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

NATIONAL REPORT ESTONIA

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2. NATIONAL REPORTS: CONTENT AND STRUCTURE

2.1. INTRODUCTION

In the national reports we would like you to give a brief overview of which legislation/laws are relevant for victim protection purposes. Questions such as: 'Can you provide the key provisions which enable the imposition of protective orders?', 'What are the procedures by which these protection orders are imposed?', 'How can protection orders be enforced?' and 'Are there any recent reforms in protection order legislation?'

Next to the above questions – which all refer to the law in the books – we are also interested in how the law is implemented in practice. It is of vital importance to see how the laws work out in practice and if there are any impediments to their effective implementation. You are also asked to comment on the workings of protection orders in practice.

In many Member States protection orders can be obtained through multiple areas of law, so not only through criminal law, but also via a civil (summary) procedure, through administrative law or other areas of law. If this is the case in your Member State, please distinguish these areas of law when you answer the questions below.

What follows is the structure which the national legal reports should take with further guidance for each section. In case you are not able to answer a certain question, please state this specifically and include the reason why the question cannot be answered (e.g., 'no information available' or 'not applicable to domestic situation').

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. Through which areas of law (criminal, civil, administrative, other) can protection orders be imposed?
 - b. Are protection orders regulated in generic law or in specific laws on forms of (interpersonal) violence (e.g., domestic violence act)?
 - 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?

1a-c: A restraining (protection) order (*lähnemiskeeld*, hereinafter PO) may be imposed on the basis of Article 1055 of the Law of Obligations Act (entered into force 01.07.2002) either in civil procedure (on the grounds of Code of Civil Procedure) or in criminal procedure (on the grounds of Code of Criminal Procedure). Additionally, a temporary restraining order may be imposed in criminal procedure on the grounds of Code of Criminal Procedure. All these laws are available on the internet, also in English.¹

¹ They can be found through the website www.riigiteataja.ee (Estonian) and www.legaltext.ee (English).

- 2) a. 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).
- b. When it comes to criminal law: can protection orders be imposed in all stages of the criminal procedure?

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).

2a-b

Civil law:

The Code of Civil Procedure provides for two possible ways to impose a PO:

First, PO may be applied as a measure for securing *action* (Article 378 (1)3) or as a provisional legal protection (Article 546).

Second, PO may be imposed as a measure for the protection of personality rights (Article 475(1)7) in the frames of proceedings on *petition*.

Criminal law:

According to the Code of Criminal Procedure POs may be imposed in two different ways:

First, a temporary restraining order for protection of private life or other personality rights of a victim (Article 141-1) as a means of securing criminal proceedings; these orders concern a person suspected or accused of a crime against the person or against a minor;

Second, a restraining order to an offender convicted of a crime against the person or against a minor as a criminal court decision concerning a victim's petition (Article 310-1); essentially this order is similar to those imposed by civil courts.

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

In civil law, POs may be applied by court on the request of victims (plaintiffs/petitioners) in the frames of proceedings in an action or in matters on petition.

In criminal law a temporary restraining order is applied to a suspect or accused with the consent of the victim but at the request of a Prosecutor's Office and on the basis of an order of a preliminary investigation judge or on the basis of a court ruling. As for a restraining order to a convicted offender the court may apply it at the request of the victim.

- 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?)

In all procedures a decision is taken by courts (or investigation judges). In the context of temporary orders in criminal procedure an important role is assigned to Prosecutor's Office (these POs are applied at their request).

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

Civil law:

PO as a securing action or a provisional legal protection: in principle, similar POs can be issued without hearing the offender only in trial *in absentia* provided that the summons are served on the defendant in a proper way.

PO may be imposed as a measure for the protection of personality rights: before applying a restraining order the court *shall* hear the person with respect to whom application of such measure is requested.

Criminal law:

In order to issue a ruling on application of a temporary restraining order, a preliminary investigation judge *shall* examine the criminal file and interrogate the suspect or accused.

- 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?

Civil POs are available in the case of bodily injury, damage to health, violation of inviolability of personal life or any other personality rights.

In criminal proceedings PO may be applied only to suspects, accused or convicted offenders related to crimes against the person or against a minor.

