MAPPING THE LEGISLATION AND ASSESSING THE IMPACT OF PROTECTION ORDERS IN THE EUROPEAN MEMBER STATES (POEMS)

NATIONAL REPORT DENMARK

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2.2. OVERVIEW OF THE STRUCTURE OF THE NATIONAL REPORTS

2.2.1. IMPOSITION OF PROTECTION ORDERS

1) We would like to know about the different forms of protection orders in your country

a. Identify the laws in which protection orders are regulated.

1) a-c: In Denmark protection orders can be found in different areas of law, e.g. criminal, civil and administrative law. The most relevant legislation in this connection is *Lov 2012-02-03 nr. 112 om tilhold, opholdsforbud og bortvisning (tilholdsloven, THL)*, se below. It is this legislation, which is at the core of the following out-line.

a) The so-called "*polititilhold*" (police restriction order) is regulated in the above mentioned *Lov 2012-02-03 nr. 112 om tilhold, opholdsforbud og bortvisning*. This legislation defines three forms of protection orders:

- **Tilhold** = ***restriction order; PO-Com*** = ban to physically or by means of communication to contact another person, (§1).

- **Opholdsforbud** = ***ban to be present at certain places; PO-Visit***, (§3).

- **Bortvisning** = ***Ban on a person over 18 years of age to be present at home; BO***, (§7).

The mentioned legislation has five chapters: chapeter 1 dealing with PO-Com (***tilhold***) and PO-Visit (***opholdsforbud***); chapter 2 dealing with BO (***bortvisning***). Chapter 3 deals with some general issues concerning all three forms of protection order. Chapter 4 deals with questions concerning court control and chapter 5 deal with the question of criminal liability in cases of violation.

b. Are protection orders regulated in generic law or in specific laws on forms of (interpersonal) violence (e.g., domestic violence act)?

As mentioned above are the three forms of restriction orders regulated in a specific law (*Lov 2012-02-03 nr. 112 om tilhold, opholdsforbud og bortvisning*). This legislation came into force in March 2012 and abolished the former regulation of this topic. The former regulation was found in a combination of the Criminal Code, § 265, and a specific regulation: *Lov nr. 449 af 9. juni 2004 om Bortvisning og beføjelse til at meddele tilhold mv*.

The current legislation is supplemented/specified by **part 6** of an internal regulation issued by the Prosecutor General (*Rigsadvokaten*): *Meddelelse om behandlingen af sager om samlivsrelaterede personfarlige forbrydelser, herunder spørgsmål om tilhold, opholdsforbud og bortvisning (RM 3/2008 – rettet februar 2013), afsnit 6:*
see: https://www.retsinformation.dk/Forms/R0710.aspx?id=161967

This internal regulation deals with different aspects of the police'/prosecutions services dealings with violence etc. in relations/families and as mentioned in part 6 specifically with questions in connection with protection orders.

The current legislation is furthermore supplemented by an administrative regulation (*Bekendtgørelse om konfliktråd i sager om tilhold, opholdsforbud og bortvisning*) which allows cases concerning protection orders to be dealt with under the rules on alternative conflict resolution (*konfliktråd*).

See: https://www.retsinformation.dk/Forms/R0710.aspx?id=140397

c. Are these laws (or the text on the protection orders) available on the internet in English or in your local language? If so, could you provide us with a link?

No, there is no English translation available (as far as we know). The legislation is, as all other Danish legislation, available on the website:

www.retsinformation.dk.

The *Lov 2012-02-03 nr. 112 om tilhold, opholdsforbud og bortvisning* can be found under the following link: https://www.retsinformation.dk/Forms/R0710.aspx?id=140188

d. Through which areas of law (criminal, civil, administrative, other) can protection orders be imposed?

As mentioned above the question of protection orders is primarily regulated in a specific legislation. As pointed out in the above mentioned internal regulation issued by the Prosecutor General (Rigsadvokaten): Meddelelse om behandlingen af sager om samlivsrelaterede personfarlige forbrydelser, herunder spørgsmål om tilhold, opholdsforbud og bortvisning (RM 3/2008 – rettet februar 2013), afsnit 6.4: A decision on a protection order is an adnimistrative decision under the demands of the Adminatration Act (*forvaltningsloven*) with its connected demands:

"*En afgørelse om tilhold, opholdsforbud eller bortvisning er en forvaltningsretlig afgørelse, og forvaltningslovens regler om partshøring, aktindsigt, skriftlighed, begrundelse og klagevejledning finder derfor anvendelseIse*."

(English non-official translation: "A decision on *PO-com*, *opholdsforbud* or *bortvisning* is an administrative decision and the rules of the Administration Act (*forvaltningsloven*) on hearing of parties, right to see files, written procedure, justification of decisions and information on review/appeal have to be obyed.")

2) Within the different areas of law (criminal, civil, administrative, other), you can also have different legal provisions through which protection orders can be imposed (e.g., a condition to a suspended trial, a condition to a suspended sentence, a condition to a conditional release from prison or as a condition to a suspension from pre-trial detention). Which different ways of imposing protection orders can be distinguished in the different areas of law? (please, be as exhaustive as possible)

If protection orders can be imposed through multiple areas of law, please make a distinction between these areas of law in answering the following questions. In other words, make sure that the following questions are filled in separately for each category of protection order. For instance, if a protection order can be imposed in both criminal and civil law, make sure that you answer for both areas of law which persons can apply for a protection order (question 3).

The main legal source concerning protection orders is the above mentioned specific regulation. However it can be argued that certain forms of protection orders (or orders quite similar) can be imposed in connection with regular criminal proceedings, for example in connection with suspended sentences. According to § 57 can the court when imposing a conditional sentence define certain conditions to be obeyed. One of those conditions can for example be the following:

§ 57, nr.1: " (…) *overholder særlige bestemmelser vedrørende opholdssted, arbejde, uddannelse, anvendelse af fritid eller samkvem med bestemte personer, (…)*". (English non-official translation: " (…) obeys specific rules concerning places of presence, work, education, use of spare time or presence with specific persons.")

A prisoner can, according to § 38 of the Danish Criminal Code, obtain early release after serving 2/3 of the sentence, or, under specific circumstances after 1/2. The early release might be connected to the same kind of conditions as a conditional sentence; see § 39, stk.2 of the Danish Criminal Code, which refers to § 57.

In criminal cases against juveniles under 18 criminal proceedings can be terminated under the "principle of opportunity", e.g. discretion, with conditions similar to those of a suspended sentence, see § 722, stk.1, nr. 3 and § 723, stk.1, nr.2.

3) a. Who can apply for such an order (victims/complainants or only the police/the public prosecution service)?

The main rule is that it is the victim which applies for such orders: THL § 14 (*lov om tilhold, opholdsforbud og bortvisning*) regulates that a decision on *PO-com*, *opholdsforbud* and *bortvisning* can be taken if the person who will be protected by the order applies for it or when general considerations demands it.

The expectation in the *travaux préparatoires* (KBET 2011 nr. 1526) of the regulation is clearly that the normal procedure would be that the victim applies. However, if the victim, for example due to severe fear, does not apply it is possible for the police to initiate the procedure, this will only happen if there is a risk of serious violence, such as, battery, rape or child abuse.

b. Which organizations or authorities are involved in applying for and issuing protection orders? (Do, for instance, probation services play a role in the issuing of criminal protection orders?)

The three types of protection orders under the THL are issued under the jurisdiction of the Chief of Police (*politidirektør*), who both is part of the police structure and the prosecution service, § 15, stk.2 THL. The decision can be appealed to the District Prosecutor (*statsadvokat*), § 15, stk.3 THL.

The recipient of decisions on *opholdsforbud* and *bortvisning* may demand of the police to bring the matter to a hearing at a local court (*byretten*), § 17 ff. THL, see also below.

Concerning the issuing of a *bortvisning* the legislation demands that the local administration (*kommune*) gets informed (and receives necessary documents), so the social services can deal with the case.

