

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

**Guidelines for national experts (draft)**

# Content

## 1. General overview of the assignment for the national experts

- 1.1. Main objective
- 1.2. Definition of protection order
- 1.3. Tasks and delivery deadlines
- 1.4. Reference period for the study
- 1.5. Template, language and size

## 2. National reports: content and structure

- 2.1. Introduction
- 2.2. Overview of the structure of the national reports

*2.2.1. Imposition of protection orders*

*2.2.2. Enforcement of protection orders*

*2.2.3. Types and incidence of protection orders*

*2.2.4. Protection order effectiveness*

*2.2.5. Impediments to protection order legislation, enforcement and effectiveness*

*2.2.6. Promising/good practices*

*2.2.7. Future developments*

## Annex: Glossary

# 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.<sup>1</sup> 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.

---

<sup>1</sup> 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?**
  - b. **Are protection orders regulated in generic law or in specific laws on forms of (interpersonal) violence (e.g., domestic violence act)?**
  - c. **Are these laws (or the text on the protection orders) available on the internet in English or in your local language? If so, could you provide us with a link?**

1) a-c: In Sweden protection orders (hereafter: POs) can be found in the areas of criminal, civil and administrative law. The most common and used POs are regulated in a specific law, the Contact Ban Act (lagen (1988:688) om kontaktförbud, hereafter CBA), and has in this report been categorized within the area of criminal law. Unfortunately, this act has no English translation, but it is available on the internet in Swedish:

[http://www.riksdagen.se/sv/Dokument-Lagar/Lagar/Svenskforfattningssamling/Lag-1988688-om-kontaktforbu\\_sfs-1988-688/?bet=1988:688](http://www.riksdagen.se/sv/Dokument-Lagar/Lagar/Svenskforfattningssamling/Lag-1988688-om-kontaktforbu_sfs-1988-688/?bet=1988:688)

Additional regulations regarding enforcement are found in the Contact Ban Regulations (förordningen (1988:691) om kontaktförbud, hereafter CBR).

The Contact Ban Act regulates four types of POs; restraining order, extended restraining order, special extended restraining order and barring order (Art. 1-2 CBA). In the following “contact ban” will be used as a collective name for these type of orders.

In the area of civil law POs can be found within the family law area. In that area the POs are regulated in generic laws, the Marriage Code (Äktenskapsbalken (1987:230)) and the Cohabitees Act (Sambolagen (2003:376)). The Marriage Code has partly an unpublished English translation: <http://ceflonline.net/wp-content/uploads/Sweden-Divorce-Legislation.pdf>.<sup>2</sup>

The Code is also available on the internet in Swedish:

[http://www.riksdagen.se/sv/Dokument-Lagar/Lagar/Svenskforfattningssamling/ktenskapsbalk-1987230\\_sfs-1987-230/?bet=1987:230#K14](http://www.riksdagen.se/sv/Dokument-Lagar/Lagar/Svenskforfattningssamling/ktenskapsbalk-1987230_sfs-1987-230/?bet=1987:230#K14)

The Cohabitees Act is only available in Swedish:

[http://www.riksdagen.se/sv/Dokument-Lagar/Lagar/Svenskforfattningssamling/Sambolag-2003376\\_sfs-2003-376/?bet=2003:376](http://www.riksdagen.se/sv/Dokument-Lagar/Lagar/Svenskforfattningssamling/Sambolag-2003376_sfs-2003-376/?bet=2003:376)

In the area of administrative law POs can be based on generic laws regulating compulsory psychiatric care, the Compulsory Psychiatric Treatment Act (lagen (1991:1128) om psykiatrisk tvångsvård, hereafter CPTA) and the Forensic Psychiatry Treatment Act (lagen (1991:1129) om rättspsykiatrisk vård, hereafter FPTA). They are available on the internet in Swedish, but not in English:

[http://www.riksdagen.se/sv/Dokument-Lagar/Lagar/Svenskforfattningssamling/Lag-19911128-om-psykiatrisk\\_sfs-1991-1128/?bet=1991:1128](http://www.riksdagen.se/sv/Dokument-Lagar/Lagar/Svenskforfattningssamling/Lag-19911128-om-psykiatrisk_sfs-1991-1128/?bet=1991:1128)

[http://www.riksdagen.se/sv/Dokument-Lagar/Lagar/Svenskforfattningssamling/Lag-19911129-om-rattpsykia\\_sfs-1991-1129/?bet=1991:1129](http://www.riksdagen.se/sv/Dokument-Lagar/Lagar/Svenskforfattningssamling/Lag-19911129-om-rattpsykia_sfs-1991-1129/?bet=1991:1129)

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

2) a-b:

Criminal law: Within the criminal law area POs in the form of contact ban can be imposed to prevent crimes against individuals who may be subject to stalking or harassment (see further Art. 1-2 CBA). A contact ban is not conditional to any other sentence. Formally, it does not require that an actual criminal offence has been committed.

---

<sup>2</sup> The translation was made 2000 and is not up to date, but the section which here is of interest is correct in relevant parts.



A contact ban is imposed by the public prosecutor (hereafter: prosecutor) and the prosecutors' decision can be tried in court, whether the prosecutor imposed a PO or decided not to impose one (Art. 7, 14 CBA). In court the prosecutors' decision will be tried in a procedure of its own. It can also be tried by court in a criminal case, if the person against whom the contact ban will apply is charged for an offence of relevance for the contact ban (Art. 21- 22 CBA).

Civil law: In a divorce case the court may prohibit the spouses from visiting one another. Such a PO can be imposed for the period prior to the determination of the question of divorce by a decree that has become non-appealable (Art. 14:7 the Marriage Code). For the period after the question of divorce has been settled, a PO may be imposed in cases where the issue of which of the spouse is entitled to continue to reside on the spouses' joint dwelling is raised. Such a PO can be imposed for the time until property division has taken place (Art. 18:2 the Marriage Code).

There are corresponding rules regarding cohabitants. Thus, a PO can be imposed if the court decides which of the cohabitants is entitled to reside on the cohabitants' joint dwelling until property division has taken place (Art. 28 the Cohabitants Act). The same applies if the dwelling is not included in the property division, but the issue of right to take over the dwelling has been raised (Art. 31 the Cohabitants Act).

Administrative law: POs based on the laws regulating psychiatric compulsory care can be imposed as a condition to give furlough or as a condition for care given in the form of outpatient care (Art. 25-26 CPTA and Art. 9-10, 11, 12 a, 16 a FPTA).

In the following the report is focused on PO within criminal law, since that one is the most common. Some answers will also reflect and cover POs within civil law.