- 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)?

A temporary restraining order (applied on accused or suspects) is always dependent on a criminal procedure. In criminal procedure a PO may be applied only to *convicted* offenders. In all other cases civil POs are not dependent on criminal procedures. POs applied as a measure for securing action are dependent on the “main” procedure.

- 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)

Civil law:

PO as a securing action or a provisional legal protection: in principle, this is an ordinary civil court procedure.

PO may be imposed as a measure for the protection of personality rights: this is a quite simple procedure on petition (not action). A person shall file a petition with the court.

Criminal law:

A victim may not initiate a procedure related to a temporary restraining order. However, s/he may file a (legally not binding) request with an investigative body or the Prosecutor’s Office.

PO by criminal court: a victim shall file a relevant application which will be decided by the court.

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

Normally decisions are taken by courts (investigative judges) during a very short period of time (in practice 2-3 days); the relevant procedures are very short as well.

In some cases POs will be a part of final decisions taken by civil or criminal courts.

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?

Civil law:

A ruling on application of a restraining order shall be served on the persons with regard to and in the interests of whom such measures are applied. The ruling enters into force upon its service on the persons obligated to comply with it.

Criminal law:

Ruling of application of temporary restraining order entered into force as of the making of the ruling. A copy of a ruling on establishment of temporary restraining order shall be submitted to a suspect or accused and victim. It shall be applied immediately. According to general principles of law, a person shall be made liable for violation of POs only upon service of a ruling on him or her.

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?

In principle courts are taking decisions very quickly (within a couple of days).

Civil court may secure a petition for application of a restraining order or apply provisional legal protection by a ruling *on its own initiative*. As a measure of provisional legal protection, measures for securing the action may be applied pursuant to the procedure for securing an action.

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?

In civil procedure a plaintiff/petitioner shall present any proves of bodily injury, damage to health, violation of inviolability of personal life or any other personality rights. In practice, courts are tuned positively towards any reasonable requests. Negative decisions in this context are quite rare.

In criminal procedure (application by a victim) there shall be presented any arguments to prove the necessity of a restraining order. Again, courts are rather positive towards these requests.

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

Legal representation is not required.

c. Is free legal representation/advice available?

In any types of procedures people may make use of state legal aid. However, it will be completely free only in exceptional cases (extreme poverty, etc).

Free advice and assistance can be provided to victims by state victim support service.

Free legal advice is provided by several NGOs and some of them are funded by national or municipal authorities.

- 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)?

Legal provisions are not very detailed. Thus, the Law of Obligation Act (Article 1055) permits to ban to approach other persons, to limit the use of housing or communication.

Temporary restraining orders in criminal procedure may prohibit staying in places determined by a court, approaching the persons determined by the court or communicating with such persons (Article 141-1 of the Code of Criminal Procedure).

In practice courts are more specific and provide for other details in POs.

- 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? During the barring period, is help provided to the victims? And to the offender?

A person may be detained for up to 48 hours for the prevention of the commission of an imminent criminal offence; for the countering of an immediate threat endangering a person's life or physical inviolability; for the ensuring of a restraining order imposed by the court (Article 7-33 of the Police and Border Guard Act). In practice this right is quite often used by the police to prevent/stop family violence.

The police may also on a temporary basis prohibit a person from staying in the vicinity of a certain person or in a certain place, require him or her to leave the vicinity of the said person or the said place, or to avoid coming to a certain distance from the person or place (Article 7-31). A prohibition on stay for up to 12 hours may be made in case of an immediate threat endangering a person's life or health; for the ascertainment or countering of a serious threat; for the ensuring of the safety of a protected person; for the ensuring of the conduct of offence proceedings. However, these provisions are rarely used in the context of family violence (but rather to protect public order, public health etc).

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

The most popular types of protection imposed under civil and criminal law include all three above-mentioned elements: 1) ban to approach to a person (normally "radius" requirements, e.g. 5-100 meters or hearing distance or recognizable distance); 2) ban to make phone calls, send e-mails and SMS, establish contacts through land mail or internet, etc; and 3) ban to stay in particular places (normally addresses of somebody's home, parents' place, office, school or kindergarten).

