

Mapping the legislation and assessing the impact of Protection Orders in the European Member States (POEMS)

National report Finland

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1. General overview of the assignment for the national experts

1.1. Main objective

Victims of crimes that are characterized by their repetitive nature, such as stalking and intimate partner violence (IPV), show an additional need for protection against recidivism by their offender in comparison to other victims. But also victims of instantaneous crimes (e.g., rape victims) may require extra protection, or perhaps simply wish to keep confrontations with their offender to an absolute minimum. Criminal, civil and administrative protection orders may provide such protection. The problem is that, so far there is no clear view of how victim protection is constructed within the EU Member States. The European Member States seem to harbour a plethora of protection order schemes, but they have never been the subject of a comprehensive study.

Another feature of protection order schemes in Europe which has largely remained in the dark is how these protection orders function in practice. Even though protection orders have been in existence for quite some time now, and even though some of them are imposed on a regular basis, their effectiveness is contested and discussions on the application procedure for protection orders are dominated by assumptions and hypotheses instead of actual data.

Recently, the attention for protection orders in the European Member States has been given a new impetus thanks to the European Protection Order (EPO) and the agreement on mutual recognition of protection measures in civil matters.¹ Once implemented, the EPO will provide a legal basis for EU Member States to recognize a victim protection order that was granted in another Member State. The available data - however marginal - nevertheless suggests that there are enormous discrepancies amongst protection order legislation and levels of protection across the EU (Van der Aa, 2011; Feasibility Study, 2010). The question of whether the EPO is still able to function well in those circumstances then becomes relevant.

The current research project wishes to address these voids and to give an accurate, in-depth, and up to date overview on what legal protection measures are currently in force in the European Member States. It intends to:

- gather in-depth information about the conditions, procedures and settings that allow for protection orders in all European Member States.
- develop a comparative and analytical perspective on the current state of protection order legislation within the EU Member States (e.g., by grouping the Member States according to a 'protection order typology' which reflects the different approaches to protection)
- learn more about the actual functioning of the different protection order regimes in Europe
- identify promising practices and possible gaps in protection
- assess whether the EPO would be able to function well if the levels of protection differ across the EU.

¹ Council of the European Union, *EU-wide protection for victims: agreement on mutual recognition of protection measures in civil matters*, Brussels, 5 March 2013, 7285/13.

The research team (University of Tilburg, University of Helsinki, Portuguese Association for Victim Support and the University of Naples) will try to attain these objectives with the help of a literature review, 27 national reports on protection order legislation written by national legal experts, and 60 semi-structured interviews with female victims of IPV and stalking whose (former) partner had a protection order imposed against him.

This guideline focuses on the national reports. With the help of the national reports we will try to accurately map protection order legislation in the EU Member States in order to present a comprehensive report to the European Commission. The ultimate goal is to make recommendations to enhance the protection provided to victims.

1.2. Definition of protection order

Legal categories or concepts are not consistent between jurisdictions and states. The concept protection order may in some countries refer to a specific criminal provision, whereas other states may only use this concept to refer to the so-called 'barring order' (an order that prohibits the offender of domestic violence to enter the family home for a specified amount of time). Another problem is that there are many synonyms or close relatives for the term 'protection order' in circulation, such as 'protective order', 'injunction order', and 'restraining order'.

In this report we will use the term 'protection order' as an umbrella concept. In order to guarantee that all national experts have a similar understanding of the concept protection order we have defined the concept as follows:

A protection order is a decision, provisional or final, adopted as part of a civil, criminal, administrative, or other type of legal procedure, imposing rules of conduct (prohibitions, obligations or limitations) on an adult person with the aim of protecting another person against an act which may endanger his/her life, physical or psychological integrity, dignity, personal liberty or sexual integrity.

This definition is partly based on the one used in the Directive on the EPO. It aims to be as inclusive as possible: we are interested in all legal measures by which rules of conduct can be imposed upon a person with the aim of protecting another person, regardless of the type of procedure by which the decision came about. We are not only covering protection orders issued by judges, but also decisions issued by magistrates, public prosecutors or other public servants.

Excluded from the current study are witness protection programs, or decisions that physically incapacitate an offender to contact a victim (e.g., unconditional prison sentence or pre-trial detention or separate waiting rooms in court premises).

It is a working definition, which aims to be applicable to the situation in all 27 Member States. Since we lack thorough knowledge on protection order legislation in all these jurisdictions, it may very well be that, in your opinion, the definition is not inclusive enough. If you think this is the case, do not hesitate to contact the research team and to include the information in the national report anyway.

Throughout the document we will use legal terms, which may give rise to certain definitional questions as well. The annex contains a glossary with a brief definition of those legal terms.

1.3. Tasks and delivery deadlines

There are two tasks which national experts must complete:

- 1) Write a national report (first draft)
- 2) Clarify sections of the report which are unclear and adjust the report accordingly (final version)

Ad 1) You are asked to write an analytical report on protection order legislation in your own Member State. A template containing detailed instructions on how to write the report is provided later in this document. Next to (substantive and procedural) legislation and policy guidelines, the template also inquires after current debates about victim protection legislation and procedure, proposals for reforms, and research which has assessed the effectiveness of national protection order provisions, both on paper and in practice. Also, you are asked to assess whether some of the national approaches to victim protection can be defined as promising or negative practices.

The first draft of this report must be submitted to the research team by **31 August 2013**.

Ad 2) The first draft of the report will be subject to quality control by one of the research members. In case certain sections of the report are unclear, you may be asked to clarify these sections and to provide supplementary information. You will receive this feedback no later than 30 September 2013. Based on this feedback, you are asked to adjust the national report and send in a final version of the report.

The final version of your national report, with a 1 page executive summary, must be submitted to the research team by **17 November 2013**.

1.4. Reference period for the study

The national reports should present information on protection order legislation in force on **31 August 2013**. Case law, jurisprudence, and statistics on protection order effectiveness may originate from previous years, as long as they are still relevant.

1.5. Template, language and size

We will provide you a template in which you can write the report. The template will provide you with a format and structure for the report. The size of the report should be between 12-17 A4 pages (excluding annexes) as a guideline, font: Arial 10.5, spacing: 14 pt. Statistical and other data (e.g., case law) should be included in the annexes.

Furthermore, in order to standardize the national reports, we kindly ask you to use the OSCOLA referencing format (<http://www.law.ox.ac.uk/publications/oscola.php>) for literature references.

We will also provide you with an example of a national report that has already been written (the Netherlands) to give an idea of the type of information we are looking for.

The national reports should be written in a neutral, objective language, containing no unsubstantiated opinions. All sources of information included should be fully referenced. Whenever possible, refer to the original source and preferably to official sources. References to

media sources must be kept to a minimum. If information is available online, please refer to the internet address (preferably to an English version, if available).

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?

Protection orders exist in different areas of the Finnish legislation. They are connected to the criminal procedure, as well as to the civil procedure, but solely administrative protection orders cannot be found in the Finnish judicial system.

The most common and used types of protection orders are in the Act on Restraining Orders (898/1998, hereafter ROA). The Act on Restraining Order came into effect in 1999 and it contains the legal provisions for the basic restraining order (RO), the extended restraining order, the temporary restraining order (TRO) and, since 2005, also the legal provisions for the barring order (BO) and its temporary (TBO) and extended versions.

The restraining order and the barring order do not belong purely to the area of criminal law, but are described as criminal procedural precautionary measures.² Nevertheless, they are closer to the criminal than to the civil law.³

² HE 41/1998, p. 8.

Another protection order that belongs to the field of criminal law is the travel ban, which is a restraining/restriction order regulated by the Coercive Measures Act (450/1987). The travel ban can be found in Chapter 2 of the Coercive Measures Act. The travel ban is purely criminal procedural and has been used as a protection order in some domestic violence cases before the ROA entered into force in 1999.⁴

In the field of civil law, the closest to a protection order is the general precautionary measure⁵ which can be described as a civil injunction. The general precautionary measure is regulated by Chapter 7, Section 3 of the Code of Judicial Procedure (4/1734), where it was added in 1993. As far as it is known, this civil procedural injunction has never been used as a protection order in domestic violence or IPV cases, but there have been suggestions that it could be used as civil procedural protection order in those cases as well with some minor alterations.⁶ Because the general precautionary measure has not been destined and used as a protection order in the way described in the definition of protection order in the POEMS project, I will focus on it only in the end of this Member State report concerning improvement of the protection order legislation in Finland.

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

The most common protection orders in Finland are regulated by a specific law, the Act on Restraining Orders. The RO, as well as the BO are protection orders connected to the criminal procedure and are described as criminal procedural precautionary measures⁷.

The travel ban is regulated by a generic law, the Coercive measures act, and so is the general precautionary measure that is regulated by The Code of Judicial Procedure, which is a generic procedural law.

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?

An unofficial English translation made by the Ministry of Justice of Finland of the Act on Restraining Orders can be found here:

<http://finlex.fi/en/laki/kaannokset/1998/en19980898.pdf>

An unofficial translation of the Code on Judicial Procedure can be found here:

<http://finlex.fi/en/laki/kaannokset/1734/en17340004.pdf>

Unfortunately, the Coercive Measures Act does not have an English translation, but the Finnish version of the law can be found here:

<http://finlex.fi/fi/laki/ajantasa/1987/19870450?search%5Btype%5D=pika&search%5Bpika%5D=pakkokeinolaki>

³ Niemi – Kiesiläinen 2004, p. 242.

⁴ Kainulainen 1998, p. 35 and Niemi – Kiesiläinen 2004, p. 255.

⁵ There is no official definition in the law for this, but the Chapter 7, Section 3 of the Code of Judicial Procedure is described as 'general precautionary measure' widely in Finnish legal literature, including Havansi 1994, p. 55.

⁶ Niemi – Kiesiläinen 2004, p. 255.

⁷ HE 41/ 1998, p. 8.

- 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).

In the area of criminal law, protection orders can be imposed in different ways. The RO can be imposed as a “precautionary measure” and it does not require that an actual criminal offence has happened. The basic RO can be imposed to prevent an offence against life, health, liberty or privacy or a threat of such an offence or some other kind of severe harassment (ROA Chapter 1, Section 1, Subsection 1). Similarly, the BO can be imposed in a situation where the person who feels threatened and the offender live permanently in the same residence, the BO may be imposed to prevent an offence against life, health or liberty or a threat of such an offence (ROA Chapter 1, Section 1, Subsection 2). This means that the RO and the BO are not conditional to any other sentence, but that they are anticipatory measures to prevent the abovementioned crimes from happening. This does not mean that they could not be imposed also together with, for example, a suspended sentence, but they are always imposed individually from other sentences.

The travel ban can be imposed as a conditional sentence to arrest or imprisonment, when a person is suspected on probable cause for a crime that has a penal scale with the severest punishment being a minimum of one year’s imprisonment. Based on the suspect’s personal circumstances or other considerations, there has to be a reason to suspect that he/she will escape or otherwise try to avoid the preliminary investigation, the trial or the enforcement of the punishment, or that he/she continues his/her criminal behavior (The Coercive Measures Act, Chapter 2, Section 1). This means that the travel ban cannot be imposed as a protection order on its own, but it requires always a crime or a suspect of a criminal offence that has been committed.

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

Generally, the ROs and the BOs are imposed in a procedure of their own, but they can also be considered along with a criminal case in a situation where there is a criminal case which may be of relevance when deciding the RO or BO matter, pending in the court at the same time (ROA Chapter 2, Section 10). In this case, the RO or BO can be combined with the criminal case if the criminal case is already pending in court.⁸ In order to impose a RO in a criminal procedure, the criminal case that is pending in court has to be against the same offender against whom the RO or BO is applied, the court in question has to be regionally competent to consider both matters and the criminal case can actually have an effect on the requirements and the preconditions of a RO or a BO. For example, battery or rape can be a crime that might have relevance to imposing a RO or a BO.⁹

⁸ Helminen – Kuusimäki – Rantaeskola 2012, p. 714.

⁹ HE 41/1998, p. 23.

The travel ban can be imposed before the hearing of the charges has begun in court, which means either during the preliminary investigation or during the consideration of charges. The travel ban can be imposed also during the hearing of a demand for imprisonment or during the actual hearing of the charges in court.¹⁰ It cannot be imposed after a sentence has been ordered by the court.

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).

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

In case of ROs and BOs, there are four parties who can apply for the protection order: The victim, the police, the social welfare authority and the public prosecution authority. The application for the imposition of a RO and a BO is regulated in Chapter 2, Section 5 of the ROA. Anyone who feels threatened or harassed can apply for a basic or extended RO or for the basic or extended BO. Also the police, social welfare or prosecuting authority can apply for the aforementioned protection orders on the victim's account. The application may be written or oral and, when necessary, the applicant may be requested to supplement the application (Chapter 2, Section 5 of the ROA). There is a ready-made form for applying for a RO or a BO, but the application can also be made informally¹¹. It is possible to have several persons applying for a RO together, for example members of the same family and a guardian can, of course apply, for the imposition of a RO or a BO on behalf of his/her underage child.¹²

A TRO and a TBO is imposed by an official with powers of arrest¹³ or by a court (ROA Chapter 3, Section 11). The police/prosecutor can, ex officio, impose a TRO or TBO if the apparent need to protect a person by means of a restraining order requires that the restraining order is imposed with immediate effect and if the circumstances of the matter indicate that the person in need of protection due to his or her fear or some other reason is unable to apply for a RO or a BO himself or herself (ROA Chapter 3, Section 11, Subsection 2). Hence, the victim does not necessarily need to apply for the RO or the BO herself/himself. Naturally, also the victim himself/herself can apply first for a TRO or a TBO.

As for the travel ban, only the police or the prosecutor can apply for it, not the victim himself/herself.¹⁴

¹⁰ HE 14/1985, p. 59-60.

¹¹ Ropponen 1999, p. 6.

¹² Ropponen 1999, p. 6.

¹³ An official with powers to arrest is a police commissioner or a prosecutor, hereafter mentioned only as the police/prosecutor, as the police is often the official with powers to arrest who is significant in protection order cases in Finland.

¹⁴ Niemi – Kiesiläinen 2004, p. 258.

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 organizations and authorities that can be involved in applying for a RO or a BO are the police, the social welfare authority and the prosecutor (ROA Chapter 2, Section 5, Subsection 1). The police or the prosecutor can also apply for a TRO or a TBO (ROA Chapter 3, Section 11).

As for the issuing of a RO or a BO, the organizations and authorities that are involved in the process can be the district court and, in case of a TRO or a TBO, also the police or the prosecutor (ROA Chapter 2, Section 4, Subsection 1 and Section 3, Subsection 11).

The organizations and authorities that are involved in the applying for a travel ban are the prosecutor and the police. Authorities and organizations that are involved in the issuing of a travel ban are the prosecutor, the court and the police, depending on the stage of procedure when the travel ban is issued (The Coercive Measures Act, Chapter 2, Section 3).

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

As a general rule, the offender has to be heard when deciding about a protection order.

The offender has to be heard when deciding about a TRO and a TBO, but it can be exceptionally issued on an *ex parte* basis if the application is either decidedly groundless or if the offender cannot be reached (ROA Chapter 3, Section 11). This means that the TRO or TBO can be issued without serving a notice to the offender if he/she cannot be reached.

The offender should be heard when issuing a RO or a BO, but it can be issued without hearing the offender if his/her presence is not considered necessary for the resolution of the matter and if the offender has been summoned to the hearing under such a threat (ROA Chapter 2, Section 6, Subsection 2). However, the offender has to be informed about the decision afterwards by serving him/her a notice about the decision (ROA Chapter 2, Section 9).

The travel ban can be decided without hearing the offender, but the decision containing a travel ban must be served to the offender (The Coercive Measures Act, Chapter 2, Section 4 and 9).¹⁵

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?

¹⁵ In the new Coercive Measures Act (806/2011) that will come into effect in January 1, 2014, the general rule is that the offender has to be heard in person before deciding on imposing a travel ban, but the decision can also be made if the offender cannot be reached (Coercive Measures Act 806/2011 Chapter 5, Section 11).