*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)?**  
**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?)**

3) a-b:

Criminal law: The prosecutor issues the contact ban. The prosecutor has a duty to consider the question whether to impose a contact ban or not, if the victim (or more correct: the person the ban is designed to protect) applies for a contact ban or whenever there is a reason to do that (Art. 7 CBA). Such an initiative can be taken from a police officer, social worker or other person, or by the prosecutor ex officio.<sup>3</sup>

---

<sup>3</sup> Regeringens proposition 1987/88:137 om besöksförbud, p. 44.

Civil law: Only the parties in a family case may apply for a PO; that means one of the spouses or one of the cohabitants may apply for it. It is the court who decides about issuing a PO.

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

Criminal law: The main rule is that the parties shall be heard before a contact ban is issued. But according to the law there are two exceptions, which here are of interest, when it is possible to order a contact ban *ex parte*. The first one is if it is thought that it otherwise would be considerably more difficult to implement the decision, the second one is if the decision cannot be postponed (Art. 11 (1) CBA). Since the required procedure is rather informal and uncomplicated, and the right to be heard is seen as an important rule, these exceptions are probably rarely used in practice. According to the guidebook for public prosecutors the second exception could be used in some cases, for example if there are judgments regarding previous convictions and the party against whom the ban will apply is hard to get hold of.<sup>4</sup>

Civil law: POs cannot be issued *ex parte* (Art. 14:9 and Art. 18:2(4) the Marriage Code, Art. 28(4) and Art. 31(5) the Cohabitants Act).

**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?**

Criminal law: The law that regulates contact ban is gender-neutral and is in principle available for all types of victims. However, the legislation was introduced as a response to violence against women.<sup>5</sup> During later reforms the preparatory works holds that the law is a key component to protect primarily women who has been subject to stalking and other harassments from their former men, but it is expressly highlighted that the law also can give protection to other victims.<sup>6</sup>

**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)?**

Criminal law: A contact ban can be issued independent from other legal proceedings (see 2 a).

Civil law: A PO within family law cannot be issued independent from other legal proceedings (see 2 a).

**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)**

Criminal law: The proceedings are very simple. The prosecutor conducts an investigation, normally with assistance by the police. The information that has been added to the case is communicated with the parties, and thereafter the prosecutor can impose a contact ban (Art. 9, 11 CBA).

---

<sup>4</sup> Åklagarmyndigheten, *Kontaktförbud – en handbok* (2011), p. 17.

<sup>5</sup> Regeringens proposition 1987/88:137, p. 7.

<sup>6</sup> Regeringens proposition 2010/11:45 *Förbättrat skydd mot stalkning*, p. 33.

Civil law: First the victim (one of the spouses or the cohabitee) files a written summons application to the court in a matrimonial case (or in a corresponding case for cohabitee). In the summons the victim also applies for an interlocutory decision about a PO. Then the court issues a summons calling the defendant to answer the claim. The summons should be served upon the defendant. When the defendant has had opportunity to answer, the court can decide about the PO. It is not necessary that the defendant has answered, but the defendant must have opportunity to do that. (If the question of divorce has been settled the spouse can raise the question of which of the spouses is entitled to continue to reside on the spouses' joint dwelling. Also in these cases the spouse must apply to the court, and the other spouse must have opportunity to answer, but such cases are not seen as a civil case. The procedure as a whole is simpler and regulated in a special law,<sup>7</sup> not the Procedural Code. In such a case it is also possible to apply for the PO as an interlocutory decision (Art. 18:2(2) Marriage Code).)

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

Criminal law: According to regulations from the Swedish Prosecution Authority concerning contact ban, a decision should be made within a week from the time when the question whether to impose a contact ban or not was raised (through an application or otherwise). In cases concerning barring order or special extended restraining order the time limit is four days. Exceptions from the time limits can be made if there are special reasons for that with regard to the investigation or other circumstances.<sup>8</sup>

In 2008 the Swedish Prosecution Authority evaluated the application of the law and examined 369 cases. In 62 % of those cases a decision was made within a week, and in 77 % of them within two weeks.<sup>9</sup>

Civil law: Decisions about POs given as interlocutory decisions should be taken by priority. There is no stipulated time limit.

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

Criminal law: As a main rule a decision about contact ban comes into effect immediately (Art. 4(2) CBA). But the person against whom it will apply should be notified by service (Art. 5 CBA). Violations of the contact ban cannot be prosecuted unless that person knows about it. That means the victim is immediately protected in a formal way, but it can take some time before the restrained person has been served.

Civil law: Formally the decision about the PO is applicable immediately. In principle also these POs must be known for the person who violates them, to be prosecuted.

---

<sup>7</sup> The Non-Contentious Matters Act (lagen (1996:242) om domstolsärenden).

<sup>8</sup> Art. 1-2 Åklagarmyndighetens föreskrifter (ÅFS 2011:6) om kontaktförbud.

<sup>9</sup> Åklagarmyndigheten, *Besöksförbud – en kartläggning över tillämpningen med synpunkter* (2008), p. 15-16.

**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?**

Criminal law: See the answers above (5 a-c). To that can be added: In the Swedish criminal process the prosecutor leads the crime investigation in for example domestic violence cases and cases about serious crimes. In such cases it is the prosecutor who decides about using coercive measures, such as search, physical examination and seizure, while the police conduct the investigation practically. Therefore there is a tradition with cooperation between the prosecutor and the police, although they are organized into different authorities. A duty prosecutor is always available that can be reached by phone (also during nights and weekends), and contacts can be taken very quickly. In cases concerning barring order the police has authority to bring the person against whom the order will apply to the police station for interrogation (Art. 6 CBA). The main rule is that in such cases the prosecutor should decide the matter in connection with the interrogation (Art. 6a CBA). Those rules make it possible to bring the person from the home and impose a barring order very quickly, if that is needed.

Civil law: See 5) a-c above.

**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?**

Criminal law: A *restraining order* may be imposed if, because of special circumstances, there is a risk that the person against whom the restraining order will apply, will commit crime against, stalk or otherwise seriously harass the person the order is designed to protect (Art. 1(1) CBA). In the legislation it is stated that when considering whether there is such risk it should be taken into account if the person against whom the restraining order will apply has committed crime against somebody's life, health, liberty or peace (Art. 1(2) CBA). It is also stated that the question of proportionality should be considered; a restraining order may be imposed only if the reasons for such an order outweigh the interference or other harm that order implies for the person against whom it will apply (Art. 1(3) CBA).

The risk shall be concrete in the individual case.<sup>10</sup> When considering the issue of risk, earlier convictions is of importance, type of crime and seriousness, only one crime or several crimes, newly committed crimes or old crimes. Also crimes or harassments committed against other persons can be of importance.<sup>11</sup> In practice, earlier committed crimes or reported crimes, which are under investigation, are important factors, when considering whether to impose a PO or not.<sup>12</sup>

An *extended restraining order* may be imposed if it can be assumed that a restraining order is not sufficient (Art. 2(1) CBA). The conditions for imposing a restraining order must also be fulfilled, and often imposing such an order is the first step.<sup>13</sup>

A *special extended restraining order* may be imposed if a person has violated an extended restraining order. Such an order is normally combined with conditions on electronic surveillance.