The above mentioned internal regulation of the Prosecutor General (*Rigsadvokaten*) stresses in point 6.11. that also in cases of *PO-com* and *opholdsforbud* the option of involving social services should be considered, so all parts can receive support at an early stage of the proceedings:

"*(…) Også i sager om tilhold og opholdsforbud bør politiet være opmærksom på muligheden for at inddrage de sociale myndigheder, således at der ydes en aktiv og socialt orienteret bistand til parterne på et så tidligt tidspunkt som muligt. Politiet bør således efter omstændighederne opfordre parterne til at henvende sig til de sociale myndigheder eller eventuelt af egen drift orientere disse myndigheder om sagen. Der henvises i øvrigt til afsnit 4.4. vedrørende underretning af andre myndigheder.*"

(Engish non-official translation: "(…) Also in cases of *PO-com* and *opholdsforbud* should the police be aware of the possibility to involve the social authorities to provide an active and social orientated help to the parties at the earliest possible time. The police should therefore considering the circumstances encourage the parties to contact the social authorities or to inform the authorities by tehmselves. (…)").

We have no specific information on how this is dealt with in practice. The ministry of justice has in 2011 published a report on stalking etc., but this report is not providing information on the question of which authorities are getting involved in connection with protection orders.

c. Can protection orders be issued on an *ex parte* basis (without hearing the offender)?

As mentioned above: the decision on a protection order is an administrative decision under the demands of the Administration Act (*forvaltningsloven*) with its connected demands; one of those demands is the obligation to hear all parts. This is stressed the internal regulation issued by the Prosecutor General (Rigsadvokaten): *Meddelelse om behandlingen af sager om samlivsrelaterede personfarlige forbrydelser, herunder spørgsmål om tilhold, opholdsforbud og bortvisning (RM 3/2008 – rettet februar 2013), afsnit 6.4*, see above 1.d).

4) a. Are protection orders available for all types of victims or crimes, or only for a certain subset of victims or crimes (e.g., only victims of domestic violence, stalking, female victims)? In other words, can all victims receive protection?

The regulation does not focus or limit its application on certain groups of victims (meaning that it does for example include all persons living in the same household). The application of the orders is defined with view to certain crimes which the specific order tries to avoid. For more information see below 6.a).

4) b. Can protection orders be issued independent from other legal proceedings (e.g., independent from criminal proceedings if the victim does not wish to press charges or independent from divorce proceedings)?

Yes, the regulation does not include any demand that procedures concerning a protection order have to be connected to other legal proceedings, for example criminal proceedings. If in a case concerning PO-visit and BO criminal proceedings are initiated as well then those two sides of case will be dealt with together.

5) a. What procedures have to be followed in order to obtain a protection order? (please explain the different steps that need to be taken)

The procedure can be summarized as follows:

Before the issuing

The police should evaluate the situation before issuing a restriction order and consider if advice or recommendation/warning (Danish: *formaning*) could be sufficient. If this is the case, the police should give appropriate advise or warning. Also mediation may be advised.

After the issuing

Decisions regarding PO-coms, PO-visits and BOs a can be appealed to the Prosecutor General (*Statsadvokaten*), PO-visits and BO's can also be appealed to the court, see further question 13 a)

b. Could you give an indication of the length of the proceedings?

We have no information on the actual length of the proceedings, however, the above mentioned internal regulation issued by the Prosecutor General (Rigsadvokaten): Meddelelse om behandlingen af sager om samlivsrelaterede personfarlige forbrydelser, herunder spørgsmål om tilhold, opholdsforbud og bortvisning (RM 3/2008 – rettet februar 2013), stresses in point 6.4. that the cases shall be proceeded in a speedy manner:

"*Sagerne bør – navnlig af hensyn til den forurettede – behandles med den fornødne hurtighed og effektivitet. I særligt grove tilfælde, f.eks. hvor anmeldelsen angår en række uønskede henvendelser gennem en vis tid (stalking), bør politiet være*

særlig opmærksom på en hurtig partshøring. Hvis sagerne ikke kan forventes afsluttet inden kortere tid, bør politiet underrette den forurettede om, hvad der sker i sagen, og hvornår politiet forventer sagen afgjort."

c. Does the protection order come into effect as soon as the decision on a protection order is made or are there any additional requirements before the orders really come into effect (e.g., in civil proceedings the notification/service of the verdict to the defendant)? In other words, is the victim immediately protected or can there be a lapse of time before the actual protection begins?

d. Is there a regulation for interim protection that can be given immediately upon request or very quickly? For how long? What steps have to be taken in order to finalize the protection after the interim order?

The decision on a protection order has to be formally brought to the attention of the person concerned (*forkyndelse*), see § 16:

"*§ 16. Afgørelser om tilhold, opholdsforbud og bortvisning skal forkyndes. Ved forkyndelse af opholdsforbud og bortvisning skal den pågældende vejledes om retten til at kræve afgørelsen indbragt for retten.*"

6) a. What are the application requirements in order to (successfully) apply for a protection order? In other words, under what conditions will a protection order be imposed?

The requirements for the different protection orders are outlined in connection with question 4.a) above.

There are few formal requirements to initiate the procedure, see § 14, which just outlines when protection orders can be imposed:

"*§ 14. Tilhold, opholdsforbud og bortvisning kan besluttes, når en person, som foranstaltningen skal beskytte, anmoder om det, eller når almene hensyn kræver det.*"

b. Is legal representation/advice of victims required by law or in practice?
c. Is free legal representation/advice available?

The legislation is not requiring legal representation in all situations but only in certain cases where there is a case hearing. In cases of BO legal representation is required; in cases of PO-visit legal representation may be provided. The legal representation has in those case the same rights as defense lawyers in criminal cases.

Also concerning the victim legal representation may be provided if the victim has to testify in court.

"§ 18. Der beskikkes en advokat for den, der kræver en afgørelse om bortvisning indbragt for retten. Der kan beskikkes en advokat for den, der kræver en afgørelse om opholdsforbud indbragt for retten, hvis retten efter sagens beskaffenhed, indgrebets karakter, klagerens person og omstændighederne i øvrigt finder det ønskeligt. Den beskikkede advokat har samme beføjelser som en forsvarer i en straffesag. Om salær og godtgørelse for udlæg til en beskikket advokat gælder samme regler som for beskikkede forsvarere, jf. retsplejelovens § 741.

Stk. 2. Der kan beskikkes en advokat for en forurettet, der skal afgive forklaring i retten. Reglerne i retsplejelovens §§ 741 c og 741 d finder tilsvarende anvendelse. Om salær og godtgørelse for udlæg til den beskikkede advokat gælder samme regler som i tilfælde, hvor der er meddelt fri proces, jf. retsplejelovens kapitel 31".

7) a. What types of protection can be provided for in the orders (e.g., 'no contact' orders, orders prohibiting someone to enter a certain area, orders prohibiting someone to follow another person around, etcetera)?

As mentioned under question 4 are the different restriction orders aimed at different situations, the three forms of protection orders are briefly described below:

PO-com

PO-com (according to THL § 2) can be imposed if there is a reasonable suspicion that a person has violated another's peace by stalking or harassing the other by personal, verbal or written approach (including electronic communication). Furthermore can this restriction order be imposed if the person in question is guilty in another violation of peace, comparable to the above. The PO-com can only be imposed if there are reasons to believe that the violations of peace will continue.

Similarly, a PO-com can be issued if there is reasonable suspicion that the respondent has violated or attempted to violate the Criminal Code provisions on homicide, robbery, deprivation of freedom (confinement, detention, restraint), violence, arson, illegal coercion regarding marriage/religious matrimony, rape or another sexual offense, and therefore the victim shall not be put in a situation to endure contact with the respondent.

The group of persons who can be protected by a PO-com are persons beeing subjected to a violation of their peace or to a serious criminal offence. It is also possible to widen the protection to persons close to the direct victim, for example parents who wish to be protected from contact with the perpetrator of their child.