The RO is mainly intended to serve as a protection order for victims and likely victims of *offence against life, health, liberty or privacy or a threat of such an offence* or victims or likely victims of some other kind of *severe harassment* (ROA Chapter 1, Section 1, Subsection 1). The law itself is gender-neutral, but the legislative history of the ROA mentions victims of ex-spouses as an example of persons who are protected by ROs.¹⁶ Another example of the victims protected by ROs are elderly people harassed by their adult children.¹⁷ Although the law does not mention female victims as the main target of protection by ROs, the idea behind the law was specifically to protect women from harassment and disturbance caused by their former spouses¹⁸ and to protect persons from domestic violence.¹⁹

The ROA contains also the barring order (BO), which aims to protect victims of domestic violence, mainly spouses and children, but it is also possible to impose a BO on a roommate or on any person living in the same residence as the alleged victim, regardless of the nature of their relationship or whether there are any family ties between them²⁰. The BO protects victims of crimes such as *threats and offences against the life, health or liberty* of the person who feels threatened (ROA Chapter 1, Section 2, Subsection 2).

The travel ban is intended mainly as surrogate for arrest and imprisonment, and although it has been used in some cases of domestic violence²¹, it has not been imposed in order to protect a particular victim. A travel ban can be imposed only for crimes where the severest punishment in the criminal offence's penal scale is a minimum of one year's imprisonment (The Coercive Measures Act, Chapter 2, Section 1). In case of crimes associated with domestic violence, IPV or stalking, the travel ban could be imposed when the offender is suspected on probable cause for example for rape (The Criminal Code 39/1889, Chapter 20, Section 1) or for assault and battery (The Criminal Code, Chapter 21, Section 5) and when there is a reason to suspect that the offender will flee or continue his/her criminal behavior (The Coercive Measures Act, Chapter 2, Section 1).

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

The RO and the BO are especially destined to be used independently from other legal proceedings, so ROs and BOs can be issued independently from all other legal proceedings. However, they can be issued together in a criminal process if there is a criminal case pending in the court against the offender and if the criminal case may be relevant when deciding a RO or a BO matter (ROA Chapter 2, Section 10).

The travel ban needs always a suspected criminal case in order to be issued. It can be issued during the preliminary investigation, after the preliminary investigation but before the prosecution or after the prosecution, during the hearing of the criminal case or during the hearing of the detention order (The Coercive Measures Act, Chapter 2, Section 3).

¹⁶ HE 41/1998, p. 4.

¹⁷ HE 41/1998, p. 4.

¹⁸ HE 41/1998, p. 4-5.

¹⁹ Niemi – Kiesiläinen 2004, p. 241.

²⁰ Rautio 2004, p. 859.

²¹ Kainulainen 1998, p.35.

- 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)

RO:

In order to obtain a basic or an extended RO, the first phase of the procedure is to apply for a RO. The applicant (the victim, the police, the prosecutor or the social welfare authorities) applies for a RO either to the district court or to the police.²² The application can be made either in writing or orally and the applicant may be requested to supplement the application if it is considered necessary (ROA Chapter 2, Section 5, Subsection 1). It is also possible to conduct a police investigation (as referred in section 37 of the Police Act 493/1995), but it is not a compulsory action of the procedure (ROA Chapter 2, Section 5, Subsection 2).

After the competent authority has received the application for a RO, the offender has to be notified about the application. When the application is made by someone else than the person protected by the RO, also she/he must be served a notice of the RO application (ROA Chapter 2, Section 5, Subsection 3). The notification of the application for a RO must be served in accordance with the provisions of serving a summons, as is prescribed in Chapter 11 of the Code of Judicial Procedure (ROA Chapter 2, Section 5, Subsection 3). The parties are asked to either send in their responses in writing to the application for a RO or to give them orally in the hearing.

The matter will go straight to the main hearing if it is not considered necessary to request a written response (ROA Chapter 2, Section 5, Subsection 3). A RO matter must always be considered urgently and the court is responsible for the thorough consideration of the case in question (ROA Chapter 2, Section 6, Subsection 3). The main hearing of a RO matter in the district court follows the provisions of criminal procedure as appropriate (ROA Chapter 2, Section 6, Subsection 1). Obtaining the evidence is primarily the responsibility of the parties, but the district court has, when considered necessary, a responsibility to find out about the facts on its own initiative as well.²³

If the attendance of the offender is not necessary, the RO matter can be heard and decided regardless of the absence of the offender (ROA Chapter 2, Section 6, Subsection 2). The RO comes into force when the district court makes the decision about the imposition of a RO and the RO must be complied with regardless of an appeal (ROA Chapter 2, Section 7, Subsection 1). The district court issues a written decision on the RO matter and if the order is imposed, includes the specific contents and exceptions of the order and also the threat of penalty for breaching the RO (ROA Chapter 2, Section 8, Subsections 1 and 2). After giving the judgment on the matter, the district court must inform the applicant, the person who is protected by the RO (if other than the applicant) and the offender about the decision (ROA Chapter 2, Section 9, Subsection 1).

The court must also inform immediately the register containing the nation-wide information about ROs when a RO is imposed, repealed or modified (ROA Chapter 2,

²² Ropponen 1999, p. 6.

²³ Ropponen 1999, p. 13.

Section 9, Subsection 3). A RO matter can also be considered along with a criminal case (ROA Chapter 2, Section 10, Subsection 1).

BO:

The procedure in order to obtain a BO is the same as for the basic RO (see above), with a minor exception. When the district court decides to impose a BO, the decision must contain the information about the specified residence, which offender must vacate and also how the offender can obtain his/her personal possessions (ROA Chapter 2, Section 8, Subsection 3). If need be, the decision must also contain information about where the offender can obtain support in matters dealing with the arrangement of his/her accommodation during the duration of the BO (ROA Chapter 2, Section 8, Subsection 3).

TRO:

ROA admits of imposing a temporary restraining order (TRO), which enters into force immediately, after it has been imposed. The procedure to obtain a TRO differs somewhat from the procedure that is followed when obtaining a basic or extended RO. A TRO can be imposed by a the police or by a court (ROA Chapter 3, Section 11, Subsection 1).The police can order a TRO even without the victim's application for a RO if the conditions stated in the law are fulfilled (ROA, Chapter 3, Section 11, Subsection 2).

Both the offender and the person who is protected by the TRO must have a chance to be heard about the imposition of the TRO before the decision about imposing a TRO is made. However, the aforementioned persons do not have an unexceptional right to be heard and the police or the court can decide about the TRO without a hearing if the application for a TRO is blatantly groundless or if the person charged with the TRO cannot be reached (ROA Chapter 3, section 11, Subsection 3).

The decision about imposing a TRO must contain the information about when and in which district court the matter will be taken up for consideration (ROA Chapter 3, Section 12, Subsection 2). As a principal rule, the TRO must be observed immediately after it is issued, unless it is issued by a court and the court orders differently (ROA Chapter 3, Section 12, Subsection 2). The case considering a TRO must be brought up for consideration to the competent district court within a maximum of three days by the official who made the decision to impose it and the case must be taken up for consideration by the district court within a maximum of seven days from the date of the decision (ROA Chapter 3, Section 12, Subsection 1).

Otherwise, the provisions of the basic RO and its procedure are applied on the TRO as well (ROA Chapter 3, Section 13, Subsection 1). It should be noted that when ordering a TRO or a TBO, the same officer cannot act as an applicant and a decision-maker in the case.²⁴

TBO:

The BO, as regulated in Chapter 1, Section 2, Subsection 2 of the ROA, can also be imposed as a temporary barring order (TBO). In fact, most of the BOs are first imposed as

²⁴ Ropponen 1999, p. 24.

TBOs, most often by the police.²⁵ The procedure of imposing a TBO differs slightly from the procedure when imposing a BO. The district court has to hold a main hearing within a week from the date when the decision about imposing a TBO has been brought to the court (ROA Act Chapter 3, Section 12a, Subsection 1). In case the main hearing is postponed, a new main hearing must be held within two weeks of the originally intended main hearing's date (ROA Chapter 3, Section 12a, Subsection 1) and in case of postponing the main hearing, the district court must order about whether the TBO still remains in effect (ROA Chapter 3, Section 12a, Subsection 3). The district court can extend the time limit of the hearing if there are extremely important reasons demanding so.

Travel Ban:

The procedure to obtain a travel ban varies depending on the phase of the criminal procedure in which it is issued. During the preliminary investigation, the police decides about imposing a travel ban, but before the travel ban is imposed, the police officer must inform the prosecutor about the matter, who can take the matter into consideration. During the consideration of charges the prosecutor can decide about the matter. In case the criminal case has gone to the hearing, the prosecutor calls for the travel ban and the court imposes it. In a detention hearing, the court can decide to impose a travel ban (The Coercive Measures Act, Chapter 2, Section 3). The offender has to be served with the decision containing the travel ban.

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

The length of the proceeding of imposing a RO or a BO is quite strictly regulated by law. A basic or an extended RO and BO matter must always be considered urgently (ROA Chapter 2, Section 6, Subsection 3).

In case the police have imposed a TRO, it has to be brought up for consideration in a district court without delay and at least within three days from the imposition of the protection order. The court must take the matter up for consideration at least within seven days of the date of the original decision (ROA Chapter 3, Section 12, Subsection 1). The main hearing considering a TBO decision must be held in the district court within a week from the date when it was brought up for consideration. In case the main hearing would be cancelled, it must be rescheduled to be held at the latest within two weeks of the date when the main hearing was originally intended to be held. The time limits of the TBO procedure may be extended only when there are very important reasons to do so (ROA Chapter 3, Section 12a, Subsections 1-2).

There are no strict time limits for the procedure of imposing a travel ban, but in case the charges are not pressed within 60 days of the imposition of a travel ban, the travel ban must be revoked. It can be extended by the court if the police have made a request for it within the 60 days' time limit (The Coercive Measures Act, Chapter 2, Section 6, Subsection 2).

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

²⁵ Restraining Order guidelines from the webpage of the Finnish Police: [http://www.poliisi.fi/poliisi/home.nsf/ExternalFiles/restrainingorder_2009/\\$file/restrainingorder_2009.pdf](http://www.poliisi.fi/poliisi/home.nsf/ExternalFiles/restrainingorder_2009/$file/restrainingorder_2009.pdf)

other words, is the victim immediately protected or can there be a lapse of time before the actual protection begins?

The TRO and the TBO come into effect immediately, unless the court considering the matter orders otherwise (ROA Chapter 3, Section 12, Subsection 3).

As a general rule, the basic and extended forms of ROs and BOs come into effect when the district court makes a decision about imposing the protection order and the protection order has to be complied regardless of an appeal, unless the appellate court orders otherwise (ROA Chapter 2, Section 7, Subsection 1). However, the decision needs to be served to the restraine. In case the restraine is not present when the decision is made, he/she has to be notified about it by using a verifiable method of service as described in Chapter 11 of the Code on Judicial Procedure (ROA, Chapter 2, Section 9). Before the restraine has received the notification of the decision, the protection order cannot come into effect in practice. (About the registration of TRO see question 19).

The travel ban comes into effect when the decision about the travel ban is made. In case the offender is not present when the decision is made, he/she has to be informed about the decision by mail (The Coercive Measures Act, Chapter 4, Section 4).

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?

A TRO and a TBO can be given immediately upon request. The police or a district court can impose a TRO or a TBO that enters into force immediately (ROA Chapter 3, Section 12, Subsection 2).

These temporary protection orders can be imposed in situations where the threat is so imminent that there is no time to wait for a regular process in court, although the urgency is not an absolute prerequisite for imposing a RO or a BO as a temporary order.²⁶ The prerequisites for imposing a TRO or TBO as temporary do not differ from the basic RO's and BO's preconditions.²⁷

The law regulates the time in which the decision containing a TRO or TBO has to be taken into consideration in the court. The law is somewhat unclear on the actual maximum length for a TRO or TBO.²⁸ In case of a TRO, according to the general rule its maximum length can be seven (7) days. The police has to bring it up for consideration and also submit the material related to the matter to the district court immediately and at the latest within three days after making the decision. The decision has to be taken into consideration within seven days after imposing it (ROA Chapter 3, Section 12, Subsection 1), but the main hearing can be held later.²⁹

²⁶ Ropponen 1999, p. 22.

²⁷ Ropponen 1999, p. 23.

²⁸ Rantala – Smolej – Leppälä – Jokinen 2008, p. 94.

²⁹ Helminen – Kuusimäki – Rantaeskola, p. 713.

In the case of a TBO, the general rule for the maximum time is ten (10) days, as it has to be taken into consideration within one week from the day the police officer who has imposed the TBO has brought it up for consideration in the court (ROA Chapter 3, Section 12a, Subsection 1). As the time limit for the latter is three days, the maximum time for how long a TBO can be given is ten (10) days. However, in case the main hearing would be cancelled, the new main hearing has to be held at the latest within two weeks of the date that the original main hearing was intended to be held (ROA Chapter 3, Section 12a, Subsection 1). The time limit regarding a TBO can also be extended if extremely important reasons requires for it (ROA Chapter 3, Section 12a, Subsection 2). This can significantly extend the maximum time that a TBO is valid, which can be over three weeks if considered necessary.

In order to become a 'basic' RO or BO the interim versions have to be considered in court in the given time, otherwise the decision containing an interim protection order will expire.³⁰ In case the temporary protection order has been imposed ex officio, the police officer who has imposed it shall act as the applicant in the court, otherwise the applicant (usually the victim) himself/herself shall act as the applicant in the court.³¹ The court then makes the final decision whether or not to impose a regular RO or BO.

There is no separate interim travel ban, because the travel ban can be imposed during different stages of the criminal process depending on the need for a protection order in the situation.

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?

A basic RO can be imposed if there are reasonable grounds to assume that the offender is likely to commit an *offence against the life, health, liberty or privacy* of the person who feels threatened or to severely harass this person in some other way. There has to be a risk or a danger that an offence against the person's life, health, liberty of privacy may occur and there has to be some kind of proof or evidence of the above mentioned threat.³²

An extended RO can be imposed if there is reason to believe that a basic RO is not adequate to prevent the threat of an offence or other harassment (ROA Chapter 1, Section 3, Subsection 3).

A basic BO can be imposed

- (1) if the offender and the victim live in the same residence and
- (2) if the offender, judged by the threats he/she has made, his/her previous offences or other behavior is likely to commit an *offence against the life, health or liberty* of the person who feels threatened, and
- (3) the imposition of a BO is not unreasonable with regard to the severity of the impending offence, the circumstances of the persons living in the same household and other facts presented in the case (ROA Chapter 1, Section 2, Subsection 2).

³⁰ Helminen – Kuusimäki – Rantaeskola, p. 712.

³¹ Helminen – Kuusimäki – Rantaeskola, p. 713.

³² Ropponen 1999, p. 5.

An extended BO can be imposed when the basic BO is not regarded as sufficient enough to prevent the threat of an offence (ROA Chapter 1, Section 3, Subsection 3).

A TRO or TBO can be imposed if the situation demands for it. Otherwise the preconditions for imposing a TRO or TBO are the same as the abovementioned preconditions for imposing a basic or extended RO or BO.³³

A travel ban can be imposed if a person is suspected with probable cause of an offence that has a maximum penalty of no less than one year's imprisonment and it is probable, due to the personal circumstances of the suspect or due to other reasons, to assume that the suspect will escape, otherwise avoid the preliminary investigation, the trial or the enforcement of the sentence or will continue his/her criminal activity (The Coercive Measures Act, Chapter 2, Section 1).

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

The provisions of criminal procedure apply, as appropriate, on the procedure and main hearing in the district court considering the basic RO, the extended RO and the basic and extended BO (ROA Chapter 2, Section 6, Subsection 1). The criminal court procedure is regulated in the Criminal Procedure Act (689/1997) and, as a rule, it does not require legal representation of the victims. However, the court can appoint a counsel for the injured party for the criminal investigation and for the trial as well if the injured party has a claim in a case prosecuted by the public prosecutor in a case relating to a sexual offence (as referred to in chapter 20 of the Penal Code) and in a criminal case, such as battering (as referred in Chapter 21, Section 1 – 6 of the Penal Code) (Chapter 2, Section 1a of the Criminal Procedure Act).

