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

NATIONAL REPORT THE NETHERLANDS

By Suzan van der Aa

CONTENTS

- National report The Netherlands** 1
- 1. General overview of the assignment for the national experts 3
 - 1.1. Main objective..... 3
 - 1.2. Definition of protection order 4
 - 1.3. Tasks and delivery deadlines 4
 - 1.4. Reference period for the study 5
 - 1.5. Template, language and size 5
- 2. National reports: content and structure 6
 - 2.1. Introduction 6
 - 2.2. Overview of the structure of the national reports 6
 - 2.2.1. *Imposition of protection orders* 6
 - 2.2.2. *Enforcement of protection orders* 19
 - 2.2.3. *Types and incidence of protection orders* 25
 - 2.2.4. *Protection order effectiveness* 27
 - 2.2.5. *Impediments to protection order legislation, enforcement and effectiveness* 28
 - 2.2.6. *Promising/ good practices* 30
 - 2.2.7. *Future developments* 31

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 measures.¹ Once implemented, the EPO will provide a legal basis for EU Member States to recognize a victim protection order that was granted in another Member State. The available data - however marginal - nevertheless suggests that there are enormous discrepancies amongst protection order legislation and levels of protection across the EU (Van der Aa, 2011; Feasibility Study, 2010). The question of whether the EPO is still able to function well in those circumstances then becomes relevant.

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

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

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

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

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

1.2. DEFINITION OF PROTECTION ORDER

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

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

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

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

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

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

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

1.3. TASKS AND DELIVERY DEADLINES

There are two tasks which national experts must complete:

1) Write a national report (first draft)

2) Clarify sections of the report which are unclear and adjust the report accordingly (final version)

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

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

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

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

1.4. REFERENCE PERIOD FOR THE STUDY

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

1.5. TEMPLATE, LANGUAGE AND SIZE

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

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

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

The national reports should be written in a neutral, objective language, containing no unsubstantiated opinions. All sources of information included should be fully referenced. Whenever possible, refer to the original source and preferably to official sources. References to media sources must be kept to a minimum. If information is available online, please refer to the internet address (preferably to an English version, if available).

2. NATIONAL REPORTS: CONTENT AND STRUCTURE

2.1. INTRODUCTION

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

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

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

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

2.2. OVERVIEW OF THE STRUCTURE OF THE NATIONAL REPORTS

2.2.1. IMPOSITION OF PROTECTION ORDERS

- 1) We would like to know about the different forms of protection orders in your country
 - a. Identify the laws in which protection orders are regulated. Through which areas of law (criminal, civil, administrative, other) can protection orders be imposed?
 - 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 the Netherlands, protection orders can be found in civil, administrative and criminal law. These protection orders (hereafter: POs) are mainly regulated in generic laws, i.e. laws that apply to all victims and to all claimants such as the Civil Code and the Code of Civil Procedure for civil POs and the Criminal Code and the Code of Criminal Procedure for criminal POs. The only exception is the short term barring order (*huisverbod*), which falls under administrative law. This type of PO is regulated in an act specifically dedicated to countering

domestic violence, namely the Short Term Barring Order Act (*Wet tijdelijk huisverbod*). All these laws are available on the internet,² but not in English.

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

2a-b:

Civil law: Civil law has only one possibility to impose a PO, namely via interlocutory proceedings (art. 254-260 Code of Civil Procedure).³ This procedure is officially an interim procedure, but in practice it is never followed up by substantial proceedings. In other words, the outcome of the interim proceedings is usually final. The civil PO can be seen as an injunction order. The substantive legal basis for such an order is a tort (*onrechtmatige daad*) in combination with a court order (art. 6:162 jo 3:296 Civil Code).

Administrative law: Within administrative law, POs can be imposed through the recently introduced Short Term Barring Order Act. With the help of this Act, persons who are (on the verge of) committing domestic violence can be barred from the family home for 10 days. Other administrative POs are based on the Psychiatric Hospitals Compulsory Admissions Act (*Wet bijzondere opnemingen in psychiatrische ziekenhuizen*). This Act has three ways of imposing POs on psychiatric patients.⁴ The Psychiatric Hospitals Compulsory Admissions Act will not be dealt with in the remainder of the report.