It is also important to mention that a PO-com can protect both private citizens and institutions, companies and public authorities if there is a concretized circle of persons (see note 2 to THL § 1).

PO-visit

PO-visit (THL § 3) can be imposed if the conditions for a PO-com are fulfilled and the suspicion concerns repeated violations as defined in THL § 2, knowingly violation of a PO-com or if BO and PO-com are not seen as sufficient for protecting the victim.

PO-visit means that the person in question is restricted from being present in a defined area (see question 9) – so to say a geographically defined PO-com. It is, however, not a condition that a PO-com has been imposed before a PO-visit; both can be imposed together or independently from each other.

The group of persons being protected by a PO-visit is basically the same as those protected by a PO-com. However it is unclear whether PO-visit also can protect entities, this is not clearly raised in connection with PO-visits.

BO

BO (THL § 7) means that a person is restricted from being present at his/her home. This restriction order can be imposed if there is a sufficient suspicion that the person in question has committed more serious violations of the Criminal Code, including threaths, sexual offenses, crimes against life and body, against a member of his household, and it must be assumed that there is a risk of continued violations if he/she stays in the home.

The group of persons being protected are those living with the respondent, for example children, spouse etc.

To summarize: PO-com and PO-visit can protect everybody, BO are aimed at the persons living with the person in question.

The regulations of the THL are further outlined and specified in an administartive order by the highest prosecutor in Denmark (*rigsadvokaten*, who is in this conetext also head of police), see *Rigsadvokaten Meddelelse om behandlingen af sager om samlivsrelaterede personfarlige forbrydelser, herunder spørgsmål om tilhold, opholdsforbud og bortvisning (RM 3/2008 – rettet februar 2013)*:

"6.5. Tilhold og opholdsforbud

6.5.1. Betingelser for tilhold

Betingelserne for at give et tilhold fremgår af § 2 i lov om tilhold, opholdsforbud og bortvisning.

For det første er det efter § 2, stk. 1, nr. 1, en betingelse, at der er begrundet mistanke om, at personen har krænket en andens fred ved at forfølge eller genere den anden ved kontakt eller ved at følge efter den anden, eller at personen har begået et strafbart forhold, som krænker den andens fred.

Det fremgår af forarbejderne til lovens § 2, at mistankekravet "begrundet mistanke" svarer til reglerne om varetægtsfængsling, jf. retsplejelovens § 762, stk. 1, nr. 2. Mistankekravet omfatter alle led i bevisvurderingen, herunder også identiteten af den indklagede. For at kunne udstede et tilhold skal der således være en begrundet mistanke om, at der er begået forhold, som kan føre til et tilhold, og en begrundet mistanke om, at disse forhold er begået af den pågældende.

Det vil afhænge af en konkret vurdering af samtlige faktiske og retlige forhold i sagen, om der er tale om en fredskrænkelse. Der kan være tale om hyppige uønskede henvendelser eller andre handlinger, som ikke i sig selv er strafbare, men som opleves som ubehagelige og forstyrrende pga. deres antal, deres indhold eller et udtrykt ønske om at være fri for yderligere kontakt. En enkelt krænkelse kan dog også være så grov, at den i sig selv kan danne grundlag for et tilhold.

For det andet er det efter § 2, stk. 1, nr. 2, en betingelse, at der er bestemte grunde til at antage, at den pågældende vil fortsætte med at krænke den anden som anført i nr. 1 (indikationskravet).

Bestemmelsen i retsplejelovens § 762, stk. 1, nr. 2, om varetægtsfængsling i tilfælde af gentagelsesfare vil være vejledende ved fortolkningen af reglerne om tilhold. Betingelsen om gentagelsesfare i lov om tilhold, opholdsforbud og bortvisning vil dog i højere grad kunne være opfyldt, selv om der kun er oplysning om et enkelt endnu ikke pådømt forhold.

Efter § 2, stk. 2, kan et tilhold endvidere gives, hvis der er begrundet mistanke om, at en person har begået en overtrædelse af straffelovens bestemmelser om drab, røveri, frihedsberøvelse, vold, brandstiftelse, voldtægt eller anden sædelighedsforbrydelse, og den forurettede eller dennes nærmeste efter lovovertrædelsens grovhed ikke skal tåle kontakt mv. med den pågældende.

Det fremgår af forarbejderne til bestemmelsen, at den tilsigter at beskytte ofre for alvorlig personfarlig kriminalitet og deres nærmeste, selv om de ikke har været udsat for en fredskrænkelse i øvrigt, og der ikke er en gentagelsesrisiko.

Om der kan gives et tilhold afhænger af en konkret vurdering af forbrydelsens beskaffenhed og de omstændigheder, den er begået under, herunder navnlig hvilken belastning den forurettede eller dennes nærmeste har været udsat for. Det forudsættes i forarbejderne til bestemmelsen, at den finder anvendelse ved lovovertrædelser, der i sig selv medfører ubetinget fængselsstraf af en ikke helt kort varighed.

6.5.2. Betydning af tilhold

En person kan gives et tilhold, hvorved den pågældende forbydes at opsøge en anden person ved personlig, mundtlig eller skriftlig henvendelse, herunder ved elektronisk kommunikation, eller på anden måde kontakte eller følge efter den anden, jf. lovens § 1.

Bestemmelsen omfatter for det første kontakt.

Tilhold indebærer som udgangspunkt et forbud mod enhver kontakt. Forbuddet omfatter således ikke kun kontakt, der kan anses for en fredskrænkelse. Der kan i en afgørelse om tilhold fastsættes undtagelser fra forbuddet, således at det kun er visse former for kontakt, der er omfattet.

Det afgørende er, om den pågældende adfærd reelt har karakter af en henvendelse eller kontakt fra indklagede til forurettede, og ikke om kontakten sker direkte. Det forhold, at en meddelelse gennem f.eks. Facebook ikke direkte er adresseret til den, der chikaneres, er således ikke afgørende. Det er dog en forudsætning, at meddelelsen ikke alene er rettet til andre, men også reelt til den forurettede, ligesom gerningsmanden må have forsæt til, at meddelelsen virker som en henvendelse til den, der chikaneres.

Også andre former for kontakt, f.eks. henvendelser i form af ophold lige uden for forurettedes bolig, aflevering eller tilsendelse af blomster og hilsner gennem radioudsendelser er omfattet af bestemmelsen.

Bestemmelsen omfatter for det andet det at følge efter en person.

Det er ikke en betingelse, at der er en egentlig kontakt. En chikane i form af, at den pågældende følger efter en person uden helt at nærme sig, således at det ikke (eller ikke med sikkerhed) kan betegnes som kontakt, vil også være omfattet af bestemmelsen.

Der kan i en afgørelse om tilhold fastsættes undtagelser fra forbuddet, således at det kun er visse former for adfærd eller henvendelser mv., der er omfattet.

6.5.3. Betingelser for opholdsforbud

Betingelserne for at give et opholdsforbud fremgår af § 4 i lov om tilhold, opholdsforbud og bortvisning.

For det første følger det af § 4, stk. 1, 1. led, at betingelserne for at give et tilhold skal være opfyldt.

For det andet er det efter § 4, stk. 1, nr. 1, en betingelse, at der er tale om oftere gentagen krænkelse (i form af fredskrænkelse eller strafbart forhold, der kan sidestilles med fredskrænkelse), forsætlig overtrædelse af et tilhold eller en lovovertrædelse, der kan begrunde et tilhold eller en bortvisning.

Efter § 4, stk. 1, nr. 2, skal politiet for det tredje vurdere, at et tilhold ikke er tilstrækkeligt til at beskytte den forurettede.

Betingelserne for at give et opholdsforbud er således strengere end for et almindeligt tilhold.