In practice, it might be necessary to get legal representation or advice in order to obtain a RO or a BO and the parties can ask the court considering a RO or a matter to appoint a legal assistant for them.³⁴

As for the travel ban, there is no legal representation required for the victim, as the victim does not have a role in the travel ban procedure. The offender has the right to use legal representation and assistance in the case (The Coercive Measures Act, Chapter 1, Section 15 and Chapter 2, Section 9).³⁵

c. Is free legal representation/advice available?

The victim, as well as the offender, can request for public legal aid and legal representation for the main hearing, which is usually granted based on the applicant's financial situation and needs³⁶. Generally, legal aid is free for persons without means.³⁷

³³ HE 41/1998, p. 23.

³⁴ Ropponen 1999, p. 9.

³⁵ Helminen – Fredman – Kanerva – Tolvanen – Viitanen 2012, p. 891.

³⁶ Ropponen 1999, p. 9 and the internet pages of the Finnish Judicial System: <http://www.oikeus.fi/8852.htm>

³⁷ The internet pages of the Finnish Judicial System: <http://www.oikeus.fi/8852.htm>

Free legal advice is available from several organizations, such as the Victim Support Finland and the Finnish Bar Association.³⁸

As the travel ban is a surrogate to arrest and imprisonment, the offender has the right to use legal representation during the matter (The Coercive Measures Act, Chapter 1, Section 15 and Chapter 2, Section 9) and can be entitled to free legal representation or advice, as regulated in the Criminal Procedure Act (Chapter 2, Section 10).

- 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)?

The basic RO can be described as a 'no contact' order. It is forbidden to meet or otherwise contact or try to contact, to follow and to observe the person who is being protected by the RO. The prohibition covers all manners of contacting the victim, also 'positive' contacts are prohibited.³⁹ The 'no contact' order covers also a prohibition to contact the protected person by telephone, by mail, by e-mail or by some other, similar manner.⁴⁰ It is also prohibited to observe the protected person by filming or by taking photographs of him or her.⁴¹

The extended RO contains also an order prohibiting the restraineed to enter a certain area described in the RO. When an extended RO is being imposed, it is prohibited to be in the vicinity of the permanent residence, holiday residence or workplace of the protected person or some other, separately specified, comparable space (ROA Chapter 1, Section 3, Subsection 3).

The travel ban prohibits the offender from leaving a certain area or place that is described in the decision containing the travel ban. It is also possible to forbid the person to enter a certain area.⁴² The offender can be obliged to be present at certain times at his/her residence or workplace, to report to the police at certain times or to stay at a hospital or an institution where he/she is already staying or where he/she is admitted. It is also forbidden to grant a passport to the offender, or if he/she already has a passport, it should be taken away for the duration of the travel ban (The Coercive Measures Act, Chapter 2, Section 2).

- 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?

The barring order (also known as *the inside-the-family restraining order*) as described in the ROA (Chapter 1, Section 3, Subsection 2), has the effect of moving and barring a

³⁸ Ropponen 1999, p. 9 and the webpages of the Victim Support Finland (<http://www.riku.fi/fi/victim+support/>) and the Finnish Bar Association (http://www.asianajaliitto.fi/asianajaliitto/in_english).

³⁹ HE 41/1998, p. 18.

⁴⁰ HE 41/1998, p. 18.

⁴¹ HE 41/1998, p. 18.

⁴² See question 43 for changes in the type of protection provided by the travel ban starting from January 1, 2014.

violent or threatening person from the common family home. The BO orders restrainee to leave the residence where he/she and the person who is protected live and it also prohibits him/her from returning there as long as the BO is in effect (ROA Chapter 1, Section 3, Subsection 2). A BO can be imposed in situations where it is likely that the offender is likely to commit an *offence against the life, health or liberty* of the person he or she is living with in the same household. The assessment of the likelihood of the above mentioned offence is based on the previous behavior or threats made by the offender (ROA Chapter 1, Section 2, Subsection 2). It should also be observed that the imposition of the BO should not be unreasonable with regard to the severity of the impending offence, the circumstances of the persons living in the same residence or other facts concerning the case (ROA Chapter 1, Section 2, Subsection 2), as the BO is a relatively severe type of protection order.

The maximum time for how long the violent or threatening person can be barred from his/her home is three months at a time, but the BO can be renewed once, which makes the maximum time of the barring six months (ROA Chapter 2, Section 7). The duration of the BO should always be considered case-specific.⁴³

As described in question 5d, there is also a temporary barring order (TBO), which can be imposed prior to the 'basic' BO. There is also an extended version of the BO, which is determined by similar factors as the extended RO.

During the application process and the barring period, the victims can get help from different organizations, for example from the crisis workers at Victim Support Finland, from the social workers or from the police, but the help is often seen as insufficient.⁴⁴

The offender can get help with organizing his/her accommodation in halls of residence and guidance to treatment of violent behavior.⁴⁵ When considered necessary, the decision containing a BO can contain also information about where the offender can get assistance regarding the arrangement of his/her accommodation during the BO can be included in the decision (ROA Chapter 2, Section 8, Subsection 3).

c. Which of these types of protection (e.g., no contact order) are imposed most often in practice?

There has been little research made of the imposition of protection orders. The most common protection order seems to be the basic RO.⁴⁶ In 2006, 1390 ROs or BOs orders were imposed.⁴⁷ In 2005 and 2006, 258 BOs were imposed (out of these, 166 were TBOs and 183 regular BOs imposed by a district court).⁴⁸ This shows that the most often imposed protection order is the 'no contact' restraining order.

As for the travel ban, approximately 500-600 travel bans are imposed yearly.⁴⁹

⁴³ HE 144/2003, p. 18.

⁴⁴ Rantala – Smolej – Leppälä – Jokinen 2008, p. 177-193.

⁴⁵ Rantala – Smolej – Leppälä – Jokinen 2008, p. 194-204 and HE 144/2003, p. 29.

⁴⁶ In a study on ROs during the first nine months after the ROA was enacted, it was shown that approximately 60 % of ROs imposed were basic no contact ROs. Mäntykenttä 1999, p. 18.

⁴⁷ Statistic database of the Statistics Finland: <http://193.166.171.75/Dialog/Saveshow.asp>

⁴⁸ Rantala 2010, p. 115.

⁴⁹ HE 222/2010, p. 85.

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)?

The basic RO, e.g. the no contact order, can be imposed either alone or together with a prohibition to enter a certain area or together with a BO. In fact, the extended RO, which contains a prohibition to enter a certain area, can be imposed only together with a no contact order (ROA Chapter 1, Section 3, Subsection 3). The same applies to the BO, it cannot be imposed alone, only together with a no contact order (basic BO) or, if considered necessary, together with a no contact order and a prohibition to enter a certain area (extended BO). The orders can be combined if there is sufficient reason to believe that the basic RO or the basic BO would not be efficient enough alone to prevent the threat of an offence or harassment (ROA Chapter 1, Section 3, Subsection 3).

The travel ban decision can constitute of several different orders. It contains always a prohibition to leave a certain area, but it can also constitute of a prohibition to leave a certain area and a prohibition to enter a certain area. It can also be combined with an order to be present somewhere at certain times, to report to the police or to stay in an institution or a hospital (The Coercive Measures Act, Chapter 2, Section 2).⁵⁰ In theory, a travel ban can also be imposed at the same time with a RO or a BO or their extended versions.

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

Popular combinations are the extended RO, which contains a 'no contact' order and a prohibition to enter a certain area. Also the BO, which contains a 'no contact' order and an order to leave the permanent residence of the victim and the offender is a popular combination.

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?

The formal requirements for the different forms of protection orders are different depending on the fact whether the protection orders imposed are 'basic', temporary or extended ROs or BOs. A decision containing a 'basic', an extended or a temporary RO must contain the name of the authority that decided the matter, the date of the decision, the name of the applicant and the name of the offender, as well as the name of the person protected by the RO if different from the applicant. The decision has to contain also a short account of the matter, the decision and the reasons for the decision and the legal provisions applied and also the specific contents of any possible exceptions in the RO, the date when the protection order expires as well as a mentioning of the threat of penalty for breaching the protection order (ROA Chapter 2, Section 8). All possible exceptions should be described as clearly and unambiguously as possible.⁵¹

A BO ('basic', extended or temporary) decision must contain all the matters mentioned above, as well as a specific definition of the residence which the offender has to leave. It

⁵⁰ As from January 1, 2014 the travel ban can also contain a 'no contact' order, see question 43.

⁵¹ Helminen – Kuusimäki – Rantaeskola 2012, p. 717.

must also include the details on how the offender can obtain his/her personal belongings from the family home. Also information about where the offender can get assistance regarding the arrangement of his/her accommodation during the BO can be included in the decision, when considered necessary (ROA Chapter 2, Section 8).

The decision on a travel ban must be written and contain the information about the criminal offence that is the reason for imposing a travel ban, the grounds for the travel ban as well as the specific contents of the travel ban. The decision must also contain information about the consequences of breaching a travel ban and the duration of the ban (The Coercive Measures Act, Chapter 2, Section 4).

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

In practice, the contents of the protection order decisions are variable, for example when taking into account a possible temporary RO or BO preceding the actual protection order when counting the maximum duration for the order.⁵² As for the duration of protection orders, most BOs are imposed for the maximum duration allowed by the law, three months.⁵³ In decisions containing extended BOs, the scope of prohibited area is described either very generally (e.g. it is prohibited for the restraineed to go to the vicinity of the victim's home) or specifically (an area ranging from 100 to 500 meters from the victim's home).⁵⁴

There is no information available on the elaborateness of travel ban decision in practice.

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?

The law itself does not state much about the scope of the ROs or BOs. In general, the scope of the extended RO is limited to the vicinity of the victim's permanent residence, holiday residence, and workplace or to some other, comparable place that is specified separately in the decision containing the RO (ROA Chapter 1, Section 3, Subsection 3). The other, comparable space can be, for example, the school where the person protected by the RO is studying⁵⁵ or the home of his/her parents.⁵⁶ The district court should define very specifically the area that is off limits for the restraineed. If the extended RO is not valid during certain weekdays or hours, that should also be specified in the decision.⁵⁷ It should be kept in mind that the scope of the extended RO or BO should not be so extensive that it hinders to excess the daily life and rights of the restraineed.⁵⁸ Places that are considered to be too unreasonable to be included in an extended RO or BO are, for example, a shopping mall, a post office, a bank office or a theatre that the person protected by the protection order occasionally visits (this might be different if the protected person works in an aforementioned place).

⁵² Helminen – Kuusimäki – Rantaeskola 2012, p. 718.

⁵³ Rantala – Smolej – Leppälä – Jokinen 2008, p. 94.

⁵⁴ Rantala – Smolej – Leppälä – Jokinen 2008, p. 95-96.

⁵⁵ HE 41/1998, p. 18.

⁵⁶ Ropponen 1999, p. 4.

⁵⁷ Ropponen 1999, p. 15.

⁵⁸ Ropponen 1999, p. 15.

When deciding the scope of protection orders, the authorities should take into account that the ROs and BOs should not be imposed as more extensive as is necessary considering the security of the person protected by the protection order.⁵⁹ An extended RO or BO cannot oblige the restraineed to move to a different area or to give up his/her job, which should be remembered when the scope of the extended ROs and BOs is being defined⁶⁰. This should be kept in mind especially when imposing an extended RO or BO on a person who works in the same place or lives nearby the person protected by the protection order⁶¹. All the ROs and BOs have one exception to the scope of the protection order: The ROs and BOs do not apply to contacts that have an *appropriate reason* and are *decidedly necessary* (ROA Chapter 1, Section 3, Subsection 4). These are, for example, contacts and meetings concerning the mutual child of the parties.⁶²

The scope of the travel ban is limited to the terms described in the contents of the travel ban (The Coercive Measures Act, Chapter 2, Section 2) and the provisions on the maximum duration of the travel ban (The Coercive Measures Act, Chapter 2, Section 7). The area that the offender cannot go to does not necessarily have to be his/her place of residence, it can also be another area, for example the place where the crime was committed. The decision containing a travel ban cannot order the suspect to stay without an accommodation in an unfamiliar place or alternatively in an unreasonably expensive accommodation.⁶³ The area where the offender is forbidden to enter should also be determined in the limits of moderation, as the reason behind the regulation is to prevent the suspect from continuing his/her criminal behavior. In the preamble of the law, the scope of the 'off limits' area is limited to the area where there is a risk that the suspect might relapse and succumb into criminal behavior.⁶⁴

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 question 9a.

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

In practice, when imposing ROs and BOs, the authorities take into account factors such as personal circumstances of the victim and the offender and when imposing extended ROs and BOs, order the protection orders to cover areas where the offender is likely to assault or harass the victim or areas or places where such assaults or harassments have previously happened. Also factors such as visiting rights of the offender and his/her children are taken into account in the protection order decisions.⁶⁵

When imposing a travel ban, the authorities take into account factors that depend on the offender and the suspected crime and then choose which additional provisions they add

⁵⁹ HE 41/1998, p. 18.

⁶⁰ HE 41/1998, p. 18.

⁶¹ HE 41/1998, p. 18.

⁶² HE 41/1998, p. 19.

⁶³ HE 14/1985, p. 59.

⁶⁴ HE 181/1994, p. 9.

⁶⁵ Ropponen 1999, p. 16-17.

to the prohibition of movement from a certain area.⁶⁶ Also the place where the suspected criminal offence has been conducted can affect the area from where the offender cannot leave.⁶⁷

- 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")?

The prohibitions to enter a certain area have to be delineated carefully and the decision containing a RO or a BO has to include also area which is affected by the RO or the BO.⁶⁸ The area that is included in the RO or BO can be delineated, for example, by naming specific streets or places (such as the home, school or workplace of the person protected by the order) that are forbidden for the restrainee to enter. A map can be used in order to clarify the restricted area.⁶⁹ The intended area can also be specified by including the address of the house or by using radiuses, such as a few hundred meters.⁷⁰ The decision containing an extended RO or BO can also include a specific restriction to be on a certain route constituting of specific streets on a specifically defined time of day (for example during the time the person who is being protected by the order goes to and returns from his/her workplace).⁷¹ This should always be described extremely precisely in the decision.

The travel ban is usually delineated by naming a certain municipality, or a part of a municipality or parts of several different municipalities as the area that the offender is not allowed to leave.⁷²

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

As the most popular protection order is the basic RO (see question 29), the scope that prohibits someone to enter a certain area is mostly quite narrow, limited to the home and the immediate vicinity of the protected person and his/her home. Protection orders covering multiple streets or villages are more unusual.

- 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?

The legal limitations of the duration of protection orders vary depending on what kind of a protection order is being imposed. The maximum durations of protection orders are always regulated by law and the duration of a protection order should be considered carefully and individually in each case.

⁶⁶ Helminen – Fredman – Kanerva – Tolvanen – Viitanen 2012, p. 878-879.

⁶⁷ HE 14/1985, p. 59 and Helminen – Fredman – Kanerva – Tolvanen – Viitanen 2012, p. 884.

⁶⁸ HE 41/1998, p. 22.

⁶⁹ Ropponen 1999, p. 15.

⁷⁰ Ropponen 1999, p. 15.

⁷¹ Ropponen 1999, p. 16.

⁷² Helminen – Fredman – Kanerva – Tolvanen – Viitanen 2012, p. 884.

The maximum duration of a basic or an extended RO is one year, but it can be extended with two years at the maximum (ROA, Chapter 2, Section 7, Subsections 1-2).

The BO can be imposed for a maximum of three months, but it can be extended with another three months, making the maximum duration of a BO six months (ROA Chapter 2, Section 7, Subsections 1-2).

As for the maximum duration of TROs and TBOs, the law is somewhat unspecific on that, but they usually end when the actual protection order is imposed in court. As a general rule, a TRO can be imposed for 7 days and a TBO for 10 days, with some exceptions.⁷³ However, a temporary protection order cannot be imposed for an undefined period.⁷⁴

When issuing the decision containing a RO or a BO, the expiry date of the protection order must be included in the decision (ROA Chapter 2, Section 8, Subsections 2), which means that a RO or a BO must always be issued for a determined period. There is, however, no minimum duration for a RO or BO.