Criminal law: The most complex system of POs can be found in Dutch criminal (procedural) law. In the Netherlands, there are no less than fourteen legal measures within criminal (procedural) law which can form the basis of a PO. Although these measures have different purposes (e.g., make sure that the offender can await his or her trial in liberty), these measures can have a protection order as a condition attached to them. These orders can be issued during all stages of the criminal procedure: both pre-trial and post-trial (see table 1). Since a thorough discussion of all the 14 measures would be impossible, the remainder of the report will mainly focus on POs that were issued as a condition to a conditional suspension of pre-trial detention and POs that were issued as a condition to a conditional suspension of the sentence. These two measures are most often used to impose a criminal protection order.

² They can be found through the website www.overheid.nl. For the Short Term Barring Order Act see (http://wetten.overheid.nl/BWBR0024649/geldigheidsdatum_24-05-2013); for the Civil Code, see (http://wetten.overheid.nl/BWBR0005291/geldigheidsdatum_24-05-2013) and (http://wetten.overheid.nl/BWBR0005289/geldigheidsdatum_24-05-2013), for the Code of Civil Procedure, see (http://wetten.overheid.nl/BWBR0001827/geldigheidsdatum_24-05-2013), for the Criminal Code, see (http://wetten.overheid.nl/BWBR0001854/geldigheidsdatum_24-05-2013), and for the Code of Criminal Procedure, see (http://wetten.overheid.nl/BWBR0001903/geldigheidsdatum_24-05-2013).

³ In theory, a civil PO can be obtained in substantive proceedings as well, but in practice this will rarely happen.

⁴ These are: 1) the conditional court authorization to a compulsory admission to a psychiatric hospital (*voorwaardelijke machtiging*), the temporary leave (*voorwaardelijk verlof*), and conditional release (*voorwaardelijk ontslag*) from a psychiatric hospital.

Table 1: Criminal measures which can form the basis of a PO

Investigation phase (pre-trial)	Out-of-court settlement	Criminal punishment or measure (post-trial)	Execution phase (post-trial)
Conditional suspension of pre-trial detention (<i>bijzondere voorwaarde bij de schorsing van de voorlopige hechtenis</i>) (Art. 80 CCP)	Punishment order issued by the public prosecutor (<i>aanwijzing bij een strafbeschikking</i>) (Art. 257a (3)(e) CCP)	Conditional suspension of the sentence (<i>bijzondere voorwaarde bij een voorwaardelijke straf</i>) (Art. 14c(2) CC)	Conditional release from penitentiary (<i>bijzondere voorwaarde bij een voorwaardelijke invrijheidstelling</i>) (Art. 15a(2) CC)
Court order for the maintenance of the public order (<i>rechterlijk bevel ter handhaving van de openbare orde</i>) (Art. 540 et seq. CCP)	Conditional dismissal (<i>voorwaarde bij een voorwaardelijk sepot</i>) (Art. 167(2) CCP)	Conditional hospital order (<i>voorwaarde bij een terbeschikkingstelling met voorwaarden</i>) (Art. 38 CC)	Conditional suspension of the treatment under a hospital order (<i>voorwaarde bij een voorwaardelijke beëindiging van de verpleging van een ter beschikking gestelde</i>) (Art. 38g CC)
Behavioural instruction issued by the public prosecutor (<i>gedragsaanwijzing van de officier van justitie</i>) (Art. 509hh CCP)		Conditional placement in an institution for repeat offenders (<i>voorwaarde bij een voorwaardelijke plaatsing in een inrichting voor stelselmatige daders</i>) (Art. 38p CC)	Conditional temporary leave from a forensic hospital (<i>voorwaarde bij een verlof uit een TBS-kliniek</i>) (Art. 50 and 51 Hospital Orders Act)
		Restriction of freedom measure (<i>vrijheidsbeperkende maatregel</i>) (Art. 38v CC)	Conditional temporary leave from penitentiary (<i>voorwaarde bij een verlof uit een penitentiaire inrichting</i>) (Art. 5(2) Regulation temporary leave from penitentiary)
			Conditional amnesty / parole (<i>voorwaarde bij een voorwaardelijke gratie</i>) (Art. 13 Parole Act)

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

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

In civil law, only the 'victims' – in civil cases called the claimants/plaintiff – can apply for a civil PO.

Short term barring orders (*huisverbod*) under administrative law can be requested for by the victims (art. 4:1 General Administrative Law Act), but what usually happens is that when the police are called to a scene of domestic violence – regardless of whether the victim called or witnesses – they will assess with the help of a risk assessment instrument whether a short term barring order may be required. The mayor or the assistant public prosecutor will then decide on whether or not to impose the short term barring order.