Det bemærkes, at tilhold, opholdsforbud og bortvisning frit kan kombineres, hvis betingelserne for foranstaltningerne er opfyldt. Det skal dog understreges, at den eller de mindst indgribende foranstaltninger, skal vælges, jf. afsnit 6.7. Det skal ligeledes bemærkes, at det ikke er en betingelse for at udstede et opholdsforbud, at der forinden er givet et tilhold. Formålet med et opholdsforbud vil dog normalt indebære, at der gives et tilhold samtidig med opholdsforbuddet, hvis ikke et tilhold allerede er givet.

6.5.4. Betydning af opholdsforbud

Politiet kan give et opholdsforbud til den person, der forfølger eller chikanerer en anden. Et opholdsforbud betyder, at personen får et forbud mod at opholde sig eller færdes i et bestemt område, jf. lovens § 3.

Den, der forfølger eller chikanerer, forbydes at opholde sig eller færdes i et eller flere nærmere afgrænsede områder, hvor den forurettede ofte færdes, f.eks. i nærheden af den forurettedes bolig, arbejdsplads eller uddannelsessted. Den forurettede får derved en eller flere "sikkerhedszoner", hvor pågældende frit kan færdes uden at føle sig utryg og bange for at møde den anden.

Det geografiske område, som forbuddet dækker, skal beskrives så præcist som muligt i afgørelsen. Hvis det er muligt bør afgørelsen vedlægges et kort, der viser området, så der ikke er tvivl om forbuddets udstrækning.

Det fremgår af forarbejderne til lovens § 3, at udtrykket "i nærheden" skal ses i lyset af, at et opholdsforbud indebærer et væsentligt indgreb i krænkerens bevægelsesfrihed. Det bør således normalt være et mindre område, hvor den forurettede ofte færdes. Andre områder end de specifikt nævnte kan f.eks. være et supermarked eller idrætsanlæg mv., hvor den forurettede ofte har sin gang. Der er ikke i forarbejderne til bestemmelsen defineret en bestemt maksimal geografisk udstrækning af opholdsforbud.

Den geografiske udstrækning vil afhænge af områdets karakter og parternes forhold. I tæt bebyggede områder, som f.eks. en storby, vil formålet med et opholdsforbud oftest kunne nås ved at lade opholdsforbuddet omfatte et mindre område. Hvis parterne bor tæt på hinanden, må forbudsområdet indrettes herefter, således at der også tages hensyn til krænkerens bevægelsesfrihed. På den anden side vil det kunne tale for et større forbudsområde, hvis den forurettede er flyttet til et nyt område for at undgå kontakt med krænkeren, og krænkeren ikke har tilknytning til området. Ved fastlæggelse af forbudsområdet bør der også tages hensyn til eventuelle større færdselsårer, f.eks. større veje og banestrækninger mv., som krænkeren har en legitim interesse i at færdes ad. Der henvises i øvrigt til afsnit 6.7. vedrørende proportionalitet.

Udtrykket "opholde sig eller færdes" omfatter enhver fysisk tilstedeværelse inden for det afgrænsede område, herunder det at passere igennem området.

Der kan i en afgørelse om opholdsforbud fastsættes undtagelser fra forbuddet, således at fysisk tilstedeværelse i visse tilfælde er lovlig.

6.5.5. Den beskyttede personkreds

Tilhold og opholdsforbud er ikke begrænset til at beskytte bestemte personer eller grupper af personer. Det er således ikke kun samlivsrelaterede krænkelser, der kan føre til tilhold eller opholdsforbud. De kan også gives for at beskytte f.eks. offentligt eller privat ansatte, kendte mennesker eller ved nabokonflikter eller chikane udøvet af en psykisk syg.

Personkredsen, der er beskyttet af et tilhold eller opholdsforbud, skal være konkretiseret i afgørelsen.

Hvis der gives et tilhold, der skal beskytte de ansatte i en butik eller på en anden arbejdsplads, skal tilholdet formuleres, så det fremgår, at det er "de ansatte", der er beskyttet. Hvis det kun er en enkelt person blandt de ansatte, der er blevet chikaneret mv. og skal beskyttes, skal tilholdet eller opholdsforbuddet alene omfatte denne person.

Et tilhold eller opholdsforbud kan, jf. § 6, udstrækkes til at omfatte et medlem af forurettedes husstand, hvis det findes nødvendigt af hensyn til formålet med tilholdet eller opholdsforbuddet.

6.5.6. Tidsmæssig udstrækning

Det fremgår af lovens § 5, at der skal fastsættes en frist for den tidsmæssige udstrækning af tilholdet eller opholdsforbuddet.

Et tilhold kan gives for et bestemt tidsrum på indtil 5 år, og et opholdsforbud kan gives for et bestemt tidsrum på indtil 1 år.

Fristen på henholdsvis 5 år og 1 år kan forlænges ved meddelelse af et nyt tilhold eller opholdsforbud før eller ved udløbet af fristen, hvis betingelserne for at give et tilhold eller opholdsforbud på det pågældende tidspunkt fortsat er opfyldt.

Hvis parterne frivilligt genoptager kontakten, bortfalder tilholdet eller opholdsforbuddet. Dette gælder, selv om det kun er for en kortere periode, at kontakten bliver genoptaget.

Hvis den, der har fået et tilhold eller opholdsforbud, frifindes for et forhold, som er indgået i grundlaget for afgørelsen, skal tilholdet eller opholdsforbuddet ophæves. Dette gælder dog ikke, hvis der i øvrigt er grundlag for foranstaltningen.

6.6. Bortvisning

6.6.1. Betingelser for bortvisning

Betingelserne for bortvisning fremgår af § 8 i lov om tilhold, opholdsforbud og bortvisning.

Efter § 8, nr. 1, kan en person bortvises, hvis der er begrundet mistanke om, at den pågældende mod et medlem af sin husstand har begået en overtrædelse af straffelovens §§ 210, 213 eller 266 eller en overtrædelse, der er omfattet af straffelovens kapitel 24-26, og som efter loven kan medføre fængsel i 1 år og 6 måneder. Herudover kan der ske bortvisning, hvis den pågældende har optrådt på en måde, der i øvrigt indebærer en trussel om vold mod et medlem af husstanden.

Politiet og anklagemyndigheden har mulighed for at gribe ind i såvel sager, hvor der er begået aktuel kriminalitet, som sager hvor der alene er trussel om simpel vold efter straffelovens § 244, selv om sådanne trusler efter § 266 ikke i sig selv er strafbare. Der er således efter denne del af bestemmelsen mulighed for at gribe ind på et tidligt tidspunkt, hvor bortvisning kan forhindre fremtidig vold mv.

Efter § 8, nr. 2, er det tillige en betingelse for bortvisning, at der er bestemte grunde til at antage, at den pågældende ved forbliven i hjemmet vil begå en lovovertrædelse, der er nævnt i nr. 1, f.eks. vold eller trusler (indikationskravet).

Bestemmelsen i retsplejelovens § 762, stk. 1, nr. 2, om varetægtsfængsling i tilfælde af gentagelsesfare er efter forarbejderne vejledende ved fortolkningen af bortvisningsreglerne. Betingelserne om gentagelsesfare i lov om tilhold,

opholdsforbud og bortvisning vil dog i højere grad kunne være opfyldt, selv om der kun er oplysning om et enkelt endnu ikke pådømt forhold.

6.6.2. Betydning af bortvisning

Ved bortvisning kan en person over 18 år forbydes at opholde sig i sit hjem, jf. lovens § 7.

Det fremgår af forarbejderne (pkt. 3.6. i de almindelige bemærkninger til lovforslag nr. L 110 af 9. november 2011 til lov om tilhold, opholdsforbud og bortvisning), at reglerne om bortvisning er en videreførelse af bortvisningsloven (lov nr. 449 af 9. juni 2004). Hjem er ikke defineret i forarbejderne til lovens § 7, men det fremgår af bemærkningerne til den tidligere gældende bestemmelse i bortvisningslovens § 1, at der ved "hjem" forstås den pågældende persons bopæl (der samtidig danner den fysiske ramme for en familie eller et lignende personligt fællesskab). Det er uden betydning, om pågældende er lejer eller ejer. Udover f.eks. en lejlighed eller et hus med dertil hørende rum og grundarealer vil også husbåde og beboelsesvogne mv. være omfattet af bestemmelsen. Derimod er ferieboliger ikke omfattet, medmindre der på det pågældende tidspunkt er tale om det fælles hjem.