The maximum duration of a travel ban depends on when the travel ban is issued. A travel ban issued before the charges are pressed in the case is generally valid until the main hearing, unless it is ordered to expire earlier or it is specifically revoked before the beginning of the main hearing. In case the court would cancel or delay the main hearing, the court has to separately order whether the travel ban is kept in effect. After the judgment, the court can keep the travel ban in effect only if the suspect is sentenced into unconditional prison sentence but allowed to wait in liberty. In such situation, the travel ban is valid until the enforcement of punishment begins or a superior court decides otherwise (The Coercive Measures Act, Chapter 2, Section 7).

The maximum time limit for a travel ban depends also on the fact whether the conditions for imposing a travel ban change in the situation, because the travel ban has to be revoked immediately when there are no prerequisites to keep it in effect. A travel ban has to be revoked also *if the charges are not pressed within 60 days* of imposing the travel ban. However, this time limit can be extended by a court if the police request so (The Coercive Measures Act, Chapter 2, Section 6). There is no minimum time limit for a travel ban. The duration of the travel ban has to be mentioned in the decision containing the travel ban (The Coercive Measures Act, Chapter 2, Section 4).

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

When deciding on the duration of ROs and BOs, the legal authorities take into account facts such as the individual circumstances and situations of the case in question. In many cases, legal authorities order the protection orders to be in effect directly for the maximum time that is permitted by the law.⁷⁵ Also a preceding TRO or TBO might affect the authorities' decision on the duration of the protection orders.⁷⁶

⁷³ See question 5d.

⁷⁴ Rantala – Smolej – Leppälä – Jokinen 2008, p. 94 and Helminen – Kuusimäki – Rantaeskola 2012, p. 718.

⁷⁵ Rantala – Smolej – Leppälä – Jokinen 2008, p. 94.

⁷⁶ Helminen – Kuusimäki – Rantaeskola 2012, p. 718.

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

There are no general statistics on protection order durations, but many ROs and BOs are imposed for the maximum time allowed by the law. In case of ROs, this would be one year. A study on ROs shows that during the first nine months when it was possible to impose a RO, the majority (87.5%) of ROs were imposed for one year, and only 12.5 % were imposed for a duration of less than a year.⁷⁷ A study on BOs in Finland in the years 2005-2005 shows that 85 % of BOs imposed by a district court were imposed for the duration of three months, which is the maximum duration of a BO.⁷⁸

There are no statistics available on the average duration of travel bans.

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 case of ROs and BOs, the victim is often the person who applies for a protection order. In the application for a RO or BO, the applicant describes the nature of the offences or harassment done by the offender. The applicant can also decide whether to apply for a basic RO or BO or an extended one or for a TRO or TBO and what is the duration of the protection order that is applied.⁷⁹ The evidence needed for imposing a RO or a BO is obtainable mainly from the victim, so that is also a situation where the victim can influence the imposition of a protection order.⁸⁰ As a main rule, before a matter considering a TRO or TBO is decided, both parties should be heard, which also gives the victim a chance to influence the imposition of a TRO or TBO (ROA Chapter 3, Section 11, Subsection 3). The court should also hear the victim (as well as the offender) when deciding about a regular RO or BO matter.⁸¹

The victim cannot independently decide about the cessation of a RO or BO. However, the victim can request the cessation or modification of a RO or BO from the court if it is considered justifiable on the grounds of changed circumstances or for other, special reasons (ROA Chapter 4, Section 16, Subsection 1). Because the reasons and circumstances that influence the imposition of a protection order are mainly reasons related to the victim and therefore difficult to prove by anyone else, the victim can, in fact, influence the imposition and cessation of a RO or a BO significantly.

The victim does not have such a significant role in the imposition of a travel ban, as the travel ban is a criminal procedural coercive measure, where the opposing parties are the suspect and the legal authorities (usually the prosecutor, a police officer or the court). Therefore the victim cannot influence the cessation of a travel ban, unless it happens through the case's changed circumstances that affect the preconditions of the travel ban so that there are no reasons to keep it in effect anymore (The Coercive Measures Act, Chapter 2, Section 6, Subsection 1).

⁷⁷ Mäntykenttä 1999, p. 18.

⁷⁸ Rantala – Smolej – Leppälä – Jokinen 2008, p. 94.

⁷⁹ Ropponen 1999, p. 7.

⁸⁰ Niemi – Kiesiläinen 2004, p. 246.

⁸¹ Helminen – Kuusimäki – Rantaeskolä 2012, p. 715.

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?

The imposition of a RO and a BO is made considering the victims' needs, because a RO or a BO can be imposed only to prevent an offence or harassment of the victim and if there are reasonable grounds to assume that the offender is likely to commit an offence against the life, health, liberty or privacy of the victim or severely harass the victim (in case of a basic or extended RO) or if the offender, judged by the threats he/she has previously made, by previous offences or by other behavior is likely to commit an offence against the health, life or liberty of the victim (in case of a basic or an extended BO) (ROA Chapter 1, Sections 1-2). The need for imposing a RO or a BO comes, therefore, from the victim's circumstances. When imposing a RO, there is an assessment of its preconditions (ROA Chapter 1, Section 2a, Subsection 1). As the victim's needs are the main reason for imposing a RO or BO, they are assessed even when the application for a RO or a BO is made by somebody else than the victim.

The victim is never the applicant in travel ban matters and the victim's needs are not assessed directly. They can, of course, affect the preconditions under what the travel ban is imposed⁸² (The Coercive Measures Act, Chapter 2, Section 1). For example, a travel ban can be imposed if there is a risk that the suspect continues his/her criminal behavior. When this criminal behavior is connected to the victim, the victim's need might affect the imposition of the travel ban.

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?

As an applicant, the victim can apply for a certain type of RO or BO (basic, extended or temporary protection order) and the application has to include the duration of the RO or BO that is applied.⁸³ The court takes these matters into consideration when imposing a protection order. When the victim is not the applicant, the victim does not have so much influence on the type, scope or duration of the RO or BO, but can affect it when being heard in the court and through the evidence he/she presents in the case.

The victims cannot directly influence the type, scope or duration of travel bans, as the victims cannot apply for a travel ban.⁸⁴ The only way to influence the travel ban by the victim is through changed circumstances in the case that might affect the conditions of the travel ban.

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

The offender can appeal for the repealing or modifying of a basic or extended RO or BO. A RO or a BO can be modified or repealed if there has been a change in circumstances or if other specific reasons have appeared. The request to repeal or modify a RO or a BO

⁸² As from January 1, 2014 the travel ban may be imposed also as a 'no contact' order, when the victim's needs may affect the imposition of a travel ban, see question 43.

⁸³ Ropponen 1999, p. 7 and the application form for a restraining order:

<http://www.oikeus.fi/uploads/rhfapn6h.pdf>

⁸⁴ HE 222/2010, p. 86.

is made to the district court that has made the decision in question. (ROA Chapter 4, Section 16, Subsection 1). The only possibility to repeal or modify a RO or a BO is by a decision made by the court, it is not permitted to modify or repeal it by the parties' mutual agreement.⁸⁵ It is also noteworthy to mention that it is not possible for the offender (or the victim) to appeal the imposition of a TRO or a TBO (ROA Chapter 3, Section 11, Subsection 4).

The offender can challenge a travel ban imposed by a police officer already before the charges are pressed in the case in the district court (The Coercive Measures Act, Chapter 2, Section 6, Subsection 3). In case the travel ban has been imposed by a court, the offender is allowed to lodge a complaint about the decision to the Court of Appeal. The complaint has no time limit and it has to be considered urgently (The Coercive Measures Act, Chapter 2, Section 10).

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?

The wishes of the offender do not have much significance when deciding about the imposition of a RO or a BO. The circumstances of both parties are taken into account when deciding about imposing a RO or a BO. These can be, for example, circumstances considering the welfare and visiting rights of the mutual children of the parties.⁸⁶

A BO is only possible to impose when it is not unreasonable considering the seriousness of the crime, the circumstances of the other persons living in the same residence and other matters presented in the case (ROA Chapter 1, Section 2, Subsection 2). This means that if the BO causes disproportionate disadvantageous consequences to the offender, it might not be imposed.

The decision containing a travel ban can include permission for the offender to leave the area where he/she is otherwise obliged to stay if there are reasonable grounds for it (The Coercive Measures Act, Chapter 2, Section 2, Subsection 2). The offender's work or studies might require him/her to stay in a different place than what the travel ban covers, so the offender's wishes can influence the specific conditions travel ban under these circumstances.⁸⁷

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?

The offender cannot directly influence the type, scope or duration of a protection order. The offender has, however, a chance to give his/her opinion about imposing the protection order and its type, scope and duration during the process.

As for the RO and the BO, as a principal rule, the offender is heard in court during the main hearing of the case, unless his/her presence is not necessary for deciding the

⁸⁵ Ropponen 1999, p. 8.

⁸⁶ HE 41/1998, p. 17.

⁸⁷ HE 14/1985, p. 59.

matter and the offender has been warned about it (ROA Chapter 2, Section 6, Subsection 2). When deciding about a TRO or a TBO, the offender must generally be reserved an opportunity to be heard (ROA Chapter 3, Section 11, Subsection 3).

The offender can also say his/her opinion about the imposition of a travel ban, because the court and the police should hear the offender before imposing a travel ban, although the matter can be decided also without the presence of the offender (The Coercive Measures Act, Chapter 1, Section 15 and Chapter 2, Section 9, Subsection 1).

- 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 that practical impediments, such as lack of police personnel, do not so much influence the actual enforcement of protection orders, as the monitoring of protection orders. In fact, many protection orders are imposed regardless of well-known lack in practical impediments, e.g. the lack of support services in BO cases⁸⁸ or lack of effective monitoring measures of travel bans.⁸⁹

- 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)?

In general, previous ROs or BOs intrinsically are not taken into account in other ensuing legal proceedings against the offender. However, they can be regarded as evidence of prior violence if the protection order was imposed because of violent behavior. A study on BOs shows that approximately half of the TBOs issued lead to an actual BO.⁹⁰

There is no information available on whether previous travel bans are taken into account when ensuing legal proceedings against the same perpetrator.

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

As a general rule, when a RO is imposed, only the person who is threatened by the offender is included in the protection of the RO. In case of domestic violence, children are only included in the protection if the RO is imposed on the offender who has threatened the life, health, liberty or privacy of the children or there is a threat that he/she would harass them in some other, serious way (ROA Chapter 1, Section 1, Subsection 1). The children can be, of course, included in the RO if there have also been offences or threats of such offences against them as well. In a situation like this, the children have to be included in the application for a RO, so that they can be included in the protection. If the children are not included in the protection order and the offender is the parent of the

⁸⁸ Rantala – Smolej – Leppälä – Jokinen 2008, p. 186.

⁸⁹ HE 14/1985, p. 85.

⁹⁰ Rantala – Smolej – Leppälä – Jokinen 2008, p. 96.

children, the RO should not affect the visitation rights of the children. The decision containing a RO should also contain any possible exceptions to the 'no contact' order, which can be, for example, situations relating to the visitation rights of the offender and the mutual children of the victim and the offender.⁹¹

Domestic violence often occurs among people living in the same residence, and the protection order imposed in these situations is the BO. Even though the BO is imposed to protect only the person or persons who have been victims of an offence against life, health or liberty or a threat of such an offence by the offender living in the same residence (ROA Chapter 1, Section 1, Subsection 2), the protection order naturally affects all persons living in the same residence, including the children, even though they wouldn't have been victims of the aforementioned offences. There is no obligation for the courts to acknowledge the visitation rights of the offender and the children in BO situations and organizing the visitation rights can often be very problematic in practice.⁹² In case the children are also protected by the BO, the restraineedoes not have visitation right during the validity of the BO.⁹³

The travel ban does not extend to the children automatically; it depends on the individual circumstances of the case.

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

If the violent partner has visitation right but the RO is not imposed to protect the children, but only the other parent of the children, the restraineedoes still meet his/her children according to the visitation rights.⁹⁴ The decision containing a RO has to include all possible exceptions to the protection order (ROA Chapter 2, Section 8, Subsection 2). An exception like this can be, for example, the visitation right of the restraineedoes and the mutual children of him/her and the victim.⁹⁵ This means that meeting or contacting the victim in order to discuss matters related to the pair's mutual children or to collect and return the children to the victim (in case they live permanently with the victim) is not a breach of the RO. If it is possible and necessary, the execution of the visitation rights should be ordered to be carried out with the presence of a third party, like as a social authority.⁹⁶

When a BO is imposed on either one of the children's parents, the BO itself does not affect the visitation rights or custody of the children, unless the BO is specifically imposed to protect the children.⁹⁷ The children still have the right to be in contact with the parent against whom a BO is imposed. When the BO is imposed in order to protect the children from a violent or threatening parent, the visitation rights are considered to be less important than the 'no contact' order that is included in the BO.⁹⁸ It should be kept in mind

⁹¹ HE 41/1998, p. 18.

⁹² Rantala – Smolej – Leppälä – Jokinen 2008, p. 207-208.

⁹³ HE 144/2003, p. 26 and p. 36.

⁹⁴ HE 144/2003, p. 21.

⁹⁵ Ropponen 1999, p. 16 and HE 41/1998, p. 9.

⁹⁶ Ropponen 1999, p. 16 and HE 41/1998, p. 9. Supreme Court KKO:2007:71: RO and visitation rights were handled in the district court the same day. Visitation rights were ordered to be carried out under supervision. – The practical problem that follows is that there are no organizations nor facilities for supervised meetings between parent and child in many municipalities. Thus the implementation of such policy is arbitrary.

⁹⁷ HE 144/2003, p. 21 and LaVM 2/2004, p. 4.

⁹⁸ HE 144/2003, p. 21.

that the visitation rights are the child's right to visit his/her parents, not the parent's rights to visit the child.⁹⁹ In some cases, the parent against whom the BO is imposed and the children can still meet, but there should be an authority, such as a social worker, present.¹⁰⁰ When a BO is imposed and children are involved in the case, the police have a duty to inform the child welfare authorities and submit a child welfare report to the authorities.¹⁰¹ Either the victim or the restraineed or the child welfare authority can take the visitation rights and custody to the court for consideration.¹⁰²

There is no information available how the travel ban is implemented if the offender has visitation rights. The travel ban should not affect excessively the offender's everyday life,¹⁰³ so visitation rights could be seen as an exception that could act as reasonable grounds for permission for the offender to leave the area where he/she is otherwise obliged to stay (The Coercive Measures Act, Chapter 2, Section 2, Subsection 2).

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

It is recommended that the visitation rights of the child and the parent against whom a RO or a BO is imposed, should be conducted with the presence of a third party, such as a child welfare authority or social worker. This may cause problems, because the municipalities or the state do not have a legal responsibility to organize supervised visitations.¹⁰⁴ In addition, not all RO or BO decisions mention how the visitation rights should be organized or if it is mentioned, the realization of the visitation rights can be more complicated in practice.¹⁰⁵

There is no empirical information available on whether there are problems with travel bans and custody or visitation rights of the offender.

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

There is no explicit prohibition against mutual ROs. As far as we know, mutual ROs are not imposed.

As for the criminal protection order, 'mutual travel bans' do not exist.

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

We have no information on this point.

18) a. Are protection orders provided free of charge?

⁹⁹ HE 144/2003, p. 22.

¹⁰⁰ HE 144/2003, p. 21-22.

¹⁰¹ HE 144/2003, p. 21-22.

¹⁰² HE 144/2003, p. 22.

¹⁰³ Helminen – Fredman – Kanerva – Tolvanen – Viitanen 2012, p. 884.

¹⁰⁴ HE 144/2003, p. 21-22.

¹⁰⁵ Rantala – Smolej – Leppälä – Jokinen 2008, p. 207-208.

In principle, the ROs and the BOs are provided free of charge, as there are no administrative charges such as application fees, legal procedure fees or service fees in the RO and BO procedure. In practice, the procedure might be hard to follow through without legal guidance, such as legal help from lawyers or attorneys.¹⁰⁶ This, of course, raises the costs of obtaining a RO or a BO. It should be noticed, that there are no legal regulations that would require hiring help for the RO or the BO procedure and if the individual is capable to represent himself/herself in court, there might not be any need for such help. Free legal aid is also available, depending on the financial situation of the parties.¹⁰⁷

The travel ban is free for the victim, as the procedure is conducted by legal authorities, not the victim.

b. If not, who has to pay for the legal costs/court fees?