---

<sup>10</sup> Regeringens proposition 1987/88:137, p. 19.

<sup>11</sup> Åklagarmyndigheten (2011), p. 19-25.

<sup>12</sup> Åklagarmyndigheten (2008), p. 18.

<sup>13</sup> Åklagarmyndigheten (2011), p. 46.

Concerning such an order the question of proportionality is expressed in the way that the restraining order may be imposed only if the reasons for such an order *significantly* outweigh the restriction on freedom of movement that order implies for the person against whom it will apply (Art. 2(2-4) CBA). It has been assumed that the reasons for imposing such an order should be stronger than for imposing a restraining order or an extended restraining order.<sup>14</sup>

A contact ban may also include a barring order. A *barring order* may be imposed if, because of special circumstances there is a *real* risk that the person against whom the order will apply, will commit crime against a cohabitants' life, health, liberty or peace. The legislation also prescribes that such an order may only be imposed if,

1. the reasons for such an order *significantly* outweigh the interference or other harm that order implies for the person to whom it will apply, and
2. the person the order is designed to protect undertakes to contribute to that the person to whom it will apply to a reasonable degree gives access to his or hers personal belongings (Art. 1 a CBA).

Here it is prescribed that it is a real risk that the person will commit crime against the cohabitants' life, health, liberty or peace. Unlike restraining order, imposing a barring order require risk for crime against a person. Risk for stalking or harassment is not enough. The word "real" risk means the risk shall be concrete in the particular case, related to the person and the situation. It should also be an acute situation, where it can be expected that a crime will be committed within a short while from the decision to impose a barring order.<sup>15</sup>

The question of proportionality is also here expressed in a way that the reasons for such an order should be strong. When considering this matter also circumstances like if the person against whom the order will apply is the owner of the dwelling, has a working place there or otherwise can have difficulties to earn his or her living can be of importance.<sup>16</sup>

In practice barring order has got a very restrictive use and some prosecutors have found it difficult to know in which situations they are allowed to use this order.<sup>17</sup> The government has proposed that the law will change and the word "real" will be removed from the statute.<sup>18</sup>

Civil law: A PO may be imposed if one of the spouses (or one of the cohabitantes) applies for that. Normally the court issues a PO if a party applies for that, but according to the legislation the party does not have an unconditional right to get a PO.

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

Criminal law: There is no requirement for the victim to have legal representation.

Civil law: Legal representation is not required by law, but in practice the parties often are represented by counsels in these family cases.

---

<sup>14</sup> Regeringens proposition 2002/03:70 *Ytterligare åtgärder för att motverka våld i nära relationer*, p. 28.

<sup>15</sup> Regeringens proposition 2002/03:70, p. 70.

<sup>16</sup> Regeringens proposition 2002/03:70, p. 71.

<sup>17</sup> Åklagarmyndigheten (2008), p. 15.

<sup>18</sup> Regeringens proposition 2012/13:186 *Ökade möjligheter att förebygga våld i nära relationer*, p. 15.

### **c. Is free legal representation/advice available?**

Criminal law: There are no special rules concerning right to legal representation or advice for victims in contact ban cases. If a victim needs legal advice, the victim may use the public legal aid system and request for it.

Civil law: In family cases a party often can use the public legal aid system; if so the party pay a little part of the costs and the rest is free.

#### **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)?**

Criminal law: The *restraining order* is a “no contact” order. It is forbidden to visit or otherwise contact or to follow the protected person. That means the protection covers all forms, also contacts by telephone call or text, by mail or e-mail or on the internet. It is also forbidden to leave a message to another person for forwarding to the protected person.<sup>19</sup> Two years ago the name of the order (and the law) changed from “visit ban” to “contact ban” to better reflect the meaning of the order.<sup>20</sup>

According to an *extended restraining order* it is also forbidden for the restrained person to be in the vicinity of the residence, working place or other place the protected person normally visits (Art. 2(1) CBA).

In a *special extended restraining order* it is forbidden to visit a wider area. It can cover one or several areas connected to the protected persons’ residence, working place or other place that person normally visits, but may not cover a wider area than what is necessary (Art. 2(2) CBA).

Civil law: According to a PO within family law it is forbidden to visit one another.

#### **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?**

Criminal law: The *barring order* prohibits the person against whom it is applied to be in the common home (Art. 1a CBA). This order may be imposed for maximum two months. Thereafter it can be extended, but only if there are special reasons for that, for maximum two weeks at a time (Art. 4 CBA).

Help can be provided to the victim and to the offender/threatening person. They can get help from NGOs, such as victim support or women’s organizations or men’s organizations, but to what extent can differ depending on where in the country they are staying. The Social Service in every municipality has the final responsibility to see to that the citizens get the help they need. According to the law the Social Service has a special responsibility to see to that crime victims get help and support (Art. 5:11 the Social Services Act, Socialtjänstlagen (2001:453)). The form of help and support that is available in practice can vary among the municipalities. When

---

<sup>19</sup> Regeringens proposition 1987/88:137, p. 40 and regeringens proposition 2010/11:45, p. 37.

<sup>20</sup> Regeringens proposition 2010/11:45, p. 36-37.

imposing a barring order both the victim and the offender/threatening person should be informed about which authorities, organizations or others that can give help and support (Art. 4b CBR).

If a crime has been committed the offender can get help from the Swedish Prison and Probation Service. They work with different treatment programs, for example IDAP (Integrated domestic abuse program).

Civil law: The court may decide which of the spouses (or cohabitants) is entitled to reside on the spouses' joint dwelling until property division has taken place (Art 14:7 and Art 18:2 the Marriage Code, Art 28 the Cohabitants Act). In that case the other spouse (cohabitant) has no right to stay in the house. The barring period is until the decision has been changed or, at most, the question of divorce has been determined by a decree that has become non-appealable or property division has taken place, see 2 a).

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

Criminal law: In practice "no contact" orders are imposed most often.<sup>21</sup>

**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)?**

Criminal law: Yes. The law is constructed in the way that a restraining order is the ordinary order, which can be added with other types of order. See 6 a).

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

Criminal law: The most common order is restraining order. Sometimes it is combined with extended order or barring order, but that is not so often. Special extended restraining order is very unusual, only one or a few cases a year.<sup>22</sup>

**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?**

Criminal law: The decision should be written, and include:

1. the protected person and the person against whom it applies,
2. the meaning and the scope of the ban,
3. reasons for the decision,
4. applied section of the law,
5. which sanction that can follow if the ban is violated, and
6. information that the decision can be tried in court, and be reexamined by the prosecutor (Art. 12 CBA).