Alle myndige personer, der hører til den pågældende husstand, kan bortvises. Der vil således være mulighed for at bortvise en mand, en kvinde, voksne børn eller andre medlemmer af husstanden.

Ved ophold forstås enhver fysisk tilstedeværelse på den pågældende lokalitet. En bortvisning indebærer, at den blotte tilstedeværelse i boligen udgør en overtrædelse, selv om der er tale om et helt kortvarigt ophold. En bortvisning rummer således både et opholds- og adgangsforbud.

Der kan i afgørelsen om bortvisning fastsættes undtagelser fra forbuddet mod ophold.

Det bemærkes, at tilhold, opholdsforbud og bortvisning frit kan kombineres, hvis betingelserne for foranstaltningerne er opfyldt. Det skal dog understreges, at den eller de mindst indgribende foranstaltninger skal vælges, jf. afsnit 6.7. vedrørende proportionalitet.

6.6.3. Personkredsen

Bortvisning kan anvendes med henblik på generelt at beskytte personer mod vold, trusler og lignende eller seksuelle krænkelser i det fælles hjem og kan anvendes til at beskytte alle medlemmer af husstanden.

6.6.4. Tidsmæssig udstrækning

Det fremgår af § 10, at en bortvisning sker for et tidsrum på indtil 4 uger.

Fristen på 4 uger kan forlænges med højst 4 uger ad gangen, hvis betingelserne for bortvisning fortsat er opfyldt ved udløbet af den hidtidige frist.

Hvis den bortviste frifindes for et forhold, som er indgået i grundlaget for en bortvisning, skal bortvisningen ophæves. Dette gælder dog ikke, hvis der i øvrigt er grundlag for foranstaltningen."

b. Is there an order that has the effect of moving/barring a violent (or threatening) person from the common or family home (eviction or barring order)? For how long can the violent/threatening person be barred?

Yes, see above concerning BO. This can be imposed for up to 4 weeks and will alway be imposed for a specific period of time.

c. Which of these types of protection are imposed most often in practice?

As the regulation is rather new, we have no material on the number of im0posed restriction orders of different kind.

A rapport published by Rigspolitiet (Centrale Nøgletal, Anmeldelser og Sigtelser 2007-2012) show that in 2012, 900 reports and 880 charges on violations of PO-Coms, PO-Visits and BOs, were registrered. This rapport operates with newer numbers (2012) but there is only statistics on how many cases on PO-Coms, PO-Visits and BOs that result in a report and a charge *for violation*.

d. Can the different types of protection orders also be imposed in combination with each other (e.g., a no contact order and a prohibition to enter a street)?

PO-Coms, PO-Visits and BOs can freely be used in combination providing the conditions for the arrangement are independently fulfilled.

One ought to choose the least imposing restrictions, as long as this or these is estimated to be suitable to enforce the protective purpose relative to the aggrieved.

e. If so, which combinations are most popular in general?

See answer c.

8) a. Are there any formal legal requirements for the formulation of protection orders? In other words, are there certain elements that always need to be included in the decision or does it, for instance, suffice if the restrained person is told 'not to contact' another person?

As mentioned above are protection orders decisions under the Administrative Act and therefore need to be in written form and with an explaination (*begrundelse*). See question 1 d).

b. How does this work in practice? How elaborate are these protection order decisions in general?

No information.

9) a. Are there any legal limitations to the scope of these protection orders – e.g., only a couple of streets – or are the legal authorities free to decide the scope of protection orders any way they see fit?

As indicated above: all restriction orders have to be proportional, meaning that they can only be imposed if there are proportional with view to the violation of the rights/freedom of the victim (see THL § 12; see also *Rigsadvoaktens meddelselse punkt 6.7.*).

This means that the authorities have to choose the measure being the least intrusive in archiving the aim of protecting the victim.

PO-com

The comments on the legislation indicate that PO-com in many cases will be proportional as it usually only includes a minor disturbance of the daily life of the person in question. This means that there are no further limitations to be taken into account than the general principle of proportionality, mainly taking into account the interest of both parties in the given specific situation.

PO-visit

The geographical area under a PO-visit-order has to be defined under considerations of a number of issues/considerations: for example will be the place of residence and work/education, as well as other places which are often frequented by the person in question, will be of importance in defining the area in question. Those considerations are part of the evaluation with view to the question of proportionality. On the other hand

is the view to the violation and the interests of the victim; the decision on a PO-visit is in so far taking both perspectives into account. See also question 9.b. below.

BO

The wording of the rules on BO have no specific limitation with view to the area; there are just referring to "the home" (*hjemmet*)'. The person in question get banned from being present at home, this is with view to the protection of the other persons at home. Again the decision on a BO has to be made under the principle of proportionality.

b. If there are limitations, which factors do the legal authorities have to take into account when deciding on the scope of protection orders?

See also above.

PO-visit

The aim of a PO-visit is the create what could be called a "zone of safety" for the victim. However, if such a zone can be established and if it gets established what will be the geographical scope are questions which will be answered under principle of proportionality.

The commentary of the legislation point out that the area in question shall be defined as precise as possible or that there is no clear limitation for the scope of the area in question.

All kind of aspects have to be taking into account in the specific situation: are both parts living close to each other? Do they frequent the same places? Are there alternative places to be used instead? Has the victim felt forced to move? Etc. all factors have to be considered and both the interest of the perpetrator and the victim have to be taken into account.

The geographical area, the prohibition covers, should be carefully described, i.e. by the use of maps and the prohibition ought not be extended too far (not more than necessary).

One crucial question is, if the parties in question have children together. This gives raise to specific considerations concerning the needs of the children (is it in the interest of children to have contact with both parts? If yes, how does this get organized?).

It follows from THL Section 13 that 'specifically authorized stay or contact' is not included by the PO-Visit and in the notes to the section shows that this form of contact for example could be if a joint child is acutely ill and there is nobody else who can take the child to the hospital.

Similar is the situation, where the respondent shall pick up necessary personal effects in the home – i.e. lifesaving (vital) medicine or objects necessary for the respondent's business performance. It is a condition that this form of contact always happen with police escort and police presence.

c. Which factors do they take into account in practice?

The only accessible material on this is an interview with 4 police officers. The interviews are reproduced in the publication '*Stalking I Danmark. En kortlægning af erfaringer, konsekvenser og støttebehov' and is published in cooperation between University of Southern Denmark and Statens Institut for Folkesundhed. (p. 82).*

In these interviews, it is shown that the police officers have experiences with imposing PO-Visits individually, thus taking account the legitimate interests of both parties, i.e. in connection with visiting rights with children.

10) a. How are prohibitions to enter a certain area mostly delineated? For instance, are these areas indicated on a map or are they indicated by naming the surrounding streets? Or do legal authorities use radiuses ("person A is no longer allowed to be within 200 meters of the victim's house")?

See above.

b. What is the average scope of an order that prohibits someone to enter a certain area (one street, multiple streets, a village)?

See above.

11) a. Are there any legal limitations to the duration of protection orders? Do the orders always have to be issued for a specified or a determined period? And is there a maximum or minimum duration attached to the orders?

PO-com

According to THL Section 5 can a PO-Com be issued for a specific period of time to up to 5 years. This means that the 5 years are the maximum, the PO-Com can be limited to a shorter period.

If the conditions of issuing a PO-Com are still met after the period of 5 years has passed can the PO-Com be extended by the issuing of a new PO-Com.

PO-visit

PO-Visit can be issued for a specific period time to up to 1 year, see THL Section 5. The PO-Com can be as well limited to a shorter period of time.