- 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)?

Yes

- e. If so, which combinations are most often imposed in general?

Most types of POs are imposed in combination of three elements mentioned above.

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

There are no formal legal requirements for the formulation of POs. In practice, they include some details. In general courts formulate orders in a short and clear manner. These orders are comprehensive as such, i.e. without contextualization.

- 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?

No. There are only very general limits described above under 7a.

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

The Law of Obligations Act (which is applicable in all POs but temporary restraining orders in criminal procedure) imposes a general requirement of reasonability and proportionality: the right to demand that behavior which causes damage be terminated does not apply if it is reasonable to expect that such behavior can be tolerated in human co-existence or due to significant public interest. However, there is no case-law or other information to specify how these provisions are understood by judiciary.

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

In practice, courts and Prosecutor's Offices will take into account various factors, but most of them are related to the principle of proportionality and personal characteristics of a defendant/offender.

- 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")?

Civil POs most often indicate concrete addresses or "radius" requirements (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)?

It may be very different in practice. To the best of our knowledge, entire streets and villages/towns/regions have never been mentioned in POs.

- 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?

POs cannot be imposed in civil or criminal procedure for more than 3 years.

Temporary restraining orders in criminal procedure will normally end up with the court decision on matters of the accusation. As for POs as a measure for securing the action, the civil court shall clearly and unambiguously adjudicate these issues in the conclusion of the judgment.

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

There might be different factors. Shorter periods of time can be normally found in cases that involve conflict over property rights.

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

In most cases courts impose POs for a maximum period of 3 years.

Temporary restraining orders are dependent on the length of criminal procedures. It will be safe to claim that in practice they are imposed for about 3 months.

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?

In civil procedures victims are playing the most important role: They can instigate the procedure. They are also free to terminate it.

As for temporary restraining orders in criminal procedure, they are imposed at the request of the Prosecutor's Office. However, victims consent is required to impose a PO, to amend its conditions and to annul it. A victim may request to annul a PO on its own initiative. However, a final decision will be taken by the court (investigative judge).

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?

In cases of family (domestic) violence the police officers are instructed to forward to victims the contacts of state victims support service (or to ask victim's consent to forward their contacts to such service). Victim support officials can make an assessment of victim's need for a PO (and they often do it in practice, especially in some regions).

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?

In civil procedures it is up to victims to request for POs and their specific conditions. Their role is much more modest in the context of temporary restraining orders in criminal procedure.

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

In principle, all POs can be challenged or appealed by the offender.

However, more restrictions are imposed on temporary restraining orders. Thus, appeals cannot be filed against a ruling on verification of reasons for temporary restraining order, except in the case the conditions of the temporary restraining order are amended. However, a suspect or accused, upon expiry of four months from the application of temporary restraining order, may submit a request to verify the reasons or to amend the conditions. A new request may be submitted four months after the review of the previous request. A shorter period (one month) is established for restraining orders that restrict the right of a suspect or accused to use his or her dwelling.

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?

In civil proceedings both parties are equal and they can present their arguments and concerns to the court. The basic interest of the court is to consider the requirement of proportionality. In practice more scrutiny is observed in cases which involve (possible) limitation of constitutional rights (e.g. property rights).

c. 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 question 13b.

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)?

There is no empirical material available to answer this question. The average number of POs is not very big (see below).

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)?

There are no legal provisions to provide answers to this question. In practice, however, it may play a noticeable role.

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

Children are not included automatically. The practice is different. In some cases children were included even when they were neither victims nor witnesses of violence. Quite more often, however, courts permitted contacts of PO holders with their children (under the control of children protection) even when PO protection was granted to another parent of a child.

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

See above.

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

Even if there are conflict between protection orders and custody/visitation decisions, there is always an opportunity to amend the condition of POs. More restrictive approach might be observed in POs applied in criminal procedure.

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 issue is not addressed in law. No information about similar arrangements in practice.

- 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)?

Civil law:

Protection orders are not provided free of charge (but relevant fees are not high). However, professional legal aid in this context might be quite expensive.

The civil court may decide that all or a part of the expenses related to a proceeding for application of a restraining order shall be borne by the state. This right is quite often used by courts in practice.