---

<sup>21</sup> Åklagarmyndigheten (2008), p. 7-11 and Brottsförebyggande rådet, *Besöksförbud – De berörda och deras erfarenheter* (BRÅ-Rapport 2007:2), p. 22.

<sup>22</sup> Åklagarmyndigheten (2008), p. 14-15 and Brottsförebyggande rådet (2007), p. 22.

If the ban includes a special extended restraining order it should also include some information and details concerning the electronic surveillance (Art. 12 a CBA).

Civil law: The decision to impose a PO is a decision given by the court, and it is formulated according to the rules regulating such decisions in general.

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

Criminal law: The Swedish Prosecutor Authority has prepared forms, with standardized text that can be completed with the information which is specific for the case. The forms could be filled in electronically.

**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?**

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

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

9 a-c:

Criminal law: The scope of the PO depends on (and follows from) the kind of PO in question. The different POs has been described under 7a) above. To that can be added: An *extended restraining order* must specify which area the restrained person is forbidden to approach, for example a particular real estate or, in some cases, even a block.<sup>23</sup>

**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”)?**

Criminal law: According to the prosecutors’ guidebook the area must be described in the decision, for example with naming the surrounding streets. It is also expressed that adding a map could be suitable, to clarify which area that is covered by the decision.<sup>24</sup>

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

Criminal law: According to the prosecutors’ guidebook an extended restraining order can cover a particular real estate or, in some cases, even a block. If a wider area is needed the requirements for a special extended restraining order has to be fulfilled.<sup>25</sup> Special extended restraining order is very unusual, see 7 e).

---

<sup>23</sup> Regeringens proposition 1987/88:137, p. 16.

<sup>24</sup> Åklagarmyndigheten (2011), p. 47.

<sup>25</sup> Åklagarmyndigheten (2011), p. 47.



**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?**

Criminal law: The POs have to be issued for a specified period, maximum one year. For extended protection orders with electronic surveillance the maximum period is six months, and for barring orders the maximum is two months. The POs can be extended, with maximum one year at a time. For extended protection orders with electronic surveillance the extended period may be maximum three months at a time. Barring orders may only be extended if there are special reasons for that and, if so, the extended period may be maximum two weeks at a time. (Art. 4 CBA)

Civil law: The PO is not issued for a specified period. About the time limit for the PO, see 2a).

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

No information available.

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

Criminal law: The most common duration is six months or one year, and six months is used more often.<sup>26</sup> In the prosecutors' guidebook the recommendation is that a duration of one year ought to be used in situations when the risk for crime, following or other harassments are high and can be expected to continue for a long time. A short duration (3-4 months) can be used when the risk can be expected to decrease rather fast. In some cases a shorter time also can be used when it is based on an ongoing crime investigation, pending more information.<sup>27</sup> If the PO is in the form of extended protection orders with electronic surveillance or barring order the maximum limit is six respective two months (see 11 a.), so in those cases it would be shorter.

**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?**

Criminal law: The victim cannot have directly influence on the prosecutors' decision. But if the victim agrees to have contact with the restrained person, violations of the PO cannot be prosecuted and sanctioned, so the victim can have influence indirectly. It is also common that the prosecutor cancel the PO if the victim contacts the restrained person, since the purpose with the PO is no longer fulfilled.<sup>28</sup> (If it is a barring order the victim also must undertake to contribute to that the person to whom it will apply to a reasonable degree gives access to his or hers personal belongings, see 6) a. above, so also here the victim can have an indirectly influence, at least in theory.)

Civil law: The victim has direct influence on the decision in court, and can request the cessation of protection orders.

---

<sup>26</sup> Brottsförebyggande rådet (2007), p. 23 and Åklagarmyndigheten (2008), p. 13-14.

<sup>27</sup> Åklagarmyndigheten (2011), p. 29-30.

<sup>28</sup> Brottsförebyggande rådet, *Nya regler i lagen om besöksförbud* (2005), p. 18.

**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?**

Criminal law: The prosecutor has a duty to consider questions concerning POs whenever there is "reason for it" (Art. 7 CBA).

Civil law: The victim has to apply for a PO at the court.

**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?**

Criminal law: Formally victims have no influence of the type, scope or duration of the PO. (But they can challenge the prosecutors' decision in court, for example if a victim wants a more extended PO than the prosecutor has issued.) Except from barring orders, where a condition is that the victim undertake to contribute to that the person to whom it will apply to a reasonable degree gives access to his or hers personal belongings, see 12 a).

Civil law: There is only one type of PO available.

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

Criminal law: The restrained person can formally challenge the prosecutors' decision to impose a PO in court and the case will be tried in the district court (Art. 14 CBA). The decision from the district court may be appealed, but at that stage leave to appeal is needed (Art. 21 CBA and Art. 39 the Non-Contentious Matters Act). It is not so often the prosecutors' decision is challenged in court.<sup>29</sup>

Civil law: The defendant can appeal a decision from the district court to Court of Appeal, but leave to appeal is needed.<sup>30</sup>

**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?**

Criminal law: A principle of proportionality is expressly stated in the law (see 6 a) above). This means that consequences for the offender should be taken into account when considering whether to impose a PO or not.

Civil law: The court may request to impose a PO, so in theory consequences for the offender could be taken into account. But it has been postulated that normally the court impose a PO, if there is an application for that.

---

<sup>29</sup> During 2006 it was only nearly 10 % of the prosecutors' decisions to impose a contact ban which were challenged in court, Brottsförebyggande rådet (2007), p. 22.

<sup>30</sup> Art. 18:3 the Marriage Code, Art. 32 the Cohabitees' Act, Art. 36, 37(1)(3), 39 the Non-Contentious Matters Act and Art 49:12 the Procedural Code (Rättegångsbalken (1942:740)).

**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?**

Criminal law: Offenders have no influence of the type, scope or duration of protection orders.

**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)?**

Criminal law: Barring orders are used very restrictive, partly because of practical issues. Many prosecutors do not see the practical need for barring orders, since the current legislation is so restrictive. In those cases, when it is an emergency situation, the prosecutor often uses other methods and arrests the suspect instead.<sup>31</sup>

**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)?**

Criminal law: Previous protection orders can be taken into account in later cases, for example in cases concerning imposes of another contact ban, or in a case concerning stalking. The Swedish legal system relies on the principle of free evidence, so there are no formal rules against using such evidence.

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

Criminal law: The children are not automatically included in the PO in domestic violence cases.

Civil law: POs within this field are between spouses or cohabitants.