Both parties are themselves responsible for any possible costs that have incurred by the consideration of a RO and a BO matter (ROA Chapter 4, Section 14, Subsection 1). These are most often costs that result from legal advice and legal services from lawyers and attorneys. This means that the party who loses the case is not responsible for the winning party's legal costs, because the RO and the BO matters are not purely civil or criminal cases and therefore rules from civil and criminal procedure cannot be applied as such.¹⁰⁸

c. Can these costs/fees constitute an undue financial burden for the victim (and bar him/her from applying for a protection order)?

As mentioned above, the RO and the BO procedure itself are free of charges, so that should not bar the victim from applying for a protection order such as a RO or a BO. However, the costs of legal services from private sector lawyers and attorneys might raise the costs of the protection order procedure unreasonably high for the parties. Therefore the law states that in case of important reasons, the court may order the other party is liable for a part or for all reasonable legal costs of the opposing party (ROA Chapter 4, Section 14, Subsection 1). These types of exceptional cases might occur in situations where an application for a protection order has been made out of chicanery or where the party against whom the RO or the BO is applied tries to prolong the process without a reason. In a situation like this, it might be unreasonable for the other party to have to pay his/her legal costs in whole.¹⁰⁹ It should be noted that the law does not state whether the party who might become liable for the opposing party's legal costs is the victim or the offender. There is also a possibility to receive free legal aid according to the Legal Aid Act on basis of financial need.

Supreme Court KKO:2009:8. The offender was liable for the costs of the attorney of the applicant in the renewal of the RO, when the offender had violated the RO.

2.2.2. Enforcement of protection orders

¹⁰⁶ Ropponen 1999, p. 9.

¹⁰⁷ Ropponen 1999, p. 9 and the internet pages of the Finnish Judicial System: <http://www.oikeus.fi/8852.htm>

¹⁰⁸ HE 41/1998, p. 25.

¹⁰⁹ HE 41/1998, p. 25.

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?

All ROs as well as all BOs have to be registered so that they can be supervised.¹¹⁰ The ROs and BOs are registered in the Data System for Police Matters. The exact provisions on recording data in the aforementioned Data System for Police Matters are laid down in the Act on the Processing of Personal Data by the Police (761/2003) (ROA Chapter 4, Section 15, Subsection 1). The information that is registered in a RO or a BO matter is the arrest warrant data about the person protected by the protection order and the restrainee, in order to find, supervise, control and protect the aforementioned persons (Chapter 2, Section 5 of the Act on the Processing of Personal Data by the Police). When the court decides about a RO or a BO or the repealing or modifying of the aforementioned protection orders, it has to send the information about the contents of the decision immediately to the Data System for Police Matters (ROA Chapter 2, Section 9, Subsection 3). It is the deciding courts obligation to take care that the correct information reaches the Data System for Police Matters.¹¹¹

When deciding about a TRO or a TBO the regulations about the registration of the protection order are somewhat unclear. The ROA states that the provisions of RO apply, as appropriate, to TROs and TBOs as well (ROA Chapter 3, Section 13). This would mean that when a court issues a TRO or a TBO, it should notify the Data System for Police Matters about it. However, the Government Bill (draft law) of the ROA states that a TRO should not be registered in the Data System for Police Matters.¹¹² This can be problematic, because the police are responsible for the supervising of the TROs and TBOs as well. In addition, violations of TROs and TBOs are subject to public prosecution, so the police should be able to supervise them, which is unfeasible without the adequate information.¹¹³ The court's informing the police about TROs and TBOs is not considered as wrongful procedure,¹¹⁴ but even so, the court has no obligation to inform the police about the imposition of a TRO or a TBO, which can become problematic in practice.¹¹⁵

After a RO or a BO has expired, the data containing the information has to be deleted within two years from the Data System for Police Matters (Act on the Processing of Personal Data by the Police, Chapter 5, Section 22, Subsection 1).

The travel bans are registered in the Data System for Police Matters (The Act on the Person Register of the Police 509/1995, Chapter 1, Section 2, Subsection 3).

¹¹⁰ Restraining Order guidelines from the webpage of the Finnish Police: [http://www.poliisi.fi/poliisi/home.nsf/ExternalFiles/restrainingorder_2009/\\$file/restrainingorder_2009.pdf](http://www.poliisi.fi/poliisi/home.nsf/ExternalFiles/restrainingorder_2009/$file/restrainingorder_2009.pdf)

¹¹¹ Helminen – Kuusimäki – Rantaeskola 2012, p. 721.

¹¹² HE 41/1998, p. 26.

¹¹³ Helminen – Kuusimäki – Rantaeskola 2012, p. 721.

¹¹⁴ The Parliamentary Ombudsman's decision on 22.3.2004 (1218/4/03).

¹¹⁵ Helminen – Kuusimäki – Rantaeskola 2012, p. 721.

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?

After making a decision in a RO or a BO, in addition to informing the restrained, the District Court has to inform the applicant about the decision. When the applicant is not the victim, also the victim has to be informed about the decision (ROA Chapter 2, Section 9, Subsection 1). Decisions concerning ROs or BOs that the victim has to be informed about include decisions on imposing, renewing, repealing and modifying a protection order.¹¹⁶ When imposing a TRO or a TBO, also the police have to inform the victim about the protection order (ROA Chapter 2, Section 9, Subsection and Chapter 3, Section 13).

In case of the solely criminal protection order, the law orders that the offender has to be informed about the decision, but does not mention anything about the victim (The Coercive Measures Act, Section 2, Chapter 4, Section 2).

b. In what way is the victim informed? Does this happen automatically? By mail or letter?

Informing the victim about the decision in a RO or a BO matter happens when the decision is declared in the court if the victim is present or when the decision is given to writing from the chancery of the court, it is sent to the applicant afterwards.¹¹⁷ A decision about a TRO or TBO can be given in writing to both parties.

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 principle, the police are responsible for monitoring the compliance of ROs as well as the BOs and they are obliged to provide executive assistance and even use force and coercive measures if needed.¹¹⁸ In practice, the person who is protected by the RO or the BO is responsible for reporting the breaches of the protection orders to the police so that they can act accordingly.¹¹⁹ This is because often the victim is the only person who notices if the offender breaches the protection order or not.

The responsibility of monitoring the compliance of travel bans belongs in practice to the police.¹²⁰

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

In general, the monitoring authorities take measures against the person who breaches a RO or a BO when the victim reports the breach of protection order to the authorities.¹²¹ There are no specific supervising modes for the compliance of protection orders.

¹¹⁶ Ropponen 1999, p. 19.

¹¹⁷ Ropponen 1999, p. 19.

¹¹⁸ Ropponen 1999, p. 26 and Helminen – Kuusimäki – Rantaeskola 2012, p. 722.

¹¹⁹ Ropponen 1999, p. 26.

¹²⁰ Helminen – Fredman – Kanerva – Tolvanen – Viitanen 2012, p. 879

¹²¹ Ropponen 1999, p. 26.

The protection orders are registered and, thus, the police should give priority to calls from victims and their addresses.

The breach of RO is a crime that allows for arrest. Moreover, the police can remove a person who is disturbing the victim's domestic peace or causes significant disturbance and it is presumable that he/she will continue to do so (Chapter 2, Section 5 of the Police Act 872/2011). This authorization is commonly used in domestic violence and disturbance. In case the mere removal of this person is not an adequate measure to prevent the crime, the police can commit him/her into interim custody for the maximum of 24 hours.

As for monitoring ROs and BOs with technical devices, the police can, regardless of the obligation for secrecy, obtain from a telecommunications operator identification data on transmissions to a particular subscriber connection, with the consent of the injured party and the possessor of the subscriber connection, necessary for the purpose of investigating a violation of a RO or a BO. The police can also receive identification data on messages transmitted from a particular mobile communications device, with the consent of the subscriber or owner of the device, insofar as necessary for investigating a crime where the mobile communications device or the subscriber connection used therein has been unlawfully in the possession of another party (Chapter 9, Section 36, Subsection 3 of the Act on the Protection of Privacy in Electronic Communications 516/2004). This regulation is valid only until the end of 2013, as a similar regulation containing telecommunicational supervision with consent is included in Chapter 10, Section 7, Subsection 1 of the Coercive Measures Act.¹²²

The activities that the monitoring authorities can undertake to check the compliance with the criminal protection order, the travel ban, are not mentioned in the law. In case the suspect has been ordered to report to the police or to be at his/her home or workplace at a certain time as described in Chapter 2, Section 2, Subsection 2 of the Coercive Measures Act, the police can monitor the compliance of the protection order by making control visits. The offender has to surrender his/her passport to the police for the whole duration of the travel ban and if he/she does not have a passport, it is forbidden to grant him/her a passport (The Coercive Measures Act, Chapter 2, Section 2, Subsection 3), which can help to control and prevent the offender's movements abroad. All in all, the travel ban lacks of effective monitoring measures.¹²³

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

When it comes to ROs and BOs, the monitoring authorities usually wait for the victim to report a breach of the protection order caused by the offender.¹²⁴

As for the travel ban, it cannot be monitored with the help of technical devices, although suggestions to extend technical supervision to travel bans have been made, but so far unsuccessfully.¹²⁵

¹²² Helminen – Kuusimäki – Rantaeskola 2012, p. 722.

¹²³ HE 222/2010, p. 85.

¹²⁴ Rantala – Smolej – Leppälä – Jokinen 2008, p. 221.

¹²⁵ HE 222/2010, p. 85.

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

There is no empirical information available on the frequency of monitoring ROs and BOs with technical devices, but as most of the monitoring is done by the victims themselves, technical devices are seldom used.

There is no empirical information available on the frequency of monitoring travel bans with the help of technical devices, as it is not allowed.

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

As it would be extremely complicated for the authorities to monitor the violations of ROs and BOs, it is generally left for the victims to report any violations of these protection orders.¹²⁶ If a victim reports a violation of such a protection order, the authorities have a responsibility to react immediately and act accordingly.¹²⁷

As the victim does not actually have an 'official' role regarding travel bans, the violations cannot be left up to the victim to report.

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?

The monitoring authorities usually become aware of a violation of ROs and BOs through the victim, who should report all breaches of protection orders to the authorities, most often to the police.¹²⁸ The victim is often the only person who has evidence about the breach of a RO or a BO. The evidenced can be, for example, text messages or letters from the offender.¹²⁹ RO and BO violations are often individual breaches, reported by the victim. They can also occur simultaneously with another crime that affect the person protected by the protection order or if the restraineed is found by chance in a place or area prohibited by the RO or the BO.¹³⁰

There is no empirical information available on how the monitoring authorities become aware of travel ban violations. However, a significant number of travel ban violations come to the monitoring authorities' notice even though there are no effective monitoring measures and getting caught for breaching a travel ban is completely coincidental.¹³¹

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

As the victim does not have a prohibition to contact the restraineed, a contact with the offender initiated by the victim is not a breach of a protection order for the victim, as the

¹²⁶ Rantala – Smolej – Leppälä – Jokinen 2008, p. 221.

¹²⁷ Ropponen 1999, p. 26.

¹²⁸ Ropponen 1999, p. 26.

¹²⁹ Ropponen 1999, p. 8.

¹³⁰ Rantala – Smolej – Leppälä – Jokinen 2008, p. 221.

¹³¹ HE 222/2010, p. 85.

victim cannot officially violate a protection order. If the offender responds to the contact initiated by the victim, it is considered as a breach of a RO or a BO.¹³²

The same applies for the travel ban, as the victim is not restricted by the ban, a contact initiated by the victim cannot be a breach of the protection order for the victim, but in case the offender violates the travel ban because of a contact initiated by the victim, it is a breach of a protection order for the offender.

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

If the offender violates the RO or the BO as a consequence of a contact initiated by the victim, it is nevertheless counted as a violation of a protection order. However, when investigating the breach of a protection order in a preliminary investigation, the police should take this into account.¹³³

As for the travel ban, there does not seem to be any difference in the establishing or proving a protection order violation whether the contact was initiated by the victim or the offender.

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?

The Guidelines of the National Police Board state that, although all breaches of ROs and BOs are considered as violations of protection orders, in a case where the contact was initiated by the victim or when the victim has allowed the offender to enter the area prohibited by a protection order, it should be clearly presented in the report of the offence. This does not mean that a breach of a protection order has not taken place, but the circumstances should be presented explicitly.¹³⁴ It might even lead in some cases to an absolute discharge for the offender.¹³⁵

As for the travel ban, a contact initiated by the victim should not affect the official reaction to the protection order violation.

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

For a prosecution for breach of RO, the evidentiary requirement is the criminal procedural, that is, beyond reasonable doubt. For arrest, a lower threshold of probable cause is sufficient.

Also for removal according to Police Act, a lower evidentiary requirement is enough.

¹³² Rantala – Smolej – Leppälä – Jokinen 2008, p. 232-238.

¹³³ Guidelines of the National Police Board POHA Dnro/2010/331 and Helminen – Kuusimäki – Rantaeskola 2012, p. 708.

¹³⁴ Guidelines of the National Police Board POHA Dnro/2010/331 and Helminen – Kuusimäki – Rantaeskola 2012, p. 708.

¹³⁵ Rantala – Smolej – Leppälä – Jokinen 2008, p. 235.

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

The violation of a RO or a BO does not affect the validity of the protection order. The violation of a RO or a BO is an offence that requires public prosecution, so the victim himself/herself does not have to take any action to prosecute the offender.¹³⁶ Of course, when the victim is the only person who is aware that a protection order violation has taken place (as is the situation in most cases of violation of protection order), he/she should notify the police about the breach of protection order, so the authorities can take the necessary actions.

A travel ban is still in force after a violation. In case a violation of protection order happens during the pretrial investigation, the consideration of charges or while the trial is still unfinished, a police officer or a prosecutor can arrest the offender and demand for his/her imprisonment, which can also be made without arresting the offender. In case the offender has already been condemned to an unconditional imprisonment and the case is being considered in an appellate court, the demand for imprisonment is to be made to the appellate court. In case the unconditional sentence is capable of being executed, the punishment may be enforced immediately.¹³⁷

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

The violation of all forms of ROs as well as the violation of BOs is sanctioned in the Criminal Code (39/1889) (ROA Chapter 4, Section 17). If a restrainee violates the protection order as it is laid down in the decision, he/she will be sentenced for violation of a RO or a BO to a fine or to imprisonment for maximum one year (Criminal Code, Chapter 16, Section 9a).

A person who violates a travel ban can be arrested and imprisoned. When the offender has been sentenced to unconditional imprisonment and the sentence has become capable of being executed, it can be enforced immediately (The Coercive Measures Act, Chapter 2, Section 8).

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)?

At the moment, there seem to be only formal reactions to breaches of ROs and BOs, as described in Chapter 16, Section 9a of the Criminal Code.

Also the travel ban violations seem to cause only formal reactions.

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

Most often the sanction following a breach of a RO or a BO seems to be an imposition of a fine, imprisonment is unusual. The amount of fines imposed in RO violations range from

¹³⁶ Helminen – Kuusimäki – Rantaeskola 2012, p. 723.

¹³⁷ HE 14/1985, p. 61.

52 % to 74 % of all sanctions imposed.¹³⁸ A statistic on RO violations from the year 2001 shows that unconditional imprisonment was sentence in 21,1 % of the cases, conditional imprisonment in 22,5 % and a fine in 52,5 %, when 3,9% of RO violation cases were left without sentence.¹³⁹

A study on BOs in Finland shows that in the years 2005-2006, 60 % of the sanctions imposed in BO violation cases were fines, 35 % imprisonment and 5 % a cumulative sentence of a fine and an imprisonment.¹⁴⁰ A curious thing is that the same study shows that a formal reaction followed in only 11 % of BO violation, which is alarming, although the study is not entirely complete this case.¹⁴¹ This shows that a fine is by far the most common sanction following a RO or a BO violation. The sum of a the fines imposed in 2005-2005 for BO violations ranged from 120 Euros to 1770 Euros, with the average sum of fine being 450 Euros (in more than a half of the cases the average sum was 220 Euros).¹⁴²

There is no empirical information available on the reactions that usually follow travel ban violations.