Criminal law:

No fees for a victim.

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?

POs may be reflected in several databases, most importantly in E-Toimik ("Electronic File") database. All relevant persons will be also provided with a copy of the court ruling/decision. A copy of a ruling on establishment of temporary restraining order shall be also sent to the Police and Border Guard Board.

- 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?

A victim will be informed while s/he will always receive a copy of a court ruling/decision. It will be done by ordinary mail. However, in some cases ruling/decision may be sent electronically.

- 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?

In national context the main responsibility lies with the police while a repetitive or serious breach of POs constitutes a crime. In practice, however, violations of POs are reported by victims themselves.

- 22) a. Which activities can the monitoring authorities undertake to check the compliance with protection orders? (e.g., GPS, extra surveillance, house visits, etcetera)

There are no special arrangements to check the compliance with protection orders. GPS surveillance is not foreseen for POs. However, the police are entitled to detain a person for up to 48 hours to ensure compliance with POs (see above).

b. Which of these activities do they generally undertake in practice?

The police are generally rather passive and may react provided there is an explicit request/application of a victim. The police shall commence criminal procedure if they became aware from the victim or other source about repeated or severe breach of a PO.

c. If protection orders can be monitored with the help of technical devices (e.g., GPS), how often is this used in practice?

No special technical devices are used in practice so far.

d. Are protection orders actively monitored or is it generally left up to the victim to report violations?

It is generally left 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?

There are no pro-active monitoring activities.

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

No.

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

There is no specific legal regulation addressing the issue. In practice, a contact initiated by the victim does not lead to punishment of the offender provided there are no other offences committed afterwards (and authorities are most often not aware of such contacts).

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?

There is no legal regulation or noticeable practice to answer this question.

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

In practice breaches of POs are established according to general procedural rules (collection of evidences).

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

In civil and criminal law the basic enforcement mechanism is prosecution of a person on the basis of the Penal Code. Violation of a restraining order is punishable if this poses a danger to the life, health or property of persons, or repeated violation of a restraining order (Article 331-2).

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

A pecuniary punishment (fine) or short-term imprisonment.

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)?

Informal reaction (warnings) of authorities (police, social workers, etc) is possible in practice.

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

The average number of conviction on the ground of Article 331-2 of the Penal Code is relatively small and it seems to concern mostly breaches of communication ban (see below). A pecuniary punishment is used much less often than imprisonment (real, suspended or substituted with community service). Real imprisonment is rare, however. It is very difficult to report about an average period of imprisonment while most of those convicted were punished for other offences in addition to breach of POs (and courts imposed aggregate punishment).

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

Yes.

It should be also noted that the number of registered violations of POs is considerably lower than the number of those punished for such actions (regretfully, there is no misdemeanour liability for minor and isolated violation of POs).

e. Are reports of PO violations, such as emergency calls by the victims, automatically given priority (e.g., with the police)?

No (to the best of our knowledge).

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 if serious and/or repetitive (see above).

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

Article 331-2 of the Penal Code (see above) provides for a pecuniary punishment (fine) or up to one year of imprisonment.

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

Reaction may be different. Criminal investigation will be commenced when appropriate (see above).

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

The victim may call in the help of the police in any case and the police will normally react using its various rights provided by the Police and Border Guard Act (e.g. detention).

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?

The monitoring authority might be a victim his/herself, and s/he needs to report the violation to the police.

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

It is up to the victim to report or not to report a violation. In principle, the police shall start investigation without any formal claims/complaints if they are informed about repeated or severe violation of POs. Criminal prosecution of an offender does not depend on the will or decision taken by a victim.

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

N/A

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

No information about relevant training of police or other public bodies.

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

There is no full or comprehensive statistics. An estimate may be made on the basis of public databases.

According to a recent study, in 2006-2011 in criminal procedures there were applied at least 112 POs regarding 102 persons (3 in 2006, 14 in 2007, 18 in 2008, 12 in 2009, 28 in 2010, and 37 in 2011).²

The average number of temporary restraining orders in criminal procedure might be more significant. Thus, in 2011 temporary restraining order was applied to 95 offenders in family (domestic) violence cases; 19 offenders were arrested. These were mostly cases of physical abuse and threat.³

The total number of POs applied in purely civil procedure is not known. However, in 2007-2012 there might be at least 15 such cases annually.