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

Criminal law: If, when imposing a PO, the protected person and the restrained person have common children below 18 years, the Social Service should automatically be informed (Art. 4a CBA). During the legislation process it has been assumed that the Social Service is responsible and may help with practical arrangements, for example follow the children between the parents.<sup>32</sup>

Criminal and civil law: In civil cases concerning visitation rights the court may decide that a special person shall assist with the visitation, if the child needs that. The Social Service is responsible for appointing the person.<sup>33</sup> In some cases such a person is appointed and that person can help with practical arrangements.

<sup>31</sup> Brottsförebyggande rådet (2005), p. 21-25.

<sup>32</sup> Regeringens proposition 1987/88:137, p. 17.

<sup>33</sup> Art. 6:15c Act on The Children and Parents Code (Föräldrabalken (1949:381)).

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

Criminal law: In a study published 2007, it is held that there are practical problems, since the Social Service do not have resources and working methods to help with practical arrangements. Children can be used as intermediaries between the parents.<sup>34</sup> An earlier study published 2003 also points on practical problems, and that some women experience the rules as unclear in situations with visitation rights.<sup>35</sup>

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

**b. If not 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?**

17 a-b:

POs within civil law are mutual protection orders.

Within the criminal law area mutual POs are not expressly prohibited, but the legislation is constructed assuming that one (or more) person(s) is the one who should be protected from the other person.

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

Criminal law: Protection orders are provided free of charge. If it concerns barring order or special extended restraining order the person against whom the order will apply has a right to legal counsel, mainly financed by the state (Art. 7a CBA).

Civil law: It is no cost for the PO itself, but it can be a cost for the main case in which the application for a PO is made. The cost for the summons application in a civil case is 450 SEK, and in a matter case the cost is 375 SEK.

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

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

2.2.2. Enforcement of protection orders

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

<sup>34</sup> Brottsförebyggande rådet (2007), p. 66-68.

<sup>35</sup> Brottsförebyggande rådet, *Besöksförbud. En utvärdering av lagen och dess tillämpning* (BRÅ-rapport 2003:2), p. 35 and p. 37.

## **19) Where and how are protection orders registered?**

Criminal law: When a PO (contact ban) is imposed the police should be informed. The PO is registered in the criminal records register. It may also be registered in the register for wanted persons.<sup>36</sup>

Civil law: A PO imposed within family law is not registered in the criminal records register. (But if the PO later is violated a sanction for that will be registered in the criminal records register.)

### **20) a. Is the victim always informed of the imposition of a protection order and of the conditions that the offender has to comply with?**

Criminal law: The victim should always be informed about the imposition of a PO (Art. 1 CBR).

Civil law: The victim is informed of the decision to issue a PO.

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

Criminal law: Normally the victim is informed automatically by letter.

Civil law: The same: Normally the victim is informed automatically by letter.

### **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?**

Criminal law: The police are responsible for monitoring the compliance with POs, like their general responsibility for preventing crimes.

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

Criminal law: In some areas the police assign the victim a contact person, so the victim knows who to contact. Some contact persons routinely takes contact with the victim to check if the PO has been violated. It also occurs that police officers who are responsible for police dogs do informal controls by walking their dogs in the neighborhood.<sup>37</sup> Sometimes "clarification talks", to explain the meaning of the PO, with the involved persons are used. In some cases the victim are offered security packet, panic alarms etc. Standardized threat and risk assessments may be used as a method to identify cases with high risk for serious violence of the PO.<sup>38</sup> In those few cases with special extended restraining order combined with electronic surveillance, the police can use that surveillance.

---

<sup>36</sup> Art. 4 CBR, Art. 3(5) the Criminal Record Registers Act (lagen (1998:620) om belastningsregister) and Art. 13a (2) the Wanted Persons Regulation (efterlysningskungörelsen (1969:293)).

<sup>37</sup> Åklagarmyndigheten (2008), p. 7-11.

<sup>38</sup> Brottsförebyggande rådet (2005), p. 45-47.

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

Criminal law: That differs among the police districts, and the police have been criticized for being too passive, and not checking the compliance with protection orders.<sup>39</sup>

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

Criminal law: Special extended restraining order combined with electronic surveillance is very unusual (see 7e) above).

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

Criminal law: Often it is up to the victim to report violations (see 22 a-b).

Civil law: It is up to the victim to report violations.

**e. How do the monitoring authorities generally become aware of a violation of a protection order: through the victim or through pro-active monitoring activities?**

Often through the victim (see 22 a-d).

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

Criminal law: According to the law the PO does not prohibit contacts which according to special circumstances are obviously justified (Art. 1(4) CBA). During the legislation process it has expressed that contacts with consent from the protected person will be seen as justified, and will not be covered by the PO.<sup>40</sup>

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

Criminal law: See 23 a).

**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?**

Criminal law (and civil law): If it was the victim who initiated the contact, the authorities will not impose a sanction. In many cases it will not be covered by the PO, see 23a). If not, it would be seen as a minor case and they are not criminalized. The prosecutor would probably not prosecute.<sup>41</sup>

---

<sup>39</sup> Brottsförebyggande rådet (2007), p. 50-51.

<sup>40</sup> Regeringens proposition 1987/88:137, p. 15-16.

<sup>41</sup> Regeringens proposition 1987/88:137, p. 35 and Åklagarmyndigheten (2011), p. 65.

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

Criminal law (and civil law): Some evidence is needed, for example SMS-messages, specified telephone bills. If there are only words tender words it is not enough.<sup>42</sup> In some cases supporting witnesses is enough, for example if a person has over heard a telephone call.

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

Criminal law (and civil law): The violation should be reported to the police, who investigate the case. In these cases a prosecutor should be the formal leader of the investigation. If the offender recognizes the offence the prosecutor can impose a penal order. Otherwise the prosecutor decides whether to prosecute or not.

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

Criminal law (and civil law): The normal sanction for one violation is a fine. Often 30 day-fines are imposed for one violation.

**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)?**

Criminal law (and civil law): In theory the prosecutor could decide about a waiver of prosecution. That is a kind of warning, given as a formal decision and recorded in the criminal register.

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

Criminal law: Fine. It has also been assumed that a violation normally will extend the time for the protection order.<sup>43</sup>

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

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

If it is emergency calls it should, but probably that will depends on where in the country the violation has occurred, other urgent situations, available police resources etc.

---

<sup>42</sup> Brottsförebyggande rådet (2003), p. 39-41.

<sup>43</sup> Regeringens proposition 1987/88:137, p. 22.

**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?**

Criminal law and Civil law: Yes it is. Violation of protection orders are criminalized in the Contact Ban Act. Minor cases are excluded (Art. 24 CBA).<sup>44</sup> The Marriage Code and the Cohabitees Act refers to that law, so the penal provision for all POs is found in CBA.<sup>45</sup>

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

Criminal law (and Civil law): The minimum penalty is fine and the maximum penalty is one year imprisonment (Art. 24 CBA).

