological intervention.⁶⁹

Also, the *Provisions* allow the police, civil affairs departments, women's federations, neighbourhood committees, villagers' committees, disabled persons' federations, etc. to apply for protection orders on behalf of the petitioners who have trouble applying due to old age, disability, serious illness or other reasons.⁷⁰ This regulation can offer better protection for particularly

⁶³ *Id.*, art. 17.

⁶⁴ *Id.*, art. 18.

⁶⁵ *Id.*, art. 19.

⁶⁶ Jiangsu Sheng Fan Jiating Baoli Tiaoli (江苏省反家庭暴力条例) [Anti-domestic Violence Regulations of Jiangsu Province] (promulgated by the Standing Comm. People's Cong. of Jiangsu Province, Dec. 2, 2021, effective Mar. 1, 2022) (2022) art. 44.7 (Chinalawinfo).

⁶⁷ Jiangsu Changzhou Fachu Quanguo Shoufen Qiangzhi Xinli Ganyu Renshen Anquan Baohu Ling (江苏常州发出全国首份强制心理干预人身安全保护令) [Changzhou City, Jiangsu Province Issued the First Personal Safety Protection Order of Compulsory Psychological Intervention], THE PAPER (Jun. 1, 2022), https://m.thepaper.cn/baijiahao_18389259.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Provisions*, art. 2.

vulnerable persons, who might be controlled by the abusers and prevented from applying for protection orders before.

With the specific assignment of work, the relevant departments will be less likely to refuse to perform their duties or be reluctant to enforce protection orders. It can be expected the introduction of local laws and regulations by the *Opinions* will greatly contribute to the establishment of an enforcement system of protection orders with clear assignment of responsibilities and high efficiency.

Despite the significant improvement in the organization of relevant departments in the enforcement of the orders, the author believes the police shall take a more active role. Future amendments to the AVL may consider listing the court and the police as the two co-enforcing organs responsible for the enforcement of protection orders instead of treating the police department only as an assisting organ. Courts have neither a 24-hour duty system nor a holiday duty system, nor a relevant mechanism to supervise the enforcement of personal safety protection orders, nor are they able to supervise and implement such orders in a timely manner.⁷¹ Therefore, it is difficult for courts, like the police department, to dispatch personnel as soon as possible, which weakens the effect of protecting the petitioners' safety. In some jurisdictions, most protection orders, such as the violence prohibition order, harassment prohibition order, contact prohibition order, eviction prohibition order, keep away order, etc., are all enforced by the police department.⁷² The author is convinced that since these kinds of protection orders generally require very timely handling and may involve confrontation with violent abusers, the police department can better deal with their enforcement.

B. A More Effective Service System

The *Opinions* provide that after issuing a protection order, the people's court shall serve the order on the parties concerned, the local police station, neighbourhood committee or villagers' committee within 24 hours, and may also, as the case may be, serve the orders on the local women's federation, schools, organizations protecting minors, federations of the disabled and organizations established according to the law for the elderly.⁷³ Moreover, when serving a personal safety protection order, a people's court shall focus on the education of the respondent.⁷⁴ The *Opinions* certainly aim to build a more effective service system which ensures all the relevant organs are served with the orders properly.

However, the difficulty in the service of the orders might make this goal unattainable.⁷⁵ Despite the improvement in the enforcement of the protection

⁷¹ Wang, *supra* note 5, at 14.

⁷² "Domestic Violence Prevention Act", art. 21.5 (2021) ("Legislation" of the Taiwan Region).

⁷³ *Opinions*, art. 14.

⁷⁴ *Id.*, art. 15.

⁷⁵ AVL, art. 32.

orders made by the *Opinions* and the *Provisions*, it is still worth noticing that the difficulties in the service of the protection orders remain unsolved. In practice, the respondents are usually difficult to be contacted, tend to deliberately avoid the order or even physically threaten the judge.⁷⁶

Under PRC law, the service of a document often determines whether the document has entered into effect in civil cases. For example, Article 265 of the *Civil Procedure Law* stipulates that “A ruling to suspend or terminate enforcement shall be effective immediately after being served on a party.”⁷⁷ Since the current legislation does not clarify when the protection orders enter into effect, if the protection orders cannot be served on the respondent timely and successfully, the validity of the unserved orders will be called into question.

The author would suggest future laws and other legal instruments make two important clarifications to improve the service of the protection orders.