The same is in general true for criminal POs. Once the police and the PPS become aware of a crime – either because the victim reported a crime or in another way – they assess whether a PO is needed. In cases of domestic violence, the police are obliged to inquire with the victim whether (s)he would like a PO, and the victim can always spontaneously inform the police/PPS of his/her desires in this respect, but it is not something victims can officially apply for.⁵ In the case of a suspension of pre-trial detention and a suspended sentence, it is the PPS who request the judge/court to impose a certain PO.

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

In civil law, only the claimant is involved in applying for a PO, the defendant can contest the claim, and the civil judge decides whether the PO will be issued.

In administrative law (short term barring orders) only the assistant public prosecutor or the mayor are involved in issuing a PO. Victims can also request for one, but this is highly exceptional.

In criminal law POs are mostly issued by the PPS or an (examining) judge/court. Victims cannot apply for a criminal PO, although they can spontaneously express their desire to get one. It is the PPS who applies for a criminal PO before the judge/court. The PPS can ask the probation services for their advice before a PO is imposed, but for most POs this is not a requirement.

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

Civil POs can be issued without hearing the offender, during the interlocutory trial *in absentia*. An important requirement is, however, that the summons are served on the defendant correctly, so that (s)he at least had the opportunity to be present.

Administrative short term orders are imposed after hearing both parties, and criminal POs usually also require prior hearing of the suspect/offender. Many criminal POs even require the offender to explicitly state that (s)he is willing to obey the PO (*bereidverklaring*).⁶ Only the behavioral instruction by the public prosecutor can be issued on an *ex parte* basis.

⁵ POs that fall under the fourth column ('execution phase') can often be applied for by (the attorney of) the offender him/herself as well. When it comes to a conditional suspension of the treatment under a psychiatric hospital order more parties can apply: the judge *ex officio*, the public prosecutor, the (attorney of the) forensic patient, the director of the psychiatric hospital or the probation service can apply for such a PO.

⁶ At the moment this requirement is used arbitrarily. The offender, for instance, does not have to make this statement with the conditional dismissal, the conditional placement in an institution for repeat offenders, or the conditional release from a forensic hospital.

- 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?

In the Netherlands, POs are generally available for all types of crimes and victims. Only the short term barring order is restricted to situations in which domestic violence has occurred or is likely to occur.

- 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 POs are always dependent on one of the aforementioned criminal measures. A procedure specifically designed to impose a criminal PO does not exist. Whether the victim wishes to press charges does not make a difference either, at least not for most crimes including IPV. Usually, the PPS can prosecute regardless of the wishes of the victims. Some crimes, however, are only subject to prosecution on complaint (*klachtdelict*), e.g., stalking. If the victim does not do this, criminal prosecution is barred and criminal POs cannot be imposed.

Civil and administrative POs can be issued independent from other legal proceedings. In practice, however, it turns out that short term orders (administrative law) often coincide with criminal proceedings, because normally the event triggering the administrative barring order will constitute a crime. Civil POs can be obtained independent from divorce proceedings.

- 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)

When it comes to civil POs, the victim has to initiate the aforementioned interlocutory proceedings for obtaining a civil PO, starting with a summons of the defendant. On the day of the trial, the victim has to provide evidence of the unlawful behavior and the defendant can counter this claim. Eventually, the judge decides – usually right after the oral hearing – on whether or not to impose the civil PO. If it was a trial *in absentia*, the verdict has to be serviced to the defendant.

The procedure for issuing a short term order (administrative law) is explained above (question 3a).

The procedures for criminal POs vary per type of type of PO. Usually public prosecutors can either immediately impose a criminal PO themselves – after hearing the suspect/offender – or they can request one from the court or (examining) judge if a judicial decision is required. Sometimes the issuing of a criminal PO requires prior advice from one or more organizations (see question 3b).

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

Civil POs are often praised for the short processing time of cases. Since they are imposed in interlocutory proceedings, they take up less time than normal civil proceedings. In 2007, interlocutory proceedings took six weeks on average, from beginning to final judgment.⁷ The actual trial takes up approximately 30-60 minutes. Depending on the urgency of the matter, the hearing can be scheduled on every day and hour, including Sundays and holidays, but this is highly exceptional.

Short term barring orders (*huisverbod*) (administrative law) generally have the shortest processing time. After the police have arrived at the scene of a (domestic violence) crime, they immediately fill out the risk

⁷ See the annual reports of the council for the Judiciary to be found at www.rechtspraak.nl.

assessment instrument. The outcome is then forwarded to the assistant prosecutor or the mayor who – in turn – immediately decides on issuing a barring order.