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

Criminal law: The police have a duty to investigate the case, interrogate the victim and, most often, also the suspect. In a survey from the Swedish Prosecution Authority criticisms have been raised against that these actions have not always been taken.<sup>46</sup>

Civil law: In principle the same is relevant here.

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

Yes. See 26 c).

**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?**

Criminal law (and Civil law): The police have no authority to issue a sanction. The police have to contact the prosecutor and report the case. The prosecutor can issue a sanction (through a penal order) if the offender admits the offence.

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

Criminal law (and Civil law): The police are obliged to report all violations. (In these cases the investigation should be led by a prosecutor, so the prosecutor should also be involved during the investigation stage.)

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

Question not relevant (see b)).

---

<sup>44</sup> Obstruction of electronic surveillance is criminalized as a special crime, Art. 25 CBA. But the use of special extended restraining order with electronic surveillance is very rare.

<sup>45</sup> Art. 14:7(4), 18:2(3) the Marriage Code and Art. 28(3), 31(4) the Cohabitees Act.

<sup>46</sup> Åklagarmyndigheten (2008), p. 24-26.



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

Criminal law: That differs among the police authorities. There are no general regulations about that, so it depends on the local authority.

2.2.3. Types and incidence of protection orders

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

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

Criminal law: Around 4 000 POs are imposed on a yearly basis. 3 610 POs were imposed during 2011, which was fewer than the year before.<sup>47</sup>

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

Criminal law: No contact order is the most common.<sup>48</sup> Extended restraining orders are imposed in less than 100 cases a year, special extended restraining orders in none or a few cases a year.<sup>49</sup> Barring orders are imposed in about 100 cases a year.<sup>50</sup>

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

See 30 a).

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

No information available.

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

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

In a survey published 2008 about 369 cases were examined, of those a PO was imposed in 110 cases. In 320 cases it was a female the PO was supposed to protect, and in 320 cases the PO

<sup>47</sup> Brottsförebyggande rådet, *Kriminalstatistik* (BRÅ-rapport 2012:11), p. 33.

<sup>48</sup> Brottsförebyggande rådet (2007), p. 22 and Brottsförebyggande rådet (2012), p. 33.

<sup>49</sup> Brottsförebyggande rådet (2007), p. 22.

<sup>50</sup> Brottsförebyggande rådet (2007), p. 22 and Justitiedepartementet, *Sveriges tillträde till Europarådets konvention om förebyggande och bekämpning av våld mot kvinnor och av våld i hemmet samt vissa frågor om kontaktförbud avseende gemensam bostad* (Ds 2012:52), p. 251.

supposed to be applied against a man. (In some of these cases it was a female victim and a female offender, so it was not 320 women against 320 men.)<sup>51</sup>

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

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

32 b-c):

The survey from 2008: Of the 110 cases in which a PO was imposed 71 cases reported earlier convictions (violent crimes, sexual offences or violations of liberty and peace), or violations of POs or previous imposed POs. Of the remaining 39 cases in which a PO was imposed almost everyone had a connection with a report to the police or an ongoing crime investigation. In 44 cases there were no prior police records or suspected crimes. In none of these cases a PO was imposed.<sup>52</sup>

#### 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 one study published 2007, it was 176 victims who were asked. In 50 % of the cases the PO had been violated, at least one time. Often it was by phone or SMS. In about 5 % of the cases violence had been used against the victim. In over 80 % of the cases the victims were very satisfied with the PO; most of them were left in peace or at least it was better than before the PO, many felt safer, some observed changes in themselves or by the offender.<sup>53</sup>

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

See 33 a), above 50 %. In earlier studies it has been estimated that at least one third are violated.<sup>54</sup>

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

See 33 a).

---

<sup>51</sup> Åklagarmyndigheten (2008), p. 12.

<sup>52</sup> Åklagarmyndigheten (2008), p. 17-18.

<sup>53</sup> Brottsförebyggande rådet (2007), p. 49 and p. 53-54.

<sup>54</sup> Brottsförebyggande rådet (2005), p. 36.

**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)?**

No information available here.

**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?**

No information available here.

**35) Is there any empirical information available on the formal and informal reaction of the enforcing authorities to violations?**

- a. How often (what percentage) do violations lead to a formal reaction?
- b. How often (what percentage) do violations lead to an informal reaction?
- c. How often (what percentage) do violations lead to no reaction?

According to the crime statistics it was 5 272 reported violations during 2011.<sup>55</sup> (That is *reported* violations; not all of them have to be criminalized behavior.) In the statistics 3 679 crimes are recorded as “solved crimes”. That is, crimes which lead to punishment or waiver of prosecution, but also cases which do not lead to prosecution, for example crime cannot be verified according to the evidence. Of the “solved crimes” 2 435 crimes led to a formal reaction; 2 367 prosecution, 42 impose of penalty order and 26 waiver of prosecution.<sup>56</sup>

#### **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**

Criminal law: The legislation has perceived unclear among some prosecutors. When the PO was introduced it was perceived difficult to apply because of the moment of “risk”; looking forward and not looking back, such they are used to in ordinary criminal cases. When the legislation came into force in 1988 the preparatory works in a way expressed opposite views; the purpose was to protect victims and to prevent further crimes, but it was also important to be restrictive since it was a question about the integrity for the person to whom it would apply. So the legal sources indicated some ambivalence. The barring order is perceived hard to apply, since the legislation is formulated in a restrictive way.

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

Criminal law: The procedure is very simple, since it is the prosecutor who decides whether to impose a PO. Therefore decisions can be taken very quickly and the procedure is rather informal. But prosecutors in these situations have a kind of a double role – take care of and see too both the victims interest and the legal rights for the person to whom the PO may apply. Maybe (some) prosecutors in such a situation are too restrictive and give priority to the interest for the person to whom the PO may apply. If the prosecutor had to go to the court for a decision they could be

---

<sup>55</sup> Brottsförebyggande rådet (2012), p. 55.

<sup>56</sup> Brottsförebyggande rådet (2012), p. 106 and p. 110.

more offensive, since they did not have the same responsibility for seeing to the double interests in the case.

Sometimes there are difficulties with the practical arrangements, for example in cases with children and visiting rights. In such cases some prosecutors do not impose a PO, if that PO cannot be followed because of practical reasons.

**c. Problems with protection order monitoring**

Today the police are organized into different authorities, one authority for a special region. Therefore the routines can differ around in the country. There are also places where there is rather few people and big areas for the police to cover. Sometimes the dividing into different authorities is held as a reason for why it is difficult to implement new routines and practices within the whole police organization. In 2015 the police organization will be one authority within the whole country, and then it (maybe) can be easier to implement the same routines and practices everywhere.