Firstly, the protection order shall enter into force from the time of its issuance. This rule has already been provided in the “legislation” of the Taiwan region.⁷⁸ Under such a rule, even if respondents successfully avoid the service of the orders, relevant authorities, such as the police department, can still enforce the orders and punish the respondents in case of their violations.

Secondly, the police department shall assist the court with the service of the order. Compared with police officers, marshals of the court system are usually responsible for maintaining the court order and have very few experiences in locating people or dealing with family conflicts.⁷⁹ Also, usually, the victims will call the police several times before launching the petition for a protection order, which means the local police probably have greater familiarity with the disputes and violence. Such familiarity would render them better at deterring and educating abusers than court officials, who are strangers to the abuser and enjoy no law-enforcement powers.

Therefore, the involvement of the police department in the service of the protection orders can not only help the court and the marshals to locate the respondent timelier but also ensure that the potential conflicts in the service are properly handled.

C. Criminal Punishment Applicable to Violators of Protection Orders

Although the AVL has already provided that where a respondent violates a protection order, constituting a crime, the respondent shall be subject to criminal liability in accordance with the law, it fails to clarify which crime a respondent commits under this circumstance.⁸⁰ This ambiguity resulted in heated disputes over whether a violation of a protection order would constitute

⁷⁶ Wang, *supra* note 5, at 14.

⁷⁷ Minshi Susong Fa (民事诉讼法) [Civil Procedure Law] (promulgated by the Nat'l People's Cong., Apr. 9, 1991, effective Apr. 9, 1991) (2021) art. 265 (Chinalawinfo).

⁷⁸ “Domestic Violence Prevention Act”, art. 15.1, 16.6 (2021) (“Legislation” of the Taiwan Region).

⁷⁹ Wang, *supra* note 5, at 19.

⁸⁰ AVL, art. 34.

the crime of refusing to execute judgments or orders.⁸¹ Moreover, no violators of protection orders have ever been convicted of the crime of refusing to execute judgments or orders so far,⁸² which may be partly caused by this ambiguity.

Article 12 of the *Provisions* clarifies that “Where respondents violate personal safety protection orders, which conforms to Article 313 of the Criminal Law of the PRC, they shall be convicted of and punished for the crime of refusing to execute judgments or rulings; where other crimes are constituted in the meantime, they shall be handled in accordance with the relevant provisions of the Criminal Law.”⁸³ This clarification will encourage law enforcement and judicial personnel to resort to criminal measures to punish the violators when necessary in accordance with the Criminal Law, which can help address the current situation of insufficient punishment on the violators of the orders.

V. OUTLOOK: ESTABLISHING A TEMPORARY PROTECTION ORDER SYSTEM

The PRC personal safety protection orders system did not distinguish between regular protection orders and temporary protection orders. Temporary protection orders, also known as emergency orders, provide protection to victims who are at imminent risk of domestic violence with a simplified petition procedure and further reduced burden of proof on the petitioner.⁸⁴ Also, temporary protection orders can be issued upon *ex-parte* petition.⁸⁵

While the regular orders may last up to 1-10 years in the United States,⁸⁶ the temporary usually last for several days⁸⁷ or until the date the court holds

⁸¹ Wang, *supra* note 5, at 14, 15.

⁸² *Id.*, at 15.

⁸³ *Provisions*, art. 12.

⁸⁴ Liu, *supra* note 1, at 110, 111. Some jurisdictions, like the Taiwan region, make a further distinction between temporary protection orders and emergency protection orders, while the latter can be issued at night or on days of rest. For the sake of argument, the author does not distinguish the two kinds of protection orders here.

⁸⁵ *Id.*, at 111. See Gao Fengxian (高凤仙), *Jiating Baoli Fangzhi Fagui Zhuanlun* (家庭暴力防治法规专论) [Monograph on the Laws and Regulations concerning the Prevention and Treatment of Domestic Violence] 114 (2018).

⁸⁶ *Domestic Violence Civil Protection Orders (CPOs)*, American Bar Association (2020), https://www.americanbar.org/content/dam/aba/administrative/domestic_violence1/Resources/charts/cpo2020.pdf.

See OHIO REV. CODE ANN. §3113.31(E)(3)(a) (2016) (A regular protection order can last up to 5 years unless modified). See also ARK. CODE ANN. §9-15-205(b) (2011) (A regular protection order can last from 90 days and to 10 years at the court's discretion). See generally Gao Fengxian (高凤仙), *Jiating Baoli Fangzhi Fagui Zhuanlun* (家庭暴力防治法规专论) [Monograph on the Laws and Regulations concerning the Prevention and Treatment of Domestic Violence] 119 (2018).