If the conditions of issuing a PO-Visit are still in place after the period of 1 year has passed can the PO-Visit be extended by the issuing of a new one.

PO-com and PO-visit

If the parties establish peaceful relations within the period of the PO-Com/Po-Visit, those restriction orders can be waived before the end of the time period.

A PO-Com or a PO-Visit can also be withdrawn if the protecteé of the PO-Com or PO-Visit so requests. The police, however, has the permission to concretely assess whether general considerations are in favor of the preservation of the arrangement, thus securing that the protecteé has not, for example, been threatened into requesting the PO-Com withdrawn.

Bortvisning

A BO is for a limited time for up to 4 weeks, cf. THL Section 10. The BO can be extended after the period of 4 weeks by a maximum of 4 weeks at a time if the requirements of the BO continues to be met after the expiration of the previous BO.

b. Which factors do legal authorities generally take into account when deciding on the duration of a protection order?

As mentioned above, one central, decisive factor to be taken into account is the principle of proportionality.

c. What is the average duration of the different protection orders (half a year, one year, two years)?

No information.

12) a. To what extent (if any) do the wishes of the victims influence the imposition of protection orders? Can victims, for instance, request the cessation of protection orders?

As mentioned above can the victim initiate the proceedings concerning protection orders. The victim can also request the withdraw of a PO-com or a PO-visit, but the loice is not bound by this request.

b. In cases where a protection order is not directly requested by the victims, is there always an assessment of the victims' need for a protection order or do victims have to bring this up themselves?

No, there will always be a consideration of the victim's needs.

c. Can victims influence the type/scope/duration of protection orders? Are they, for instance, involved in deciding on the type of protection order or the scope of protection orders?

The decision is made by the authorities, not the victim. The authorities will take all relevant considerations into account.

13) a. Can offenders formally challenge/appeal the imposition of protection orders?

According to THL Section 15, subsection 3 is it the fuction of the Prosecutor General (*statsadvokat*) to deal with complaints (appeals) concerning PO-coms, PO-visits and BO's. The procedure does not stop the imposed restriction order while the issue is under consideration and this decision cannot be appealed within the adminstartive system. Also the decision not to impose a restriction order can be appealed (by the victim).

Furthermore, THL § 17, stk. 1, enables the person in question to demand of the police to bring the decision on a PO-visit or a BO to the court within 14 days after being informed of the restriction order. The courts have to deal with the question of the restriction orders in very clear time frames (PO-visit within a week, BO within 24 hours)

b. To what extent (if any) do the wishes of the offender influence the imposition of protection orders? Are, for instance, (disproportionate) disadvantageous consequences for the offender taken into account?

Yes, see above, for example under question 9: the decision on protection orders will always take all interest into account, including the interest of the perpetrator. This is a crucial part with view to the principle of proportionality. This means, beside other issues, that the police has to choose the least intrusive measure which can obtain the proected needed.

In practice, the decision on restriction orders will always be an individual decision taking the specific circumstances and the specific situation at hand into account.

b. Can offenders influence the type/scope/duration of protection orders? Are they, for instance, involved in deciding on the type of protection order or the scope of protection orders?

See above, the interest of the offender are taking into account and he/she has the be heard and can comment/suggest. But he/she is not involved in the decision as such (nor is the victim).

14) To what extent (if any), do practical impediments (such as shortage of police personnel, lack of available resources in certain (rural) areas) to the enforcement of protection orders play a role in the decision to impose a protection order? Do legal authorities, for instance, refuse to impose certain protection orders, because they know their enforcement in practice is problematic or do they impose these protection orders anyway (e.g., for reasons of 'sending a message' to the offender)?

It seems very unlikely that those kind of practical impediments play a role in Denmark.

15) Can previous protection orders be taken into account in other ensuing legal proceedings against the same perpetrator (e.g., as evidence of a pattern of violence)?

All kind of relevant information can be taken into account.

16) a. When a protection order is issued in a case of domestic violence, are the children automatically included in the protection?

It can not be said that the protection order has automatic effect on children as such, the specific effect needs to be defined within the order in question.

b. How is the order granted/implemented if the violent partner has visitation rights?

It is out-lined in a information-brochure by the *Rigsadvokaten* ("Råd og vejledning – Til dig, der er udsat for forfølgelse, chikane eller stalking") that in case there are children involved (shared children of the perpetrator and the victim) this will be considered when issuing a restriction order. This means that it is possible that the contact to the children can be continued. The question of contect with the children is dealt with by the "Statsamt" and is not necessarily connected to the question of the restrictionorder.

c. Are there any problems with protection orders and custody/visitation decisions by the courts?

We have no information on this.

17) a. Are so-called 'mutual protection orders' (i.e., protection orders that restrain both the victim and the offender) allowed in your country?

b. If not, in which cases are mutual protection orders prohibited and what is the rationale behind this prohibition?

The Danish system does not operate with those.

18) a. Are protection orders provided free of charge?
b. If not, who has to pay for the legal costs/court fees?
c. Can these costs/fees constitute an undue financial burden for the victim (and bar him/her from applying for a protection order)?

The procedure as such is free of charge, however, if the case also leads to criminal proceedings the court in charge will decide on the question of cost both with view to the criminal proceedings and the restriction order:

"§ 19, Stk. 6. Pålægges der klageren sagsomkostninger i en straffesag, der angår forhold, som har givet anledning til opholdsforbuddet eller bortvisningen, pålægges det ved dommen i straffesagen tillige den pågældende at betale omkostningerne ved sagen om opholdsforbud eller bortvisning. Retten kan dog undtagelsesvis bestemme, at disse omkostninger helt eller delvis skal betales af statskassen, såfremt særlige omstændigheder taler for det."

2.2.2. ENFORCEMENT OF PROTECTION ORDERS

If protection orders can be imposed through multiple areas of law, please make a distinction between these areas of law in answering the following questions. For instance, if a protection order can be imposed in both criminal and civil law, make sure that you answer for both areas of law where and how protection orders are registered (question 1).

19) Where and how are protection orders registered?

This is clarified in the internal regulation issued by the Prosecutor General (Rigsadvokaten): *Meddelelse om behandlingen af sager om samlivsrelaterede personfarlige forbrydelser, herunder spørgsmål om tilhold, opholdsforbud og bortvisning (RM 3/2008 – rettet februar 2013), afsnit* 6.10.:

"6.10. Det centrale Kriminalregister

I tilfælde, hvor der gives et tilhold, et opholdsforbud eller en bortvisning, skal dette indberettes til Kriminalregistret (non-offical Danish translation: "In cases of imposing of PO-com, PO-visit or BO shall this be reproted to the Criminal Register.").

20) a. Is the victim always informed of the imposition of a protection order and of the conditions that the offender has to comply with?
b. In what way is the victim informed? Does this happen automatically? By mail or letter?

As mentioned above the protection order will usually be initiated by the victim and the procedure is according to the Administration Act (*forvaltningsloven*) which means, besides other issues, hearing of parts.

21) Who is or which authorities are responsible for monitoring the compliance with protection orders? In other words, who checks whether these orders are violated or not?

The is no specific monitoring system, the general principle is that the victim requests proceedings for violating restricting orders. It is also possible that the authorities initiate proceedings if "general considerations" (*almene hensyn*) demand this.

"6.13.Overtrædelse af tilhold, opholdsforbud eller bortvisning – påtale og straf

Straf for overtrædelse af et tilhold mv. forudsætter, at afgørelsen er truffet af den kompetente myndighed og meddelt den pågældende, samt at afgørelsen er lovlig.

Det følger af lovens § 21, stk. 3, at påtale i sager om overtrædelse af tilhold, opholdsforbud eller bortvisning sker efter begæring fra den forurettede, medmindre almene hensyn kræver det. Det sikres herved, at mindre alvorlige forseelser ikke forfølges, hvis den forurettede ikke ønsker det. En anmeldelse fra den forurettede anses som en anmodning om påtale, medmindre andet fremgår af anmeldelsen, jf. retsplejelovens § 720, stk. 2, 2. pkt."