The routines about monitoring differ and the police have been criticized for not controlling ex officio if the POs are violated or not. The police have many tasks and some authorities prioritize other duties.

**d. Problems with protection order enforcement**

See 36 c). It can be difficulties with the practical arrangements, such as with children and visiting rights. In some parts of the country it can also be difficulties to find sheltered accommodation.

**e. Problems with protection order effectiveness?**

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

I think it is difficulties with the legislation and with the practical arrangements. Thereto many POs are violated, and do not give the protection as was supposed. The legislation is still not clear – still there are “double messages” behind the legislation and therefore the interpretation of the law can differ among prosecutors. It is also difficult to apply laws relying on a “risk” moment. Then there are difficulties with the practical arrangements, especially when it comes to barring order.

2.2.6. Promising/ good practices

**38) Which factors facilitate the:**

**a. Imposition**

A clear legislation and authorities (for example the police) who give information about the possibility to have a PO. Informal and simple procedure rules.

**b. monitoring, and**

**c. enforcement of protection orders?**

b-c: Shared experiences among the persons who work with it to spread good practices (both within one authority or organization and between several authorities with different roles). Clear and designated rules about the different authorities' responsibility.

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

If a PO has been violated it is important with reactions rather quick. In other cases no reactions will be preventive, because they do not have effect on the offender; in those cases it is important with control. The challenge is to know in advance which cases can develop to emergency cases. It has also been experienced that the behavior from authorities, especially the police, are of importance so that (mostly) women report PO violations.

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

The procedure to impose a PO is informal and simple, and in many cases restraining orders prevent further contacts. So in many cases they fulfill the purpose.

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

See 38).

2.2.7. Future developments

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

There is an ongoing legislation process, see 43). During this year we have had a discussion in the media about the lack of sheltered accommodation; in some areas it is very difficult to find one and the Social Service has got critic for not taking responsibility for that.

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

a-c:

The government has laid a bill proposing changes of the law regulating barring order.<sup>57</sup> The proposition is to remove the word "real" risk from the statute.

The question of implementing the European Protection Order within criminal law is at the moment subject to investigation within the Ministry of Justice.<sup>58</sup>

In April 2012 the government decided to appoint a national coordinator against domestic violence. The coordinator's task is to bring together and support authorities, communities and organizations

---

<sup>57</sup> Regeringens proposition 2012/13:186.

<sup>58</sup> Regeringens proposition 2012/13:186, p. 9.

to enhance the work against domestic violence, for example to spread best practices. The coordinator will report the assignment in June 2014.<sup>59</sup>

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

I think the law will change; the proposition in the government bill has been laid as a response to demands from the parliament.

**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?**

---

<sup>59</sup> Regeringens beslut, *En nationell samordnare mot våld i nära relationer* (2012-04-26, Dnr 2012:38).

## **Glossary**

### *1. General Legal Terminology.<sup>60</sup>*

#### **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.

---

<sup>60</sup> 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.<sup>61</sup>

**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.

---

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



### **Legal representation/counsel**

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 violence<sup>62</sup>**

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.

### **Stalking<sup>63</sup>**

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.

---

<sup>62</sup> Rec. (2002)5. (VAW) (Committee of Ministers).

<sup>63</sup> 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.

## **Rape/sexual assault**

Sexual assault is in this study defined as any sexual act committed against non-consenting persons<sup>64</sup>, 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?

---

<sup>64</sup> Council of Europe Convention on preventing and combating violence against women and domestic violence, art. 36 b.

**Radius**

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

**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.

## Bibliography

### Literature and reports

Brottsförebyggande rådet (the Swedish National Council for Crime Prevention), *Besöksförbud. En utvärdering av lagen och dess tillämpning*, BRÅ-rapport 2003:2. (Visit ban – An Evaluation of the Law and its Implementation).

Brottsförebyggande rådet (the Swedish National Council for Crime Prevention), *Nya regler i lagen om besöksförbud*, 2005. (New Rules within the Law on Visit Ban).

Brottsförebyggande rådet (the Swedish National Council for Crime Prevention), *Besöksförbud – De berörda och deras erfarenheter*, BRÅ-Rapport 2007:2. (Restraining Orders in Sweden – An Evaluation of the Law, the New Regulations, their Implementations and Effects).

Brottsförebyggande rådet (the Swedish National Council for Crime Prevention), *Kriminalstatistik*, BRÅ-rapport 2012:11. (Crime Statistic).

Åklagarmyndigheten (the Swedish Prosecution Authority), *Besöksförbud – en kartläggning över tillämpningen med synpunkter*, 2008. (Visit ban – a Mapping of the Application with Comments).

Åklagarmyndigheten (the Swedish Prosecution Authority), *Kontaktförbud – en handbok*, 2011. (Contact ban – a guidebook).

### Government Bills and other official sources

Regeringens proposition 1987/88:137 *om besöksförbud* (Government Bill on visit ban).

Regeringens proposition 2002/03:70 *Ytterligare åtgärder för att motverka våld i nära relationer* (Government Bill on further action against domestic violence).

Regeringens proposition 2010/11:45 *Förbättrat skydd mot stalkning* (Government Bill on enhanced protection against stalking).

Regeringens proposition 2012/13:186 *Ökade möjligheter att förebygga våld i nära relationer* (Government Bill on increased opportunities to prevent domestic violence).

Justitiedepartementet, *Sveriges tillträde till Europarådets konvention om förebyggande och bekämpning av våld mot kvinnor och av våld i hemmet samt vissa frågor om kontaktförbud avseende gemensam bostad* (Ds 2012:52) (Ministry of Justice, Swedish implementation of Council of Europe Convention on preventing and combating violence against women and domestic violence, and some issues about contact ban).

Regeringens beslut, *En nationell samordnare mot våld i nära relationer*, 2012-04-26, Dnr 2012:38 (Government Decision, A national coordinator against domestic violence).

## Appendix

### **Brottsförebyggande rådet (BRÅ)**

(The Swedish National Council for Crime Prevention)

In two reports BRÅ has examined the Contact Ban Act after the enforcement of special extended restraining order and barring order. One intermediate report was published in 2005, and the final one in 2007.

#### **Nya regler i lagen om besöksförbud, 2005.**

*(New Rules within the Law on Visit Ban)*

This report describes the prosecutors and the NGOs view on the new rules and examines whether the police has written routines for their work with POs. The report also examines possibilities to reduce violation of POs.

The report is based on: Interviews with 12 prosecutors from different parts of the country, questionnaire to the County Police Commissioners, telephone interviews with sex police officers and questionnaire to victim organizations (89 answers). Furthermore, interviews with key persons from authorities and organizations, some study visits and statistical information.

