

Accessing Human Rights To No Contact Against Stalking Abuse

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Tomorrow, March 8th marks International Day for Women.

As we speak today in Cyprus, women will gather together throughout the Island to march in the streets to raise consciousness about their struggle to end gender-based violence against women.

But, as they march to a resounding gong full of sound and fury throughout the world which declared, "*There shall not be domestic violence.*"

Programs like STOP, Zero Tolerance, COMMIT, PROGRESS, WAVE, HeForShe and DAPHNE, demands for legislative reforms to protect abused women.

Yet, not one law or lobbyist declares a woman's human right to an effective remedy for the enjoyment of privacy, absent "violence".

Women must do more than march every March about abuse.

Women must learn all year how they can ask their courts, absent evidence of violence, to enforce their privacy right "to be left alone," and protect their right to no contact against abuse.

Stalking is the world's newest and fastest growing form of international terrorism which also disproportionately affects women as a form of abuse, absent violence.

[A]ccording to a recent study by the U.S. Department of Justice, an estimated 3.4 million people are stalked annually in the U.S.

Seventy-six percent (76%) of women killed by their intimate partners were stalked by their partners beforehand.

In the most comprehensive study of stalking in the EU Member-states, it found Most domestic laws to prevent domestic violence run hollow because stalking statistics show most stalkers are unmarried to their victims; intimate partners stalkers typically don't continue to reside with their victims; stalker unwanted contact is usually undefined by legislation; and stalking conduct originates from locations far beyond "domestic" settings.

Unwanted cyberspace contact is advanced via satellite where actors, family members, intimate partners, and also strangers enjoy easy access to tag, target, and abuse victims virtually from anywhere.

Yet, "[O]nly thirteen out of the twenty-seven European member states have explicitly criminalized stalking." (Purcell, Pathé & Mullen, 2004). In Cyprus, because no anti-stalking legislation exists, this omission seems to indicate in Cyprus, stalking is not considered behavior to be a social problem.

In the United States, stalking is considered a social problem; all fifty states and the District of Columbia have enacted anti-stalking legislation.

But, most U.S. anti-stalking law still get stuck in the mud when only some U.S. States allow victims to file a civil law suit against any stalkers or absent violence.

Most states, like Alabama, require a domestic or dating relationship require some relationship with the stalker.

California, which enacted the first anti-stalking law, is the only state to require no relationship requirement.

Where some U.S. states do not have anti-stalking civil protection order legislations others states, like Arkansas, Idaho, Iowa, Kentucky, and North Dakota, do not recognize stalking as harassment for protection orders.

Stalking abuse steams ahead because it defies uniformity by legal definition.

In the U.S., fortunately, advances are being made to automate civil protections through interactive court websites that provide self-represented litigants fill-in-the blank forms to guide them through the civil complaint process to obtain immediate protections. This type of website driven, self-help process for abused women in Cyprus was initiated on the Island by a U.S. Fulbright project, One Woman At A Time (OWAAT) in conjunction with UNIC Law Clinic Programme.

OWAAT adopts a U.S. model where the central purpose of the civil protection order system is to protect individuals from harm.

The U.S. civil protection order system is open, available and barrier free.

And, is a system which affords each applicant the right to obtain relief tailored to her needs, and is petitioner-driven throughout the process.

In the EU, Member-states like Cyprus, which have not enacted some form of anti-stalking legislation, increase stalking, contrary to state duties to protect and ensure against conduct in violation of citizen human rights to enjoyment of privacy.

But change is here. After January 11, 2015, new EU civil protection order laws will protect EU Member-state women travelling or residing in Cyprus from other EU Member-states, except Denmark, who obtained civil protections to prevent stalking, and must obtain enforcement of these orders by Cyprus courts.

Meanwhile, Cyprus women are not entitled to civil protection orders to prevent stalking. Why not, because unwanted contact violations of privacy include non-violent, verbal or non-verbal interference with any person's self-hood and autonomy.

Under The Council of Europe Convention and several other international documents, the current article defines 'violence against women' as:

(...) a violation of human rights and a form of discrimination against women and shall mean all acts of gender based violence that result in or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion

or arbitrary deprivation of liberty, whether occurring in public or in private life (Art. 3(a) Council of Europe Convention on combating and preventing violence against women and domestic violence)1.

Likewise, The Convention prescribes the criminalization of stalking.

Article 34 reads as follows:

Parties shall take the necessary legislative or other measures to ensure that the intentional conduct of repeatedly engaging in threatening conduct directed at another person, causing her or him to fear for her or his safety, is criminalized.

Thereunder, when EU Member States courts apply laws in protection order cases that limit issuance of immediate, civil no contact protection orders to *only domestic, domestic violence or related family members*, and upon extrinsic evidence to prove violence, as is typically the case in Cyprus, the outcome to dismiss civil protections are contrary to state constitutional protections, and EU Member-state international treaty agreements under the EU Convention of Human Rights.

What can courts do?

First, courts in equity should be aware how many human rights protections do not require violence. The Human Right to privacy is one example.

Courts are also aware of the 2013 decision by The European Court of Justice (ECJ) that held individual data has privacy rights “to no longer be linked” to online

search engines like Google, finding unwanted data links an interference with a claimant's enjoyment of privacy.

Second, when abused women seek court protections to no longer be linked with abusers, their claims implicitly raise human rights violations issues before the court related to its duty to protect the enjoyment of the human right to privacy.

Third, most abused women's no contact claims that get dismissed should be appealed because some EU Member-state domestic violence statutes for protection orders, like in Cyprus, which require plaintiff to prove violence by extrinsic evidence, such as a police or medical report, are contrary to human rights supranational laws that supersede domestic state constitutions.

Fourth, when EU Member-state courts apply only these state statutes to abused women's claims and fail to apply human rights protections and dismiss, it is contrary to state constitutional and EU human rights protections.

Fifth, when State statutes create legal limitations which result in precluding abused women's human right protections, it perpetuates gender-based violence and gender-discrimination inequality against women, also in violation of human rights.

Sixth, when civil action procedural delays in no contact claims result in denying an application for ex parte hearings in no contact claims, or unduly prolonged hearing proceedings, or failures to accommodate abused women's requests for a police report necessary to obtain legal protections, these measure run afoul of states duties to ensure and secure a woman's privacy human right to be afforded adequate state protections from human rights violations.

In conclusion, so long as states allow actors to conduct unwanted, non-violent cyberspace interference resulting in a risk of harm in violation of privacy rights, then states, by omission, unlawfully allow stalkers to deprive mostly women of their human rights to no contact. Stalkers win, while mostly women die when civil protections orders for no contact were not issued against stalking.