And THL § 21

"§ 21. Den, der forsætligt overtræder et tilhold efter § 1, et opholdsforbud efter § 3 eller en bortvisning efter § 7, straffes med bøde eller fængsel indtil 2 år.

Stk. 2. Ved fastsættelse af straffen efter stk. 1 skal det indgå som en skærpende omstændighed, at forholdet har udgjort et led i en systematisk og vedvarende forfølgelse eller chikane.

Stk. 3. Overtrædelse af stk. 1 påtales kun efter den forurettedes anmodning, medmindre almene hensyn kræver det."

22) a. Which activities can the monitoring authorities undertake to check the compliance with protection orders? (e.g., GPS, extra surveillance, house visits, etcetera)
b. Which of these activities do they generally undertake in practice?
c. If protection orders can be monitored with the help of technical devices (e.g., GPS), how often is this used in practice?
d. Are protection orders actively monitored or is it generally left up to the victim to report violations?
e. How do the monitoring authorities generally become aware of a violation of a protection order: through the victim or through pro-active monitoring activities?

See above.

23) a. Is contact with the offender initiated by the victim considered a breach to the protection order?

No, it cannot be said that contact initiated by the victim is perceived as a breach. Furthermore; according to the comments of THL Section 5 a PO-Com or a PO-Visit is withdrawn when the parties have established contact or found a peaceful way of co-existence, even if this is only for a shorter period. It must, however, be emphasized in this context that it is a requirement that the co-existence/ contact is voluntary.

b. What (if any) role does contact initiated by the victim him/herself play in establishing or proving a protection order violation?

Not all form of contact mean that things have been developing in the right direction. In any case the question of withdrawing a restriction order has always to be considered specifically in every situation to determine whether the contact can be said to be voluntary and also if the order is still needed.

c. What (if any) role does contact initiated by the victim him/herself play in the official reaction to protection order violation? Are the authorities, for instance, less inclined to impose a sanction on the offender if the victim initiated contact him/herself?

As indicated above, contact initiated by the victim can be a sign of normalization and might lead to withdrawing a restriction order, but this is not the only factor. In connection with sanctioning violations all kind of aspects will be taken into account.

24) a. Which evidentiary requirements have to be met before a violation of a protection order can be established?

b. Which procedure(s) has to be followed in order for the protection order to be enforced after a violation?

The requirement for evidence are the same as for all criminal proceedings.

25) a. What are possible reactions/sanctions if a protection order is violated?

See 26

b. Are there only formal reactions/sanctions available, or are there also informal reactions possible to the breach of a protection order (e.g., a change of the conditions, a warning)?

We have no information on how this is handled in practice. Thus, it must be assumed that, as a main rule, no informal sanctions (warnings, changing of conditions of the PO-Com, etc.), are used, but rather that they act within the procedures provided by the law, see question 26.

c. Which (official or unofficial) reaction usually follows on a protection order violation?

We have no information on this question.

d. In your opinion, are the sanctions/reactions to protection order violations 'effective, proportionate and dissuasive'?

Violations can be punished under the criminal law; this seems to be of appropriate character and severity. We have, however, no basis for evaluating if in practice the reactions to violations can be seen as "effective, proportionate and dissuasive".

26) a. Is the violation of civil, administrative or other protection orders criminalized? In other words, is the violation of any protection order an offense in itself?

Yes, THL § 21, criminalizes the violation of PO-com, PO-visit and BO, the violation will can be punished with a fine or prison to up to 2 years

It is a condition for the criminal liability that the violation was "knownly/willingly" (*forsætlig*). If the contact was justified (*særlig beføjet*) no punishment will take place.

If the court considers the punishment, it is seen as an aggravating circumstance that the situation in question has been part of a systematic and on-going harassment (stalking). Also former and resent violations and for example threats will be taken into account.

As mentioned above, the criminal proceedings will usually be initiated by the victim, smaller violations which the victim is not concerned of, will therefore usually not be subjected to criminal proceedings.

b. If so, what is the range of sanctions (minimum and maximum penalty) attached to a violation?

The minimum sanction is a fine (1000 DKR, cf. internal regulations of the Prosecutions Office) while the maximum sanction is prison up to 2 years.

The period of possible imprisonment gives the police the opportunity to confine the respondent pre-trial detention (if the other conditions of pre-trial detention are in place), if he does not respect the restriction order, cf. Code on Judicial Process Section 762, subsection 1.

According to practice, the punishment for first-time violations is usually a fine. However, there are examples where the respondent is punished with prison, even for a first-time violation, when the violation constitutes a considerable amount of violations, highly bothersome to the victim. Similarly, deprivation of liberty can arise in first-time violations, when the violation is of considerable severity and has created significant insecurity for the victim.

For repeated violations, the courts will usually impose a shorter period of prison.

The question of sanctions is also further elaborated in the internal regulation issued by the Prosecutor General (Rigsadvokaten).

"6.13. Overtrædelse af tilhold, opholdsforbud eller bortvisning – påtale og straf

Straf for overtrædelse af et tilhold mv. forudsætter, at afgørelsen er truffet af den kompetente myndighed og meddelt den pågældende, samt at afgørelsen er lovlig.

Det følger af lovens § 21, stk. 3, at påtale i sager om overtrædelse af tilhold, opholdsforbud eller bortvisning sker efter begæring fra den forurettede, medmindre almene hensyn kræver det. Det sikres herved, at mindre alvorlige forseelser ikke forfølges, hvis den forurettede ikke ønsker det. En anmeldelse fra den forurettede anses som en anmodning om påtale, medmindre andet fremgår af anmeldelsen, jf. retsplejelovens § 720, stk. 2, 2. pkt.

Forsætlig overtrædelse af et tilhold, et opholdsforbud eller en bortvisning straffes med bøde eller fængsel indtil 2 år, jf. § 21.

Det fremgår af § 21, stk. 2, at det ved fastsættelse af straf skal indgå som en skærpende omstændighed, hvis forholdet har udgjort et led i en systematisk og vedvarende forfølgelse eller chikane – såkaldt "stalking". Det forudsættes ved bestemmelsen, at der i sådanne tilfælde som udgangspunkt anvendes ubetinget frihedsstraf.

Det fremgår af lovens forarbejder, at det forhold, at overtrædelse af tilhold ikke længere er omfattet af straffeloven (tidligere § 265 i straffeloven), ikke skal ses som udtryk for en ændret vurdering af alvorligheden af sådanne overtrædelser. Opretholdelse af den tidligere strafferamme på bøde eller fængsel indtil 2 år for overtrædelse af tilhold understreger, at der på ingen måde er tilsigtet en lempelse med ændringen.

Efter forarbejderne bør anklagemyndigheden og domstolene generelt være opmærksomme på mulighederne for nuancering af straffen for overtrædelse af tilhold, opholdsforbud og bortvisning, således at der tages hensyn til den konkrete grovhed i det enkelte tilfælde, herunder hensyn til den belastning, som den forurettede har været udsat for, og til udviklingen i samfundets syn på forfølgelse og chikane.

The *traveaux preparatoire* indicate that the prosecution service shall use the practice concerning sanction for theats, Criminal code § 266, as a leading guide for their suggestion of sanctions in cases of violations of restriction orders. This means:

The first time a PO-Com is violated, it will generally be sufficient to apply for a fine, unless there are aggravating circumstances.The proposed fine in the first case must be at least DKR 1,000. The penalty may be increased depending on the seriousness.

In the case of several first-time offenses for repeated violations, there must be a substantial increase in the fine, with emphasis on the number of offenses, their gravity, etc..

In the case of a very large number of violations that have been extremely uncomfortable for the victim, there may be a basis for a first time offense to apply for a custodial sentence.