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

The penal scale of violating a RO or a BO that covers the sanctions from a fine to a maximum of one year's imprisonment is proportionate and dissuasive if the sentence is imposed based on the nature and quality of the violation. The problem seems to be that sanctions for violating a RO or a BO are mostly fines, not imprisonments, which makes the sanctions ineffective (see question 25c). Also the sum of the fines imposed seems to be so low that it can hardly be an effective consequence and in my opinion, it does not have a deterrent effect strong enough.

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

Reports of RO and BO violations are given priority automatically. However, a study on BOs in Finland shows that a BO does not always mean that the police would react any faster to a 'home call' than in other cases.¹⁴³

There is no information available on the matter whether reports of travel ban violations are given automatically priority.

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?

As there are no actual civil or administrative protection orders (as we define them in this study) in Finland, the protection orders that can be violated are the criminal procedural

¹³⁸ Oikeus 2003:16, p. 170 and HE 144/2003, p. 5.

¹³⁹ HE 144/2003, p. 5.

¹⁴⁰ Rantala – Smolej – Leppälä – Jokinen 2008, p. 247.

¹⁴¹ Rantala – Smolej – Leppälä – Jokinen 2008, p. 246 and 259.

¹⁴² Rantala – Smolej – Leppälä – Jokinen 2008, p. 247.

¹⁴³ Rantala – Smolej – Leppälä – Jokinen 2008, p. 250.

ROs and BOs and the purely criminal protection order, the travel ban. The violation of a RO or a BO is a criminalized offense in itself, regardless of whether there have been some other criminal offenses as well.¹⁴⁴

The violation of a travel ban is an offence that can result into arrest and imprisonment of the offender (The Coercive Measures Act, Chapter 2, Section 8), but it is not criminalized separately as an offence in itself.¹⁴⁵

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

The sanction scale of violating a RO or a BO (any version of them, including the 'basic', extended and temporary protection orders) range from a fine to a maximum of one year's imprisonment (Chapter 16, Section 9a of the Criminal Code).

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

The police react to a violation of a RO or a BO if they find out about it. Violating a RO or a BO is in itself a crime that leads to public prosecution, regardless of the victim's will, so the police have the duty to react to it in case a violation of a RO or a violation of a BO comes to their knowledge.¹⁴⁶ A study on BOs in Finland shows that the general practice among the police is to react to a BO violation according to the scale of violation committed in the case. The minimum reaction of the police is to interrogate the offender about the BO violation and send the examination record to the prosecutor.¹⁴⁷

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

In case of a travel ban violation, the victim himself/herself does not have a role in the procedure, but of course if the victim notices that the offender is violating the travel ban, he/she can notify the police about. For example if the offender goes to a place or area that is prohibited for him/her in the travel ban and this aforementioned place is a place protected by domestic peace (e.g. the victim's home), the victim can call the police for help and the police can remove the offender and if needed, arrest and take him/her into custody (The Police Act, Chapter 2, Section 14).

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?

In case of a breach of a RO or a BO, the monitoring authority is the police.¹⁴⁸ When the police hear about a violation of a RO or a BO, they have the right to arrest and detain the person who is suspected on probable cause on violating a protection order.¹⁴⁹ As the

¹⁴⁴ Lappi-Seppälä 2000, p. 446.

¹⁴⁵ Niemi – Kiesiläinen 2004, p. 257.

¹⁴⁶ Helminen – Kuusimäki – Rantaeskola 2012, p. 723 and Working group memorandum on the Barring Order 23.1.2001, p. 26.

¹⁴⁷ Rantala – Smolej – Leppälä – Jokinen 2008, p. 248.

¹⁴⁸ Helminen – Kuusimäki – Rantaeskola 2012, p. 722.

¹⁴⁹ Helminen – Kuusimäki – Rantaeskola 2012, p. 722.

violations of a RO and a BO are criminal offences that are subject to public prosecution, the police cannot issue a sanction itself but has to report the breach of protection order to the authorities.¹⁵⁰

In case of a travel ban violation that comes to the knowledge of the police during the pretrial investigation, the consideration of charges or while the trial is still underway, the police can arrest the offender, but they have to make a demand of imprisonment to the court, as the police cannot order about an imprisonment in travel ban violation cases. When the offender imposed is condemned to an unconditional imprisonment and the case is under consideration in an appellate court when the violation is made, the monitoring authority has to make the demand for imprisonment to the appellate court.¹⁵¹

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

As a general rule, the police are obliged to report violations of ROs and BOs to the prosecutor, with the exception of minor violations. The police leads the preliminary investigation in the case and after the preliminary investigation is done, the case moves to the prosecutor, whose decides whether to press charges against the violator of a protection order and whether take the case to court or not.¹⁵²

The police have a right to take action in a case of travel ban violations, but there does not seem to be an obligation to report all violations of travel bans to the decisive authorities. When handling a travel ban violation, the police should draw up a separate record of investigation that can be presented when making a demand for imprisonment.¹⁵³

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

According to a study on BOs in Finland, the police do use its discretionary power, an evidence of that is that only 11 % of BO violation cases lead to a sentence in 2005-2006.¹⁵⁴

There is no information available on how the police use in practice their discretionary power in cases of travel ban violations.

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

The National Police Board has given instructions to the police on how to monitor and enforce ROs and BOs.¹⁵⁵ As far as I know, there has not been any separate training for the supervising authorities on the matter, as is the case with travel ban monitoring training as well.

2.2.3. Types and incidence of protection orders

¹⁵⁰ Rantala – Smolej – Leppälä – Jokinen 2008, p. 248.

¹⁵¹ HE 14/1985, p. 61.

¹⁵² Niemi, in the book Frände et al., 2012, p. 845-846 and 853.

¹⁵³ Helminen – Fredman – Kanerva – Tolvanen – Viitanen 2012, p. 879.

¹⁵⁴ Rantala – Smolej – Leppälä – Jokinen 2008, p. 246.

¹⁵⁵ Guidelines of the National Police Board POHA (Dnro/2010/331, 21.6.2012).

*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

The Statistics Finland publishes regularly statistic concerning ROs and BOs. According to the Statistics Finland, the total number of ROs and BOs imposed yearly altogether is around 1300-1500.¹⁵⁶ The amount of ROs and BOs imposed has remained approximately constant since 2005.¹⁵⁷

There is more empirical information on BOs due to a comprehensive study made in 2008 about BOs in Finland in the years 2005-2006. The number of BOs imposed yearly is less than 10 % off all ROs imposed. In 2005-2006, 258 BOs (including 'basic', extended and temporary BOs) and were imposed, when the total number of all ROs (including BOs) was 2797 (1407 in 2005 and 1390 in 2006).¹⁵⁸ Of all the BOs imposed in 2005-2006, one third was imposed as an extended BO, which makes the number of extended BOs approximately 80-90 per year.¹⁵⁹ As for TBOs, in the years 2005-2006, 29 % of all BOs were imposed exclusively as a TBO (75 exclusively TBOs), when a temporary and a regular (basic or extended) BO was imposed in 36 % of the cases (93 cases where a TBO and a regular BO was imposed together).

As for the exclusively criminal protection orders, there is little empirical information available on the number of travel bans imposed. They are not as popular as ROs and the total number of travel bans imposed yearly is approximately 500-600. In the year 2006, 604 travel bans were imposed and in January-May 2007, only 230.¹⁶⁰

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

For the number of different types of protection orders imposed yearly, see question 29. All in all, the 'no contact' order seems to be the most popular of all protection orders. Protection orders that contain eviction from the family home compose less than 10 % of all ROs and BOs and if travel bans are counted in, the percentage of BOs is even less. It should be noted that all ROs and BOs contain the 'no contact' order, in addition to the prohibition to enter an area that some of them contain and the eviction from the family home that the BOs contain. As there are approximately 1500 ROs and BOs imposed

¹⁵⁶ Statistics Finland statistics on restraining order matters: number of restraining orders imposed in Finland by district courts in 2011 was 1383, in 2010 1405 and in 2009 1506 (referred to 10.5.2013).

¹⁵⁷ HE 19/2013, p. 12.

¹⁵⁸ Statistics Finland statistics on restraining order matters: number of restraining orders imposed in 2006 in Finland by district courts (referred to 10.5.2013) and Rantala – Smolej – Leppälä – Jokinen 2008, p. 91.

¹⁵⁹ Rantala – Smolej – Leppälä – Jokinen 2008, p. 95.

¹⁶⁰ HE 222/2010, p. 85.

yearly¹⁶¹ and only approximately 600 travel bans¹⁶² and just a part of the travel bans imposed contain the prohibition to enter a certain area, it can be said that the 'no contact' order is by far the most popular protection order in Finland.

b. Which combinations of protection orders are most often imposed?

The most popular combination of protection orders seems to be the combination of 'no contact' order with a temporary (short-term) protection orders and 'no contact' orders combined with a prohibition to enter a certain area (extended ROs). Even though there is no empirical information or statistics available on the fact which one of these combinations is used more often, studies on BOs show that TBOs are more popular than extended ones (see question 29). If the RO follows the same pattern (and there is no reason why it would not), the most popular combination of protection orders is the combination of a temporary 'no contact' order.

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

ROs are most often imposed for situations where an ex-partner acts violently, harasses and threatens his/her former partner. Typical situations where these actions and threats appear are situations when the relationship between the parties ends because of the other partner's violent or threatening behavior, or the aforementioned behavior starts as a consequence of the breakup.¹⁶³ The most common situation where a RO is imposed seems to be after a break-up in a relationship.¹⁶⁴ In the majority of cases offender acts violently in addition to the threats he/she makes. Most often the former partner tries to harass his/her partner's life by making direct contacts, by stalking and by trying to get in to the victim's home.¹⁶⁵ The offender also often makes phone calls and sends messages to the victim, often dozens of times per day.¹⁶⁶

The BO is most commonly imposed in situations where a couple in a relationship is living in a common home and the offender has been acting violently towards his/her partner. This kind of harassment includes often serious violence, threats of serious violence and stalking. The violent behavior that leads to a BO happens often in the common family home of the partners.¹⁶⁷

As for the travel ban, there is no statistical information available on what types of crimes it is most often used. After the ROA was enacted, the travel ban has not been used as a protection order in the sense we understand it.

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

¹⁶¹ HE 19/2013, p. 12.

¹⁶² HE 222/2010, p. 85.

¹⁶³ Ropponen 1999, p. 28.

¹⁶⁴ Mäntykenttä 1999, p. 35.

¹⁶⁵ Ropponen 1999, p. 29.

¹⁶⁶ Ropponen 1999, p. 30-31.

¹⁶⁷ Rantala – Smolej – Leppälä – Jokinen 2008, p. 120-121.

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

Most of the ROs and BOs are imposed against male offenders on behalf of female victims. In the first 9 months after the RO became possible to impose in Finland, over 93% of the restrainees were male, and the number has not changed much during the years.¹⁶⁸ The majority of the victims that are protected by a RO are women.¹⁶⁹ Most of the restrainees were 36-40 years¹⁷⁰ old and the victims 31-35 years old¹⁷¹.

In a study BOs imposed in Finland in the years 2005-2006, 99 % of the restrainees were male. Most of the men against whom a BO was imposed were 31-50 years old.¹⁷² The majority, 94%, of the persons protected by a BO were women. The majority of them were 31-50 years old, like the men.¹⁷³ Most of the male restrainees, 87 %, were the spouse or partner of the woman who was protected by the BO, which is quite obvious, as the BO is imposed against person living in the same residence with the victim.¹⁷⁴

There is no empirical information available on the age of the offenders in travel ban cases, neither is there information available on the age of the victims.

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

In a study made about BOs that were imposed in Finland in 2005-2006, the results show that most of the restrainees against whom a BO was imposed had a prior police record. 73 % of the restrainees had committed a crime in the previous six years preceding the imposition of the BO.¹⁷⁵ It should be remembered that these are only the crimes that have come to the police's knowledge and that had resulted in a sentence by court, the number of unresolved and unreported criminal offences might be even higher. On the contrary, out of the persons who were protected by a barring order, only 11.4 % had been condemned for a criminal offence in the six years preceding the BO.¹⁷⁶

There is no empirical information available on the previous police record of offenders in RO or travel ban cases,

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

¹⁶⁸ Mäntykenttä 1999, p. 15 and Niemi-Kiesiläinen 2004, p. 247 that shows the percentage of male restrainees being 96%.

¹⁶⁹ 80-90 %, Niemi-Kiesiläinen 2004, p. 247.

¹⁷⁰ Mäntykenttä 1999, p. 16.

¹⁷¹ Mäntykenttä 1999, p. 19.

¹⁷² Rantala – Smolej – Leppälä – Jokinen 2008, p. 107.

¹⁷³ Rantala – Smolej – Leppälä – Jokinen 2008, p. 111.

¹⁷⁴ Rantala – Smolej – Leppälä – Jokinen 2008, p. 117.

¹⁷⁵ Rantala – Smolej – Leppälä – Jokinen 2008, p. 128-129.

¹⁷⁶ Rantala – Smolej – Leppälä – Jokinen 2008, p. 144.

Approximately one third of the restrainees against whom a basic or an extended BO was imposed in 2006 had had a TBO preceding the regular BO.¹⁷⁷

There is no empirical information available on what percentage of offenders in RO or travel ban cases had already had a previous protection order imposed on them.

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)?

In some cases, protection order work as they were intended to, they reduce the unwanted contact. However, a great deal of protection orders are violated, so they do not always reduce unwanted contact.¹⁷⁸ It is nearly impossible to discover the actual effect of protection orders.¹⁷⁹ There has been a lot of debate over the effectiveness of protection orders in Finland.

The amount of RO violations range from 1/3 to 2/3, depending on the study, of all ROs imposed.¹⁸⁰ This means that ROs do not reduce unwanted contact in the amount that was intended.

A study about BOs in Finland shows that the effect of BOs on the restrainees had no effect or were, in fact, negative in many cases. This is revealed through the amount of criminal and harassing behavior, such as violent actions or crimes against property committed by the restrainee.¹⁸¹ What the study does not show is whether the crimes and harassments were focused on the person who was protected by the BO. As the same study shows that approximately two thirds of the regular BOs were respected and weren't violated, it can be said in this light that the BO did not increase the violent or other way criminal behavior of the restrainee towards the victim.¹⁸² As for the victim's situation, the study shows that although the process of imposing a BO was found hard, the BO itself improved the well-being of the victims, at least to some extent.

There is no empirical information available on the effect of travel bans.

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

¹⁷⁷ Rantala – Smolej – Leppälä – Jokinen 2008, p. 90-91.

¹⁷⁸ Violation of protection orders varies, see question 33b.

¹⁷⁹ Rantala – Smolej – Leppälä – Jokinen 2008, p. 261.

¹⁸⁰ Mäntykenttä 1999, p. 29 and 33 and HE 19/2013, p. 12.

¹⁸¹ Rantala – Smolej – Leppälä – Jokinen 2008, p. 265-280.

¹⁸² Rantala – Smolej – Leppälä – Jokinen 2008, p. 239.

It is extremely hard to discover the exact numbers of RO and BO violations. This is because many of the violations do not reach the monitoring authorities and are thus left unreported. It has also been noticed that the number of reported protection order breaches may be smaller because in some cases the police might record only one violation of protection order, when the same person commits several violations.¹⁸³

A study about BOs in Finland says that approximately one third of BOs were violated and reported to the police.¹⁸⁴ Obviously, the real number of BO violations is higher, as not all violations are reported to the police, which happens in all protection order violations.