In 2006-2011 there were registered 120 breaches of POs (0 in 2006, 6 in 2007, 12 in 2008, 11 in 2009, 44 in 2010, and 29 in 2011). Most of the breaches in 2010 and 2011 were repeatedly committed by few offenders. During the same period 12 men and 2 women were punished in criminal procedure for breach of POs (Article 331-2 of the Penal Code). In 2009-2011 breaches of temporary restraining orders mostly concern communication bans.⁴

² Kaire Tamm, Anne Kruusement, Elektroonilise valvega lähenemiskeelu kohaldamise analüüs, (Analysis of Application of Restraining Orders with Electronic Surveillance), Kriminaalpoliitika analüüs Nr 2/2012, P.3

³ Ministry of Foreign Affairs, Fifth and Sixth Periodic Report on the implementation of the Convention on the Elimination of all forms of Discrimination against Women in Estonia (unpublished draft), p. 30

⁴ Kaire Tamm, Anne Kruusement, Elektroonilise valvega lähenemiskeelu kohaldamise analüüs, (Analysis of Application of Restraining Orders with Electronic Surveillance), Kriminaalpoliitika analüüs Nr 2/2012, P.5

- 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 often imposed?

It seems that temporary restraining orders are applied most often (i.e. POs applied in criminal procedure on suspects and those accused of crimes against the person and against a minor). Then “civil” POs applied in criminal procedure follow. The number of POs applied in pure civil procedure seems to be lower.

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

As it was explained above, POs may be imposed only in the context of particular offences. In most cases they involve family (domestic) violence or sexual assault.

- 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?

Yes, this is mostly the case.

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

There is no such information.

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

N/A

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)?

In general, POs are observed. However, any estimates seem to be poorly sustained in the absence of proper monitoring system. Most of registered violations are committed by few offenders (see above). There were no studies to highlight this issue.

- 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?

N/A

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?

N/A

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

National legislation on POs is very general and provides no details or guidance for judges regarding PO essential elements. Courts have to decide on *ad hoc* basis what actually means phrases like “prohibition to approach” or “regulation of the use of housing or communication”. As a result courts take quite various decisions on the grounds of the same legal norms.

One of the most challenging issues is when a victim and an offender share the same dwelling. Another noticeable problem concerns child protection and parental rights in the context of POs.

- b. Problems with protection order imposition/issuing/procedure

For a victim in civil procedure there will be always a risk to pay procedural costs (while court may or may not decide that all or a part of the expenses shall be borne by the state).

- c. Problems with protection order monitoring

In practice, POs are monitored by the victim. The police normally interfere at the victim’s request.

One of the solutions offered by the Ministry of Justice is to expand GPS surveillance to POs.

- d. Problems with protection order enforcement

Punishment for breach of POs is possible only for repetitive or serious breach that poses a danger to life, health or property of persons. In practice, the police use the right to detain a person for up to 48 hours. Police may be reluctant to interfere in cases other than family (domestic) violence incidents.

- e. Problems with protection order effectiveness?

Practical effectiveness of POs has never been studied.

37) In your opinion, what is/are the biggest problem(s) when it comes to protection orders?

It submitted that the main problem with POs is the lack of monitoring mechanism which undermines the average efficiency of this useful measure.

2.2.6. PROMISING/ GOOD PRACTICES

38) Which factors facilitate the:

a. imposition

It is praised that POs are implemented by courts very quickly, normally within a couple of days.

b. monitoring, and

N/A

c. enforcement of protection orders?

As a recent positive example we may refer to criminalisation of the breach of temporary restraining orders (i.e. orders that may be applied in criminal procedure on suspects/accused of crimes against the person or against a minor). This amendment provided law enforcement agencies with effective mechanism to enhance protection of victims.

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

One of the key success factors for POs is their proportionality. Unreasonable and disproportionate limitations might be difficult to impose for subjective and objective reasons.