Conclusions from the report: Prosecutors view the new rules difficult to use, because the legislation is very restrictive. In emergency cases a PO do not give sufficient protection, so instead they decide to arrest the suspect. Prosecutors, police commissioners and organizations perceive the protection as insufficient and not preventing further crimes. Approximately one third of imposed POs are violated. A minor group of offenders violate the POs several times, and has committed most of the reported violations. A majority of violations are made in the form of telephone call or SMS, only 13 % with physical contacts.

#### **Besöksförbud – De berörda och deras erfarenheter, BRÅ-Rapport 2007:2.<sup>65</sup>**

*(An Evaluation of the Law, the New Regulations, their Implementations and Effects).*

This report describes the victims' views of the POs, the support they wanted and got, and what effects they perceived. The report also includes children's situation.

The report is based on: 409 PO cases (in half of the cases a PO were imposed), 40 cases with imposed barring order, statistical information and 263 questionnaires. Furthermore, interviews with prosecutors, police officers and persons from support organizations and social services. The 409 cases are random samples collected from the police authorities within three metropolitan counties (Stockholms län, Västra Götalands län and Skånes län). Statistical information has been obtained from Statistics Sweden (SCB) the Swedish Prosecution Authority, the Swedish National Courts Administration and the Swedish National Police Board (RPS). In total 476 questionnaires has been distributed by police authorities within 10 of 21 counties. 263 of them has been answered, by persons of whom some has been granted a PO (176), some rejected a PO (59) and some has been served with a PO (28). That means about 55 percent has answered. In the report the Swedish National Council (BRÅ) holds that despite the relatively high dropout in response

---

<sup>65</sup> An English Summary of the report is available on: <http://www.bra.se/bra/bra-in-english/home/publications/archive/publications/2007-07-25-restraining-orders-in-sweden.html> .

rates the study gives new and important information about circumstances and experiences of POs, from the 263 persons who answered the questionnaire.

Conclusions from the report: The number of applications of POs has increased during the years, and the proportion of issued POs has decreased. The report holds that the reason is that more people know about the possibility to apply for a PO and the police are better to give information about it, but also that more of the applications do not fulfill the legal requirements for imposing a PO. - Most of the applicants are a socio-economically weak group. They are often women and the persons against whom the PO will apply are often men. Often they have been, or are, involved in a relationship with each other. In the report BRÅ found some differences between prosecutors when deciding whether to impose a PO or not, and recommend future efforts to ensure that decisions are more consistent and transparent, for example using structured threat and risk assessments (SARA). - Concerning perceived security, the conclusion in the report is that it seems as those who are granted a PO feels more secure than those in cases where the PO is rejected. That was a result even though the PO in many cases was violated. In the report BRÅ recommend the police to systematically follow-up the views from those who have been granted a PO. - In many cases involving children, the Social Service was not informed and engaged. BRÅ suggest further developments within that area. – In the report BRÅ also recommend developing more support and treatment programs for offenders.

### **Åklagarmyndigheten, Besöksförbud – en kartläggning över tillämpningen med synpunkter, 2008.**

(The Swedish Prosecution Authority, *Visit ban – a Mapping of the Application with Comments*)

This report is about the implementation of the law. The report examines if there are differences among prosecutors when applying the law.

The report is based on: 448 PO cases, statistical information, questionnaires to prosecutors and discussions during visits to local prosecution offices. The cases are collected from six local prosecution offices within south or middle/south parts of Sweden (two districts within Stockholm and districts within Linköping, Helsingborg, Uppsala and Jönköping). The collected and examined cases are from the period September – November 2007 and consist of all non-imposed POs, half of imposed POs and all reported violations of POs during that period.

Conclusions from the report: There are differences among prosecutors regarding routines and praxis. Threat and risk assessments are used in few cases. Praxis among prosecutors is rather restrictive, and the report concludes that the legislation is unclear: the preparatory works indicates restrictiveness and there are not a lot of cases from the courts. Some local prosecution offices have discussions about praxis as a routine, and among those prosecutors the decision making are more consistent. POs in the form of barring order are used very seldom, according to the restrictive legislation. But according to the report the prosecutors are a bit too restrictive, probably because of difficulties with the practical arrangements.

## Summary

In Sweden protection orders can be found mainly in the areas of criminal law and civil law. The most common and used POs are within *criminal law*, regulated in the Contact Ban Act. Within *civil law* POs can be found within the family law field, regulated in the Marriage Code and the Cohabitees Act.

Within the *criminal law* a contact ban can be imposed to prevent crimes against individuals who may be subject to stalking or harassment. A contact ban is not conditional to any other sentence. Formally, it does not require that an actual criminal offence has been committed, but that is often the case in practice. There are four types of POs; restraining order, extended restraining order, special extended restraining order and barring order. The most common order is restraining order. Sometimes it is combined with extended order or barring order, but that is not so often. Special extended restraining order is very unusual, only one or a few cases a year.

A contact ban is imposed by the public prosecutor and the procedure is very simple. No formal application from the victim is needed. The prosecutors' decision can be tried in court, whether the prosecutor imposed a PO or decided not to impose one. In court the prosecutors' decision will be tried in a procedure of its own. It can also be tried by court in a criminal case, if the person against whom the contact ban will apply is charged for an offence of relevance for the contact ban.

Within *civil law* the court may, in a divorce case, prohibit the spouses from visiting one another. A formal application is needed from one of the parties in the case. Such a PO can be imposed for the period prior to the determination of the question of divorce by a decree that has become non-appealable. For the period after the question of divorce has been settled, a PO may be imposed in cases where the issue of which of the spouse is entitled to continue to reside on the spouses' joint dwelling is raised. Such a PO can be imposed for the time until property division has taken place. There are corresponding rules regarding cohabitees.

Violations of POs, within both criminal law and civil law, are criminalized in Contact Ban Act. Consent from the victim is not needed for a public prosecution.

*Challenges with POs* within criminal law in Sweden involve issues about both legislation and practical arrangements. Among prosecutors the legislation is seen as a bit unclear – there are “double messages” behind the legislation and therefore the interpretation of the law can differ among them. There are also experienced difficulties applying laws relying on a “risk” moment. Then there are difficulties with the practical arrangements, especially when it comes to barring order. Thereto many POs are violated, and do not give the protection as was supposed.

The government has laid a bill proposing changes of the law regulating barring order. The proposition is to change the statute, in order to make the interpretation less restrictive. The question of implementing the European Protection Order within criminal law is at the moment subject to investigation within the Ministry of Justice.

Last year the government decided to appoint a national coordinator against domestic violence. The coordinator's task is to bring together and support authorities, communities and organizations to enhance the work against domestic violence, for example to spread best practices. The coordinator will report the assignment in June 2014.