The percentage of RO violations range from 30 % to over 60 %, depending on the study and the way the violations are reported.¹⁸⁵ In a study on stalking cases where a RO had been issued, it was discovered that 35 % of the restraints violated the RO.¹⁸⁶ In 2001, the district courts in Finland heard 203 cases in which the main accusation was a violation of a regular RO (basic or extended) and an incriminating sentence was given in 190 cases.¹⁸⁷

There is no empirical information available on the exact percentage of travel bans violated, just that a significant number of them are violated.¹⁸⁸

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

According to a study on BOs in Finland in 2005-2006, the nature of violence in BO violations is, in many cases, even more negative and serious than before.¹⁸⁹

Similar empirical studies are not available on the change in nature of violence in RO or travel ban cases, although according to a study on RO violations during the first 9 months after it had been possible to impose a RO, the majority of RO violations were unwanted contacts made by phone or letters.¹⁹⁰

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 case the victim initiates the breach of the protection order, it is still counted as a protection order violation by the restraineed. It is often hard to estimate the exact number of cases where the victim has initiated the violation of the protection order, as they often remain unreported and thus do not come into the knowledge of the police or other legal authorities.¹⁹¹

¹⁸³ Rantala – Smolej – Leppälä – Jokinen 2008, p. 221-222.

¹⁸⁴ Rantala – Smolej – Leppälä – Jokinen 2008, p. 239.

¹⁸⁵ Mäntykenttä 1999, p. 29 and 33 and HE 19/2013, p. 12.

¹⁸⁶ Häkkänen – Hagelstam – Santtila 2003, p. 199.

¹⁸⁷ HE 144/2003, p. 4-5.

¹⁸⁸ HE 222/2010, p. 85.

¹⁸⁹ Rantala – Smolej – Leppälä – Jokinen 2008, p. 265-280.

¹⁹⁰ Mäntykenttä 1999, p. 20.

¹⁹¹ Rantala – Smolej – Leppälä – Jokinen 2008, p. 233.

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?

In case of BOs, it has been showed that the way the police reacted and acted to the BO influenced the restrainee's attitude toward the protection order, and if the police showed that they took the BO seriously, that can have positive effects on BOs. On the other hand, the lack of police intervention and light attitude towards BOs and BO violations appears to have a negative effect on the effectiveness of BOs.¹⁹²

Empirical information on factors that affect the effectiveness of ROs and travel bans is not available.

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?

In the study on BOs in Finland, it is showed that the amount of formal reactions (sentences) in BO violations is approximately 11 % of all those who were suspects in cases of BO violations.¹⁹³

On case of ROs and travel bans, there is no empirical information available on formal reactions on RO and travel ban violations.

b. How often (what percentage) do violations lead to an informal reaction?

As far as it is known, there are no studies made about informal reaction in protection order violation cases, although a study on BOs shows that in 83 % of the BO violations the police made a report on the case, which can be seen as an informal reaction on BO violations.

c. How often (what percentage) do violations lead to no reaction?

As described above, only 11 % of BO violations led to formal reaction and there are no known informal reactions, so almost 90 % did not lead to (formal) 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

One problem is that RO is so separate from civil or criminal procedure. The RO and the BO, which are the most commonly used protection orders in Finland are regulated by a separate law (the ROA) that does not belong entirely to either the civil or the criminal law, although it is closer to criminal procedure.¹⁹⁴ The

¹⁹² Rantala – Smolej – Leppälä – Jokinen 2008, p. 249.

¹⁹³ Rantala – Smolej – Leppälä – Jokinen 2008, p. 246.

¹⁹⁴ Niemi-Kiesiläinen 2004, p. 242.

restraining orders are described as criminal procedural precautionary measures.¹⁹⁵

The RO and BO legislation is also described an alternative way to criminal procedure to deal with IPV, which indicates that the legislator does not have a serious attitude toward IPV.¹⁹⁶ Sometimes victims of serious violence apply for a RO but because the RO procedure is separate from criminal procedure, no criminal proceedings concerning the violent crime are initiated. This can prove to be very risky for the victim. This problem was obvious after 1999 when the ROA came into force. Today the prosecution rules for battery have changed and the police is more active in investigating and prosecuting domestic violence.

Furthermore, because the RO procedure is only semi-criminal, the victim has to be very active in the procedure. Besides the victims being mostly responsible for applying, they often have to collect the evidence themselves. This puts a high requirement for victims of IPV who often are seriously traumatized to start with.

The travel ban legislation is somewhat ineffective and it is also described as being an implausible alternative to pretrial detention.¹⁹⁷

b. Problems with protection order imposition/issuing/procedure

The connection between the criminal procedure and the procedure of the ROs and the BOs is somewhat complicated and even problematic from the perspective of legal protection. The imposition of a RO or a BO is very much related to the criminal procedure, even though the prerequisites for imposing a RO or a BO do not require that an actual crime has happened. Merely the threat of a crime as described in the legal provisions of the RO and the BO is sufficient to the imposition of a RO or a BO.¹⁹⁸ It can be problematic to obtain a protection order in cases of serious violence or after crimes such as rape if there is no proof of continuous threat of violence.¹⁹⁹ In practice, however, most ROs are imposed after actual and several violent crimes have taken place.

An extremely serious problem is related to the imposition and procedure of ROs and BOs. Studies show that in some cases TROs and TBOs (45 % of all TBOs) are not imposed eventually as regular ROs or BOs, because the victim does not apply again for the imposition of these temporary protection orders as regular ones. What makes this alarming is that studies also show that this often occurs in situations of serious violence, when the victim is often so afraid of the perpetrator that she/he does not have the courage to apply for the regular RO or BO.²⁰⁰

c. Problems with protection order monitoring

¹⁹⁵ HE 41/1998, p. 8.

¹⁹⁶ Niemi-Kiesiläinen 2004, p. 259-260.

¹⁹⁷ HE 222/2010, p. 85.

¹⁹⁸ Niemi-Kiesiläinen 2004, p. 242

¹⁹⁹ Niemi-Kiesiläinen 2004, p. 259.

²⁰⁰ Rantala – Smolej – Leppälä – Jokinen 2008, p. 96-97.

The most significant problem with protection order monitoring is the inadequacy of monitoring measures and thus the difficulty of monitoring ROs and BOs. The responsibility to monitor ROs and BOs belongs to the police in principal, but due to practical difficulties and lack of police personnel, the monitoring of these protection orders is often the responsibility of the victim himself/herself. This can be seen as problematic, not least because studies show that many RO and BO violations are left unreported by the victims.²⁰¹

Monitoring travel bans is problematic, because there are actually no effective monitoring measures for travel bans.²⁰²

d. Problems with protection order enforcement

Problems with protection order enforcement are usually connected to the official preconditions that have to be filled in order to enforce a protection order. The enforcement of a RO requires that the service of the decision containing a RO is served to the restrainee according to the regulations set out in the law. This can cause problems in case the restrainee cannot be found and thus the information about a RO does not reach him/her. In a situation like this, the restrainee cannot be charged with violation of a RO and, in practice, the RO is not in force.²⁰³

Problems with BO enforcement include problems regarding, among other things, the enforcement of visitation rights in case there are children involved in a BO case (see question 16c) and the collecting of the personal belongings of the restrainee. The court has to order in the decision containing a BO the way how the restrainee can obtain his/her personal belonging from the common home of the parties (ROA Chapter 2, Section 8, Subsection 3). This can be problematic, because the law does not state how the collecting of the personal belongings should be conducted and the courts do not have an explicit norm on how the collecting of possessions is ordered in BO decisions.²⁰⁴ A study about BOs in Finland in 2005-2006 shows that 49 % of BO decisions contained an order to collect the personal belongings with the help of a third party, 21 % an order for the parties to agree about the matter with each other and the rest did not contain any mentioning of the collecting of the personal belongings or it was mentioned very vaguely.²⁰⁵ When the matter is left for the parties to decide, it can cause problems because the relationship between the parties at the time when a barring order is issued is often tense.

e. Problems with protection order effectiveness?

One of the main problems concerning protection order effectiveness is the amount of RO and BO violations and their inefficient sanctions. Studies show that in 60 % of situations concerning BO violations the sanction that is imposed is a fine of a

²⁰¹ Rantala – Smolej – Leppälä – Jokinen 2008, p. 240.

²⁰² HE 222/2010, p. 85.

²⁰³ Helminen – Kuusimäki – Rantaeskola 2012, p. 721-722.

²⁰⁴ Rantala – Smolej – Leppälä – Jokinen 2008, p. 205-206.

²⁰⁵ Rantala – Smolej – Leppälä – Jokinen 2008, p. 205-207.

few hundred Euros,²⁰⁶ although the sanction scale for RO and BO breaches allows a sanction from a fine to a maximum of one year's imprisonment (Criminal Code Section 16, Chapter 9).

In RO and BO matters, also contacts initiated by the victim can cause problems. As mentioned above, a contact initiated by the victim is not considered as a breach of protection order, but if the restraineed responds to the contact it might be a RO or a BO violation in case there is no 'appropriate reason' for the contact as is stated in the contents of the protection order (ROA Chapter 1, Section 4, Subsection 4).

Problems with travel ban effectiveness see question 36c.

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

In my opinion, the biggest problems concerning protection orders – and here I emphasize especially ROs and BOs, as they are the most common protection orders in Finland – is their ineffectiveness and their process which is a mix of civil and criminal procedures but still a separate procedure of its own. The ROs and the BOs are also easy to violate, because the police does not have enough resources to monitor ROs and BOs efficiently and thus many violations of ROs and BOs are left unreported. Furthermore, the level of sanctions sentenced for RO and BO violations are mostly so low that they compound the ineffectiveness of ROs and BOs.

2.2.6. Promising/ good practices

38) Which factors facilitate the:

a. Imposition

Factors that facilitate the imposition of protection orders are mainly related to the procedure. Although the RO and the BO procedure can be seen as somewhat complicated, a RO or a BO is relatively easy to obtain, meaning that in most cases a protection order is granted if the preconditions are fulfilled. In cases of TROs and TBOs, they can be imposed even without hearing the offender if he/she cannot be reached (ROA Chapter 3, Section 11, Subsection 3).

b. monitoring, and

A good practice that facilitates the monitoring of ROs and BOs is that the monitoring is primarily the responsibility of the police.²⁰⁷ Although the resources are limited, this means that when the police notice signs of a RO or a BO violation, they generally have to report the case. Another factor that facilitates the monitoring of protection orders is that all ROs and BOs are registered in the Data System for Police Matters, which means that the police should react promptly to violations of ROs and BOs.

²⁰⁶ Rantala – Smolej – Leppälä – Jokinen 2008, p. 247.

²⁰⁷ Helminen – Kuusimäki – Rantaeskola 2012, p. 722.

As for the travel ban, the contents of a decision containing a travel ban are stored to the Data System for Police Matters, which helps the police to obtain information about persons under a travel ban.

c. enforcement of protection orders?

Factors that facilitate the enforcements of protection orders are, in case of ROs and BOs that the TRO and the TBO can be imposed and enforced by the police and even without hearing the offender and, exceptionally, even without notifying him/her in case he/she cannot be reached.

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

Factors that increase the effectiveness of ROs and BOs are related to the sanctions that are sentenced in cases of protection order violation. The legislation enables the sanction of a maximum of one year's imprisonment. The maximum sanction regulated in law for a RO or a BO violation is so high that it allows the police to arrest and even imprison a person who is suspected on probable cause to have violated a the protection order.²⁰⁸ This means that the society and legislator regard RO and BO violations as serious offences.

The violation of a travel ban can lead to arrest and imprisonment of the offender, and in case he/she has been sentenced in an unconditional prison sentence, it can be enforced immediately.

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

One of the most promising things considering protection orders is enacting the addition of the barring order to the Act on Restraining Orders in 2005. This was a major factor indicating that the legislator showed genuine concern towards domestic violence that often occurs in families and relationships where the parties live together. The majority of the victims of domestic violence are women²⁰⁹, so the adding the BO as a protection order to the Finnish legislation was measure to protect the victims of domestic violence, especially female victims, who were earlier left with little protection.

The BO has been successful. According to a study, only one woman who was protected by the BO in 2005-2006 was killed by the restraineed. Taking into account that the cases involved serious violence, this can be held as a good result.

Interestingly, even the men against whom a BO was imposed, reported in interviews that the BO had been a good measure and changed their lives to the better. However, the small number of interviews (only 6) probably reached only those who had a positive attitude.

²⁰⁸ Helminen – Kuusimäki – Rantaeskola 2012, p. 722.

²⁰⁹ Niemi-Kiesiläinen 2004 s. 33.

A promising practice is also that there has been an increasing tendency to offer help to the victims as well as the offenders in protection order cases. For example, as study on BOs shows that the victims found the help of a support person from the Victim Support Finland very valuable in both the legal procedure and coping with the mental part of the BO process.²¹⁰ Although the legislators have emphasized the importance of victim support in protection order cases and its use has increased, there is still a lot to be done in the field of victim support services.

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

As one of the biggest problems with protection orders is the ineffectiveness of ROs and BOs, I would have a few recommendations concerning the effectiveness, supervision and monitoring of the aforementioned protection orders. As the police are responsible for monitoring the compliance of ROs and BOs, they should be given more measures. One possible measure that would exceedingly facilitate the monitoring of ROs and BOs could be if the electronic monitoring sentence use would be extended to cover also ROs. Since November 2011, it has been possible to issue an electronic monitoring sentence (as ordered in the Monitoring Sentence Act 330/2011), that consists of monitoring the offender with the help of electronic equipment such as an electronic ankle bracelet that tracks his/her location. This would require some alternations to the law, as the electronic monitoring sentence is now possible to issue only as an alternative of an unconditional prison sentence and it restricts the convict's life more strictly than necessary in RO and BO cases (Monitoring Sentence Act, Chapter 1, Section 2). However, with some minor changes it could be an excellent way to monitor the compliance of ROs and BOs.

In order to improve the imposition of ROs and BOs, it would be important to provide the police and the social welfare authorities with more information and training on the subject. It is possible for these authorities to apply for a RO or a BO if the victim himself/herself does not apply for it, but studies show that this is still extremely rare.²¹¹ Especially in cases of domestic violence, the victim might be too scared to apply for a BO, so the police and social welfare authorities should be trained to notice situations when there is a need to apply for a RO or a BO. As quite many TBO are not followed by an application for BO and these are cases of serious violence, there seems to be a need for reform. One possible measure could be to channel all applications for TBOs to the police. When deciding on the BO, the police would be at the same time obliged to decide whether there is reason to open a crime investigation. If it is a case of serious violence, the police would even consider whether there is reason to arrest the suspect. Also, the police have more information about victim support services than the court.

There has been a suggestion to develop the present RO and BO legislation by *Johanna Niemi* to impose a separate criminal and civil RO.²¹² The present form of RO legislation is described as an alternative way to criminal procedure to handle domestic and intimate partner violence.²¹³ By creating two separate, but clearly distinguishable RO procedures,

²¹⁰ Rantala – Smolej – Leppälä – Jokinen 2008, p. 181-184.

²¹¹ Rantala – Smolej – Leppälä – Jokinen 2008, p. 92.

²¹² Niemi-Kiesiläinen 2004, p. 241-260.

²¹³ Niemi-Kiesiläinen 2004, p. 260.

it might be easier for the victim to obtain a civil procedural RO in matter that do not yet fill the preconditions or evidentiary requirements for a crime, and a more severe, criminal procedural RO in cases of more serious offences, such as domestic batteries and rape, that fulfill the essential elements of a crime without necessarily the need for a continuous threat.