⁸⁷ See COLO. REV. STAT. ANN. § 13-14-103 (2018) (“[A emergency order] shall expire not later than the close of judicial business on the next day of judicial business following the day of issue, unless otherwise continued by the court.”) See also ALASKA STAT. ANN. § 18.66.110 (2022) (“An emergency protection order expires 72 hours after it is issued unless dissolved earlier by the court at the request of the petitioner.”)

the hearing.⁸⁸ Article 305(5) of the Model Code on Domestic and Family Violence provides that “An emergency order for protection expires 72 hours after issuance.”⁸⁹ The “Domestic Violence Prevention Act” of the Taiwan region provides that a temporary protection order shall cease to be effective when the petitioner revokes the petition for an ordinary protection order; when the court completes the trial and issues an ordinary protection order or when the court rejects the petition.⁹⁰

Also, the burden of proof for a petitioner for temporary protection orders is much lower than that of regular protection orders.⁹¹ In general, it is not necessary for the petitioners to prove the existence of domestic violence, they only need to sign a sworn statement claiming the immediate and present danger of domestic violence with reasonable grounds.⁹²

The author reckons that the distinguishment between regular protection orders and temporary protection orders can guarantee prompt protection for the victims. Under the AVL, “After *accepting* a petition, the people’s court shall issue a personal safety protection order or reject the petition within 72 hours or, in case of emergency, within 24 hours.” (Emphasis added)⁹³ It is noteworthy that the courts do not work on holidays, they thus are unable to *accept* cases on these days. As a result, under certain circumstances, the petitioners may not be granted a protection order more than one week after their petition, if such petitions are launched on the last day before or during a holiday (There is a seven-day holiday for the Spring Festival and National Day in China). The lack of a temporary protection order system in mainland China significantly increases the safety risk of the petitioners before the court grants their petitions.

The author, therefore, suggests that China establish a system of temporary protection orders with the police department as the responsible authority in addition to the current system. The police department shall issue a temporary personal safety protection order or reject the petition within 6 hours after the petitioner’s petition. The police department shall grant the petition if it believes that there are reasonable grounds that the petitioners may be subject to domestic violence or imminent danger of domestic violence. A temporary protection order for protection usually expires 72 hours after issuance, and the police department may extend its validity period for 1 to 7 days in case of necessity.

⁸⁸ See IOWA CODE ANN. § 236.4(2) (“The court may enter any temporary order it deems necessary to protect the plaintiff from domestic abuse prior to the hearing [which shall be held no less than five and not more than fifteen days after commencing a proceeding and upon notice to the other party].”) See generally Gao Fengxian (高凤仙), *Jiating Baoli Fangzhi Fagui Zhuanlun* (家庭暴力防治法规专论) [Monograph on the Laws and Regulations concerning the Prevention and Treatment of Domestic Violence] 121(2018).

⁸⁹ *Model Code on Domestic and Family Violence*, National Council of Juvenile and Family Court Judges (Jan. 13-15, 1994), https://www.ncjfcj.org/wp-content/uploads/2012/03/modelcode_fin_printable.pdf.

⁹⁰ “Domestic Violence Prevention Act”, art. 16.6 (2021) (“Legislation” of the Taiwan Region).

⁹¹ Liu, *supra* note 1, at 184.

⁹² *Id.*

⁹³ AVL, art. 28.

After the police grant the temporary protection order, it should be served to the parties within 24 hours.

VI. CONCLUSION

The personal safety protection order system established following the AVL seven years ago has provided important protection for domestic violence victims. While the high standard of proof, the vague definition of “domestic violence” and the unclear responsibilities of relevant authorities in the enforcement of the protection orders rendered the system less effective, the recent issuance of the *Opinions*, the *Provisions* and the revised Law on the Protection of Rights and Interests of Women has significantly filled up these deficiencies. The author is convinced that the new updates on the protection orders will provide the victims with more accessible protection.

Recognizing the accomplishment of the current legislation and legal instruments, the author further suggests, *inter alia*, that: (i) Future Amendment of the AVL shall incorporate the lower standard of proof into its legal text; (ii) Future legislations or legal interpretations shall also list economic abuse as a form of domestic violence and clarify that domestic violence can also occur between former spouses, cohabitants and close relatives regardless of their gender; (iii) The police department may take a more active role in the service and enforcement of protection orders; (iv) In addition to the current protection order system, a system of temporary protection orders should be established to offer temporary protection for the victims in case of emergency.