Criminal POs – or rather the criminal measures forming the basis of criminal POs – vary when it comes to their processing time. They can be imposed very quickly (e.g., when a suspect is arrested and brought before an examining magistrate within 3 days and 15 hours, who then decides to impose a PO), but they can also take up (much) more time (e.g., when the suspect is allowed to pass the time before the trial in (unconditional) freedom and the criminal PO is imposed only as a condition to a conditional sentence).

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?

The civil judges usually declare the civil POs to have immediate effect (art. 258 CCP). Although a service of the verdict is still required, this does not defer the working of the PO.⁸

Short term orders also have immediate effect, albeit that the offender can appeal the decision. Even though the judge can revoke the barring order within the 10 days, judges are very reluctant to do this.

Until recently, criminal POs did not come into effect until there was a final judgment (*kracht van gewijsde*). This has been changed recently. Nowadays, most criminal POs can be ruled to have immediate effect. This is left up to the judge. Some criminal POs, however, still require a final judgment (e.g., the conditional placement in an institution for repeat offenders) and the probationary period of the conditional dismissal does not begin until the 15th day after the dismissal is serviced on the suspect (Art. 14b(3) CC).

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

The short term barring order can be imposed immediately upon request and civil POs can be imposed relatively quickly as well (see 5b and c). However, since the short term barring order only lasts for 10 days – upon extension max 28 days – it could be that there is a lapse of time when no order is valid (and protection cannot be ensured). This could be the case when the short term barring order has expired and the civil PO is not yet issued. For the steps that need to be taken to finalize the (civil) protection after the interim order, see 5a).

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?

Civil interlocutory proceedings can only be initiated if the case has a sense of urgency, but judges easily assume this urgency. For civil POs it suffices if the judge considers it plausible that the defendant acted unlawfully against the claimant or that there is a real threat of future unlawful behavior. The judge can in that case impose a PO to prevent future unlawful behavior.

Short term orders can only be imposed on (adult) persons who live at the same address as the victim or who reside there on a more than incidental basis (art. 2(1)(2) Short term Barring Order Act). The continued presence of this person in the home needs to constitute a ‘serious and immediate danger’ for the persons left behind. This threat needs to be established with the help of a risk assessment instrument.

⁸ Yet the enforcement of the PO upon violation does require the service of the verdict.

Again, the exact application criteria for criminal POs differ per type of PO. Often, criminal POs require (a suspicion of) a serious crime, but some POs can be imposed in less serious cases as well. Also, where some criminal POs require the offender to explicitly state that (s)he will obey the PO, others do not. Furthermore, some POs add to the list of requirements that there has to be a (substantial) risk of recidivism or harm to the victim in order to justify the imposition of a PO, whereas others do not. If, however, the risk of recidivism is too high, some POs can no longer be imposed, because that would be irresponsible.

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

Legal representation for the victim is only required by law in civil interlocutory proceedings. When it comes to the short term order or criminal POs, the victim does not have to be represented.

c. Is free legal representation/advice available?

In civil cases, claimants with few financial resources can apply for subsidized legal representation, but they are still expected to pay an income-related contribution towards the costs. The court fees are also lower for this group of claimants. People to whom the Legal Aid Act does not apply cannot profit from these arrangements.

Free legal advice is not available for victims after the offender has been removed from the family home under the short term barring order. This has often been criticized. (include literature reference)

In criminal cases, victims with a low income and/or few financial resources can also apply for legal representation/advice under the Legal Aid Act. Victims of vice crimes or crimes of violence who have suffered permanent damage as a result of the crime can receive legal advice free of charge, regardless of their income. Furthermore, all victims of crimes, traffic accidents, and calamities can contact the national Victim Support Organization for advice and support.⁹

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)?

Because many legal provisions do not explicitly indicate which POs can and cannot be imposed, it is impossible to give an exhaustive account of all types of POs that can be applied in the Netherlands. This has to do with the fact that many laws use so-called 'open norms'. This means that there is great liberty in formulating the conditions of the PO. This is, for instance, true for civil POs and (some) criminal POs, such as the conditional dismissal or the 'punishment order' (*strafbeschikking*).¹⁰

Within criminal law, however, there does seem to be a trend to include an exhaustive list of types of protection available within the new (PO) provisions (e.g., the 'restriction of freedom measure') and to specify the scope of old (PO) provisions more clearly (e.g., the conditional sentence). In the context of these criminal measures, only some types of POs can be imposed, mostly 'no contact' orders and prohibitions to enter a certain area. This has to do with the fact that a PO can seriously infringe on a human right and therefore can only be imposed on the basis of a legal provision that is sufficiently clear and predictable.