We have no case law concerning punishment for violations under the new regulation in Denmark, the former practice can be shown by the following cases:

- In case TfK2007.807/2Ø was the defendant found guilty of having, during a longer period in more than 400 occasions, violated former Section 265 of the Criminal Code by seeking out or by contacting, either in person or by phone, his former wife. He received a suspended sentence of 1 year in prison. '
- TfK2006.497V. The accused had been given a warning not to violate A's peace. It appeared from the warning that it did not include reminders on an economic demand, the accused had against A. The accused was convicted of having sent four letters with offensive addressing, since in addition to the name and address were inflicted texts such as "Swindler / vandal and violent man" on the envelopes. The court fixed the penalty to 4 daily fines, each of DKR 500.
- In TfK2000.60 / 2Ø the accused, previously unpunished, had in 73 cases contacted his children's mother, although he was issued a warning for violating her privacy. The court fixed

the penalty for mild imprisonment (hæfte; now abolished) in 30 days, while emphasizing on the one hand that there was a large number of violations, and on the other hand, that most inquiries were of very short duration, and the accused at no time had been threatening or violent. Because there was an interaction mechanism for the kids, the High Court suspended the sentence.

- TFK2009.401Ø, where the defendant was punished with 30 days imprisonment for one count of violating of Section 265 of the Criminal Code. The defendant had been punished three times prior for violations of a PO-Com and two of these was decided with respectively one fine of DKK 2,000 and daily fines of DKK 500. The third case, additionally involving threats against witnesses, cf. Section 123 of the Criminal Code, was adjudicated to 4 months imprisonment.
- TfK2009.92Ø, where the defendant was punished with 14 days imprisonment for 3 counts of violating a PO-Com. Prior to conviction in the High Court, the defendant accepting a fine on DKK 1,000 out of court for an additional violation of the PO-Com.
- TfK2006.183V, where the defendant, who had twice been punished for violating Section 265 of the Criminal Code and received a 10-day custodial sentence along with a fine of DKK 3,000 for two violations of a PO-Com. The fine was firstly set at 5 daily fines of DKK 300 and secondly at 10 daily fines at DKK 300.
- TfK2005.811Ø, where the defendant was punished with 20 days imprisonment for 11 violations of Section 265 of the Criminal Code, by having driven past his former girlfriends residence. The defendant was previously punished for violation of Section 265 of the Criminal Code with 10 daily fines of DKK 500.
- TfK2005.705V, where the defendant was sentenced 30 days imprisonment by repeatedly contacting the victim, either in person or by phone. The defendant was previously punished with daily fines for violation of Section 265 of the Criminal Code.
- TfK1999.119V, where the defendant, who was previously sentenced daily fines for violations of, amongst others, Section 265 of the Criminal Code, violated a warning nine times by contacting the victim, while he also had stolen her purse. The punishment was set at mild imprisonment (hæfte) for 30 days.
- TfK2011.883.2V, where the defendant was acquitted for violating Section 265 of the Criminal Code, as the PO-Com had expired. The defendant was punished three times prior for violating said PO-Com. The first time, he was sentenced 5 daily fines of DKK 200, by two violations of the PO-Com. The second time, there was one count of violating the PO-Com, and here the punishment was set at 5 daily fines of DKK 300. Third time was also one count, settled out of court with a fine of DKK 2,000.

Cases of violating PO-visit and BO can be expected to be punihed more severe than violations of PO-com, as the conditions/reasons for imposing those two restirction orders are more serious than those for a PO-com.

c. If so, how do the police generally react to a violation of a civil, administrative or other protection order?

There is no available material on the approach of the different police procedures in relation to this problem, but it is estimated that the police act in compliance with the law, thus pursuing the case (cf. the above mentioned process) when the victim reports a violation of a PO-Com etc.

d. If not, can the victim still call in the help of the police and how do the police react?

This question is not relevant for Denmark.

27) a. Is the monitoring authority capable of issuing a sanction following the breach of the order or does the authority have to report the violation to another authority in order for the sanction to be issued?

b. If so, are they obliged to report all violations or do they have a discretionary power not to report violations?

c. If so, how is this discretionary power used in practice?

A violation is considered at criminal offence and is therefore dealt with within the penal system.

28) Do supervising authorities receive training in how to monitor and enforce protection orders?

Not relevant.

2.2.3. TYPES AND INCIDENCE OF PROTECTION ORDERS

*This section inquires after the presence of (empirical) studies into the **nature and incidence** of protection orders in your country. If such studies have been conducted, please refer to these studies and give a brief (English) summary of the research design, methods and most important outcomes of the studies in an appendix.*

29) Is there any (empirical) information available on the number of protection orders imposed on a yearly basis in your country? How often are protection orders imposed on a yearly basis? Please distinguish per area of law

30) a. Which types of protection orders (no contact, prohibitions to enter an area, eviction from the family home, other) are imposed most often?

b. Which combinations of protection orders are most popular?

31) For which types of crimes are protection orders generally imposed (IPV, stalking, rape, other)?

32) Is there any (empirical) information available on specific victim and offender characteristics?

a. Are protection orders generally imposed against male offenders on behalf of female victims?

Which percentage of the restrainees already had a prior police record?

b. Which percentage of the restrainees already had a previous protection order imposed against him/her?

2.2.4. PROTECTION ORDER EFFECTIVENESS

*This section inquires after the presence of (empirical) studies into protection order **effectiveness** and the reaction to the violation of protection orders. If any such studies have been conducted in your country, please refer to these studies and give a brief (English) summary of the research design, methods and most important outcomes of the studies in an appendix.*

33) a. Is there any empirical information available on the effectiveness of protection orders in your country? Do protection orders stop or reduce the unwanted contact? Or do they have another effect (e.g. improve the well-being of the victims, change in the nature of the violence)?

b. Which percentage of the imposed protection orders are violated?

c. If protection orders are still violated, are there any changes in the nature of the violence (e.g., violent incidents are less serious)?

d. Is there any empirical information on the role that victims play in protection order violations (e.g., percentage of cases in which the victims themselves initiated contact)?

34) Is there any empirical information available on factors which significantly influence the effectiveness of protection orders, either in a positive or a negative way?

35) Is there any empirical information available on the formal and informal reaction of the enforcing authorities to violations?
    a. How often (what percentage) do violations lead to a formal reaction?
    b. How often (what percentage) do violations lead to an informal reaction?
    c. How often (what percentage) do violations lead to no reaction?

2.2.5. Impediments to protection order legislation, enforcement and effectiveness

36) Which impediments are present in your country when it comes to:
    a. Problems with protection order legislation
    b. Problems with protection order imposition/issuing/procedure
    c. Problems with protection order monitoring
    d. Problems with protection order enforcement
    e. Problems with protection order effectiveness?

37) In your opinion, what is/are the biggest problem(s) when it comes to protection orders?
    -tehottomuus
    - epäselvä käytäntö? Vaikea valvoa

2.2.6. Promising/ good practices

38) Which factors facilitate the:
    a. imposition
    b. monitoring, and
    c. enforcement of protection orders?

39) Which factors increase the effectiveness of protection orders? In your opinion, which factor(s) contribute most to the success of protection orders?

40) What would you consider promising practices in your country when it comes to protection orders? Why?

41) Do you have any recommendations to improve protection order legislation, imposition, supervision, enforcement and effectiveness?

2.2.7. FUTURE DEVELOPMENTS

42) Do protection orders feature at the moment in current discussions (in politics) on the protection of victims?

43) a. Will the legislation/practice on protection orders change in the nearby future? Are there, for instance, any bills proposing changes to the current practice?
    b. If so, what will change?
    c. Are there at the moment any pilots in your country with a new approach to victim protection orders

44) Which (if any) developments in protection order legislation or enforcement do you foresee in the nearby future?

45) You have probably heard about the introduction of the European Protection Order (EPO). From now on, criminal protection orders issued in one Member State have to be recognized in another Member State. What is your opinion on the EPO? Which problems/possibilities (if any) do you foresee in the implementation of the EPO in your Member State?