I would recommend connecting the RO and the BO legislation more tightly to the criminal procedure, which would make it more official and it would show that the society and the legislator regard RO and BO matters as serious affairs. One benefit would be that the police would be responsible for collecting the evidence. A RO and BO process that belongs purely to the criminal law would also raise the actual level of sanctions of protection order violations and it would also benefit from the criminal procedure's rules and regulations.²¹⁴

There is a civil injunction called the general precautionary measure that is used mainly to protect the plaintiff against the defendant's actions ahead of a civil law suit. As far as is known, it has never been applied as an injunction to protect victims of violence, harassment or intimate partnership violence in Finland, but it is quite flexible and in theory it could be applied for that as well, with some minor alterations.²¹⁵ According to the general precautionary measure, in case the applicant can show that it is probable that he/she has a right that is enforceable against the opposing party and there is a risk that the opposing party would prevent or reduce the applicant right or somehow decreases the value of the right, the court may, among other things, prohibit the opposing party from doing something, order him/her to do something or justify the applicant to do something or have something done (The Code on Judicial Procedure, Chapter 7, Section 3, Subsection 1, points 1-3). This civil injunction can be imposed if it does not cause unreasonable inconvenience to the opposing party (The Code on Judicial Procedure, Chapter 7, Section 3, Subsection 1, points 1-3). The enforcement of a civil injunction can be made more effective by ordering a penalty payment to the opposing party. There has been made suggestions that the general precautionary measure could be used for IPV and domestic violence situations. It could be used by prohibiting the offender from entering a certain area, sending messages or by allowing the victim to change the locks of his/her home at the offender's expense.²¹⁶ The general precautionary measure could be developed into a civil PO, which has been lacking from the Finnish legislation and which would be more inexpensive and administratively lighter than the semi-criminal RO and BO procedures.²¹⁷

The imposition, supervision, enforcement and effectiveness of travel bans could be improved if the monitoring of travel bans could be made easier, for example with the help of electronic monitoring devices. This would require the alteration of the electronic monitoring legislation, as it is now only possible to use electronic monitoring sentence as an alternative to unconditional prison sentence. Also, there is no proper sentence for violating the travel ban; the law only *allows* the police to arrest and imprison the offender, but a concrete sentence for violating a travel ban might increase the deterrent effect of the travel ban violation and so improve the effectiveness of the travel ban.

²¹⁴ Niemi-Kiesiläinen 2004, p. 259.

²¹⁵ Niemi-Kiesiläinen 2004, p. 250-251 and Havansi 1994, p. 55 and 72.

²¹⁶ Niemi-Kiesiläinen 2004, p. 250.

²¹⁷ Niemi-Kiesiläinen 2004, p. 259.

2.2.7. Future developments

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

There has been a proposition made in the Parliament in 2013 to criminalize stalking to protect the victims of stalking.²¹⁸ The Finnish Ministry of Social Affairs and Health has also made an action plan to reduce violence against women in 2010, as instructed by the Government.²¹⁹ This plan includes taking actions to improve the situation with actions such as making an extensive report on the functioning of the ROs and the BOs in Finland during the years 2012-2013. The report will especially focus on security of the victim and also study the effects of the electronic monitoring sentence, which indicates that the electronic monitoring sentence might be used for monitoring ROs and BOs in the future.²²⁰

- 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?

There has been made a bill proposing changes to the Coercive Measures Act²²¹ and as a result, the new Coercive Measures Act (806/2011) will come into effect on January 1, 2014. The alterations take the travel ban closer to the RO regarding its contents.

- b. If so, what will change?

The most significant changes to the contents of the travel ban by adding to it 'no contact' order. According to the new travel ban, the offender can be prohibited from contacting a person who is, for example, the injured party in the case.²²² Another significant change to the travel ban is that the suspect has to be heard in person before the travel ban can be imposed.²²³

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

See question 42.

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

As there are no concrete changes in prospect for protection orders in Finland in the near future, except for the travel ban legislation, one can only make assumptions on changes regarding protection order legislation and enforcement. However, the public opinion seems to be that the sanction sentenced for crimes are too low, so one possibility could

²¹⁸ HE 19/2013.

²¹⁹ The Ministry of Social Affairs and Health: Action plan to reduce violence against women, 5:2010.

²²⁰ The Ministry of Social Affairs and Health: Action plan to reduce violence against women, 5:2010, p.

44.

²²¹ HE 222/2010.

²²² HE 222/2010, p. 263-264.

²²³ HE 222/2010, p. 266.

be that the sanctions that are imposed in reality for RO and BO violations might rise within the limits of the RO's and the BO's own penal scale.

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?

The European Protection order (EPO) is in my opinion a good improvement to the protection order legislation. With the constantly growing mobility in the EU, it is extremely important that a protection order issued in one Member State is recognized also in other member States, otherwise the protection order legislation would lose its function when either the victim or the restraineed would move within the EU Member States.

The main problem regarding the EPO is, of course, that the protection order legislation is not similar in every Member State and that even within the same protection order term there might be some differences.

Glossary

1. General Legal Terminology:²²⁴

Crime

An act usually deemed socially harmful or dangerous and specifically defined, prohibited, and punishable under criminal law.

Instantaneous crime

An “instantaneous” crime is one which is fully consummated or completed in and by a single act (such as arson or murder) as distinguished from one which involves a series or repetition of acts.

Continuous crime

A “continuous crime”, or a “course of conduct crime”, is a crime consisting of a continuous series of acts, which endures after the period of consummation

Civil law

Law that applies to private rights especially as opposed to the law that applies to criminal matters. Protection orders that are imposed as part of civil proceedings are referred to in this study as ‘civil protection orders’.

Criminal law

Branch of public law that deals with crimes and their prosecution. Substantive criminal law defines crimes, and procedural criminal law sets down criminal procedure. In criminal law the protection order is a public matter. A criminal protection order can be imposed by a judge or prosecutor.

Administrative law

Law dealing with the establishment, duties, and powers of and available remedies against authorized agencies in the executive branch of the government. Some Member States view intimate partner violence (also) as a breach of the public order.

Case law

In the context of this research case law refers to the entire collection of published legal decisions of the courts regardless of whether in the particular member state law can be established by judicial decisions or only by legislative acts, such as statutory law.

Substantive Law

Law that creates or defines rights, duties, obligations, and causes of action that can be enforced by law.

Procedural Law

Law that prescribes the procedures and methods for enforcing rights and duties and for obtaining redress and that is distinguished from law that creates, defines, or regulates rights. It determines the rules of legal process such as the rules of evidence and of procedure in enforcing a legal right or obligation.

²²⁴ Merriam-Webster's Dictionary of Law ©1996. Merriam-Webster, Incorporated. Published under license with Merriam-Webster, Incorporated.

Pre-trial detention or remand

The detaining of a suspect in a criminal case before the trial has taken place. Since pre-trial detention occurs while the suspect is still presumed innocent, it is often seen in most jurisdictions as an exceptional measure. It serves two main purposes: to protect the public and or the victim's safety (prevent the perpetration of further crimes or violent situations) or to protect the conduct of the proceedings (prevent the suspect from fleeing or compromising evidence). The pre-trial detention can be prolonged by a judge.

Adult person

An individual who is above the age fixed by law at which he or she would be charged as an adult for a criminal act and to whom no special rules apply in relation to the criminal proceedings.

Report

Detailed account or statement of facts, potentially constitutive of a charge of misconduct against someone, made normally before the police or other social services such as health centres, hospitals, courts, etc.

Legal provisions

Legal provisions are sections/articles within (codes of) criminal, administrative, civil, or other law that can form the basis of a protection order. Take, for instance, the 'no contact' order as a condition to a conditional release from prison. In this example, the 'no contact' order is the protection order, whereas the conditional release from prison is the legal provision upon which the protection order is based.

Formal complaint

It refers to the initial pleading that starts a lawsuit and that sets forth the allegations made against the defendant. It can proceed from a victim, police officer or other person, yet it sets forth a criminal violation and serves as the charging instrument by which charges are filed and judicial proceedings commenced against a defendant in a court.

Complainant

It refers to the party (as a plaintiff or petitioner) who makes the complaint in a legal action or proceeding.

Victim

A natural person who has suffered harm, including physical or mental injury, emotional suffering or economic loss, directly caused by acts or omissions that are in violation of the criminal law of a state.²²⁵

Decision

It refers to an authoritative determination (as a decree or judgment) made after consideration of facts or law. While being an authoritative determination of a disputed issue, it does not have to be a final determination closing the case. Some (interlocutory) decisions may be appealed. With regards to a protection order, a decision can be made by a judge, prosecutor, magistrate, or any other administrative officer or public servant.

Legal representation/counsel

225 EU Council framework decision, 15 march 2001. (2001/220/JHA)

By legal counsel or representation we refer to a professional of the law who gives legal advice and pleads the cause of another before a court or tribunal.

Legal aid/advice

By legal aid we refer to the provision of information or advice in relation to the rights, without actually representing the person in the legal procedures.

Probation

The suspension of all or part of a sentence and its replacement by freedom subject to specific conditions (and the supervision of a probation officer). If the suspected/accused/convicted person fails to follow the conditions the sentence will be imposed. The purpose of this is to stimulate good behaviour. This condition may, for instance, include a 'no contact' order or a street ban.

Sanction

Punitive or coercive measure or action that results from failure to comply with a law, rule, or order. The sanction of a crime refers to the actual punishment, usually expressed as a fine or jail term.

Notification

Notification refers to the communication of a fact, claim, demand, proceeding, or verdict. The requirements of when, how, and what notice must be given to a person are often prescribed by a statute, rule, or contract. The notice can, for instance, be published in a public medium (as a newspaper) or it can be serviced on the defendant/suspect in person.

2. Forms of violence

Intimate partner violence (IPV)

Intimate partner violence refers to physical, sexual, psychological, and economic violence or threats against a person by a current or former intimate partner, irrespective of the sex of the partner. It can take place regardless of whether there is, or has been, a shared residence.

Domestic violence²²⁶

Violence occurring in the family or domestic unit, including, *inter alia*, physical and mental aggression, emotional and psychological abuse, rape and sexual abuse, incest, rape between spouses, regular or occasional partners and cohabitants.

Stalking²²⁷

Stalking refers to a pattern of repeated and unwanted attention – a course of conduct - in the form of direct, indirect or virtual attention, communication or contact, causing anxiety or fear in the targeted person. More severe forms of stalking consist of persistent and continued pursuit and harassment in a way that is likely to impair the victim's life. It is often, but not always, associated with IPV, especially post-separation.

Rape/sexual assault

²²⁶ Rec. (2002)5. (VAW) (Committee of Ministers).

²²⁷ C. Hageman-White, L. Kelly, & R. Römken (Eds.), Feasibility study to assess the possibilities, opportunities and needs to standardise national legislation on violence against women, violence against children and sexual orientation violence (pp. 127-152). Luxembourg: European Commission.

Sexual assault is in this study defined as any sexual act committed against non-consenting persons²²⁸, even if they do not show signs of resistance. Rape is considered one form of sexual assault consisting of the sexual penetration with any means, by one person of another person's body without the consent of that other person.

3. Terms related to the protection order

Types/nature of protection orders

Protection orders refer, in the context of this research, to those orders specifically issued for the protection of a particular party from violence and to prevent violence from (re-)occurring. The type/nature of the order refers to the different measures that can be included in order. These measures could require, for example, the eviction of the aggressor from the home, the prohibition to return, the prohibition to approach or contact the victim, etc. or a combination of these measures.

Injunction

A remedy in the form of a court order compelling a party to do or refrain from doing a specified act. An injunction is available as a remedy for harm for which there is no adequate remedy at law. Thus it is used to prevent a future harmful action rather than to compensate for an injury that has already occurred, or to provide relief from harm for which an award of monetary damages is not a satisfactory solution or for which a monetary value is impossible to calculate. A defendant who violates an injunction is normally subject to penalty for contempt.

Restraining order

An order of a specified duration normally issued after a hearing attended by all parties that is intended to protect one individual from violence, abuse, harassment, or stalking by another esp. by prohibiting or restricting access or proximity to the protected party. Temporary restraining orders can be issued for brief duration, ex parte, to protect the plaintiff's rights from immediate and irreparable injury by preserving a situation or preventing an act until a hearing for a preliminary injunction can be held.

Barring order

A barring order requires the respondent to leave the family home and stay away from the family home of the applicant/victim and/or dependent children. It may also include terms prohibiting the respondent from using or threatening to use violence or to contact the victim.

Police go order

A police go order is not a judicial order but a notice given by the police to a person as a warning, in order to stop a violent event or prevent it from happening.

(The) scope

The scope of the order details the exact limits of the protection order and its conditions. For instance, how many streets are included in a protection order that prohibits the offender from entering a certain area? And which persons is (s)he no longer allowed to contact?

Radius

The area, usually measured in meters, surrounding the home (or other defined location) which the aggressor must not approach.

²²⁸ Council of Europe Convention on preventing and combating violence against women and domestic violence, art. 36 b.

Practical impediments

Practical impediments refer to all the circumstance which may impair the implementation of a protection order, such as shortage of police personnel. Thus, regardless of the imposition of the order, in practice, the protection that the order should offer turns out to be limited or even completely hindered.

Pro-active supervision

Pro-active supervision means in this study that the police personnel work to monitor and enforce the order by controlling that the aggressor complies with it. Police should actively verify the absence of any breach by the aggressor (or the victim). In the event of a violation of the protection order, the police should report this to the authorities handling the case.

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- The internet pages of the Victim Support Finland: <http://www.riku.fi/fi/victim+support/>

Government Bills (draft laws) and other official sources:

- HE 14/1985 vp.- Hallituksen esitys Eduskunnalle esitutkintaa ja pakkokeinoja rikosasioissa koskevaksi lainsäädännöksi (Government Bill to the Parliament on legislation about pretrial investigation and coercive means in criminal matters).
- HE 181/1994 vp. – Hallituksen esitys Eduskunnalle laiksi pakkokeinolain muuttamisesta (Government Bill to the Parliament on changing the Coercive Measures Act).

- HE 41/1998 vp. – Hallituksen esitys Eduskunnalle laiksi lähestymiskiellosta ja eräiksi siihen liittyviksi laeiksi (Government Bill to the Parliament on the Act on Restraining Orders and on some laws related to it).

- HE 222/2010 vp. – Hallituksen esitys Eduskunnalle esitutkinta- ja pakkokeinolainsäädännön uudistamiseksi (Government Bill to the Parliament on the renewal of the legislation about pretrial investigation and coercive measures).

- HE 144/2003 vp. – Hallituksen esitys Eduskunnalle laiksi lähestymiskiellosta annetun lain muuttamisesta ja laiksi rikoslain 21 luvun 17 §:n kumoamisesta (Government Bill to the Parliament on changing the Act on Restraining Order and on repealing Chapter 21, Section 17 of the Criminal Code).

- HE 19/2013 vp. – Hallituksen esitys Eduskunnalle laeiksi rikoslain, pakkokeinolain 10 luvun 7 §:n ja poliisilain 5 luvun 9 §:n muuttamisesta (Government Bill to the Parliament on changing the Criminal Code, Chapter 10, Section 7 of the Coercive Measures Act and Chapter 5, Section 9 of the Police Act).

- LaVM 2/2004 – Lakivaliokunnan mietintö (Memorandum of the Legal Affairs Committee): Hallituksen esitys Eduskunnalle laiksi lähestymiskiellosta annetun lain muuttamisesta ja laiksi rikoslain 21 luvun 17 §:n kumoamisesta (Government Bill to the Parliament on changing the Act on Restraining Order and on repealing Chapter 21, Section 17 of the Criminal Code).

Case law:

- Eduskunnan oikeusasiamiehen ratkaisu (The Parliamentary Ombudsman’s decision) 22.1.2004 (1218/4/03).
- Supreme Court KKO 2007:71

Protection Orders in Finland

	Applicant	Time limits	Issuing authority	Ex Parte 1	Ex Parte 2
RO	The victim, the police, the social welfare authority, the prosecutor	1 year, can be extended to 2 years	the Court	In general, the offender has to be heard, but can be given without hearing the offender	The offender has to be notified about the application
TRO	The victim, the police, the social welfare authority, the prosecutor	7 days in general	The police, the Court	Can be given without hearing the offender	In general, the offender has to be notified about the application
BO	The victim, the police, the social welfare authority, the prosecutor	3 Months, can be extended to 6 Months	The Court	In general, the offender has to be heard, but can be given without hearing the offender	The offender has to be notified about the application
TBO	The victim, the police, the social welfare authority, the prosecutor	10 days in general, can be extended	The police, the Court	Can be given without hearing the offender	In general, the offender has to be notified about the application
Travel Ban	The police, the prosecutor	60 days	The police, the Court	Can be decided without hearing the offender (as from January 1, 2014 the offender has to be heard)	The offender has to be notified about the application
Civil Injunction	The victim	1 Month	the Court	The offender has to be heard before imposing a civil injunction, however a temporary civil injunction may exceptionally be given without hearing the offender	The offender has to be notified about the decision
Ex Parte 1:	Without hearing the offender about the application				
Ex Parte 2:	Without serving the offender with the application				