Another important factor is to consider vital interests of both a victim and an offender. For instance, the issue of housing for offenders under POs is a considerable social problem in a poor country with unreasonably high prices of rent.

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

Relevant provisions on POs are rather fresh but promising. Most importantly, POs provided valuable tools to assist victims of family (domestic) violence. In the context of temporary restraining orders in criminal procedure more safety is now guaranteed to victims of certain offences.

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

Factors which may improve the situation are:

- To amend legislation to provide judges with more details and guidance in the context of POs (and to make them use a more standardized language/requirements in POs).
- To introduce institutional arrangements to consider vital interests of both victims and offenders under POs (especially housing needs);
- To introduce misdemeanour liability for isolated cases of breach of POs (punishable by fine or detention);
- To abolish payment of any state fees and procedural fees in any procedures related to POs;
- To provide a victim with a formal right to request imposition of a temporary restraining order in criminal procedure;
- To make more efforts to raise public awareness about POs, also with the assistance of the state victim support service;
- To expand GPS surveillance to the cases of POs;
- To conduct research on Pos' practical effectiveness.

2.2.7. FUTURE DEVELOPMENTS

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

At the moment, there is a debate about necessity to expand GPS surveillance to the cases of POs. A major disadvantage of the proposed measure is that it is quite costly.

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?

Major changes in law or practice are not expected (if not expanding GPS surveillance to POs).

b. If so, what will change?

N/A

c. Are there at the moment any pilots in your country with a new approach to victim protection orders.

No.

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

In principle the objective voiced by the Ministry of Justice to expand GPS surveillance to the cases of POs is achievable, alas, with difficulties in times of economic crisis.

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?

In general, my attitude towards EPO is rather positive. I foresee no major difficulties to implement relevant rules in the national context.

ANNEX. SUMMARIES OF STUDIES

Margit Vutt, *Lähenemiskeelu kohaldamine tsiviilkohtumenetluses. Analüüs* (Application of Restraining Orders in Civil Procedure), Tartu: Riigikohus õigusteabe osakond, 2008

Analysis was based on court decisions and rulings as of 1 December 2007 which could be found in the KIS (Courts Information System) database. According to the author's findings, applying for a restraining order in civil proceedings was not very widespread. A restraining order was mostly applied in family matters. There were also restraining orders applied in other types of cases, e.g. unjust enrichment. Restraining order as a measure for securing action in property rights disputes is hardly widespread. Restraining range was defined differently. However, it was mostly set at 100 meters. In some rulings court might provide very detailed reasoning behind application of a restraining order. However, this might not be the case for other rulings. The author believes that quite many rulings were too laconic and lacking of thorough motivation as compared with court decisions. Some rulings were made without hearing of an offender.

Kaire Tamm, Anne Kruusement, *Elektroonilise valvega lähenemiskeelu kohaldamise analüüs*, (Analysis of Application of Restraining Orders with Electronic Surveillance), Kriminaalpoliitika analüüs Nr 2/2012

The objective of this study was to analyse the need to apply restraining orders with electronic surveillance, the possibility and applicability of relevant measures. The authors start with a statistical overview. Restraining orders can be applied in both criminal and civil procedure. In criminal proceedings they are mostly used in family (domestic) violence cases. In 2006–2011 there have been implemented about 110 restraining orders on slightly more than one hundred persons. During three years nearly 2/3 of all restraining order violations were violations of communication ban; violations were rarely associated with violence. One person may violate a restraining order several times: For instance, in 2010 90% of all registered breaches were committed by two men. During 5.5 years 14 persons were punished in criminal procedure for violation of restraining orders. Restraining orders with electronic surveillance can be implemented in the US and Spain, and they are tested in Sweden, Norway and Portugal. Protection of victims will be enhanced with the use of electronic surveillance and it will strengthen control over compliance with the terms of a restraining order. GPS devices are preferable in the national context. Implementation of a two-component GPS device will cost about 133,000 euro (50 cases per year). Technical installation and immediate supervision over compliance may remain the responsibility of the probation service. However, the police shall respond to acute violations. In order to introduce restraining orders with electronic surveillance it is necessary to amend the Code of Criminal Procedure and the Probation Act.