⁹ See www.slachtofferhulp.nl.

¹⁰ This can be witnessed from some of the 'more exotic' examples, such as the PO that prohibited an offender to continue his studies at a certain university or the PO that obliged an offender to tell the women he would date for the upcoming 10 years about his preference for having sex with minors.

The types of protection available under a short term barring order are exhaustive: the barred person is not allowed to enter the family home for 10 (on extension 28) days and to contact the persons who stayed behind.

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?

Yes, this is the short term barring order (see above). The offender can be removed for 10 days, and this can be prolonged to a maximum of 28 days.¹¹ During the barring period, help is provided to both the victim (e.g., social services) and the offender (e.g., probation services). This is unique for the short term barring order.

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

The most popular types of protection imposed under civil, criminal and administrative POs are: 1) the no-contact order, 2) the order that prohibits an offender to enter a certain street/area, and 3) the short term barring order which obliges the offender to leave the family home.¹²

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)?

Most types of POs can be imposed in combination with each other. This goes for all areas of law (civil, criminal, and administrative).

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

The most popular combination can be found in the barring order which, by definition, combines an order to leave the family home with a 'no contact' order. The second most popular combination is the 'no contact'-order in combination with a prohibition to enter a street. In civil cases, the vast majority of the cases contain this combination. Combinations are also found very often in criminal case files, but most criminal cases only contain a single 'no contact' order.¹³

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

There are no formal legal requirements for the formulation of POs. In practice, however, many judges – especially civil judges – make up rather elaborate PO decisions, so as to specify which behavior is prohibited and which not. The content of 'no contact' orders, for instance varies a lot, with civil POs and POs issued by means of a suspended sentence being most detailed, followed by the conditional suspension of the pre-trial detention and the conditional release from prison. The orders issued as a condition to a temporary leave from

¹¹ Because the content of civil POs is not prescribed by law, the civil judge could – in theory – also order the offender to move from the family home. There are no examples of this in practice.

¹² S. van der Aa, F. Klerx, M. Bosmans, A. Bosma & M. van den Bosch, *Aard, omvang en handhaving van beschermingsbevelen in Nederland. Deel twee: Aard en omvang*, Den Haag: WODC 2013, p. 278.

¹³ Van der Aa e.a. (2013), p. 278.

prison, on the other hand, often entail nothing more than that the prisoner is 'not allowed to contact the victim'.¹⁴

- 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?

There are practically no legal limitations to the scope of civil and criminal POs. In literature, you can find examples of POs varying from 25 meters surrounding the victim's home to POs prohibiting offenders to enter a village, a city or even an entire province. There are only some general restrictions – such as proportionality, the requirement that the conditions of the PO can only relate to the behavior of the offender, and the stipulation that the conditions cannot infringe on the freedom of religion or beliefs, or someone's political freedom – but that is all.

Short term barring orders are, by nature, restricted in their scope. They only apply to the family home.

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

See question 9a for the general restrictions.

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

In practice, many judges/ public prosecutors will take all sorts of factors into account, most of them related to the proportionality and personal circumstances of the defendant/offender (e.g., whether family/friends live in a certain forbidden area). Very extensive POs – encompassing entire villages or cities – are therefore seldom imposed.

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

Civil POs are often indicated with the help of a map and they are indicated by naming the surrounding streets. Criminal POs, however, are (practically) never indicated on a map and the use of radiuses is much more frequent.

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

The average scope of an order that prohibits someone to enter a certain area is usually limited to one or more streets. POs with a more extensive scope are much rarer.

- 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?

Originally, civil POs did not have to be issued for a specified period. Nowadays, civil POs are generally issued for a determined period, such as one or two years, but every now and then there are still civil POs issued without a determined expiration date.¹⁵ There is no law prohibiting this.

¹⁴ *Ibidem*.

¹⁵ E.g., Rechtbank 's-Hertogenbosch 9 juli 2002, *LJN* AE4992 and Rechtbank Almelo 19 juli 2000, *LJN* AA6584.

Short term barring orders expire after 10 days, after prolongation, maximum 28 days.

Criminal POs usually have a legally determined maximum duration. Either this duration is explicitly stated in the legal provision (the maximum duration for the 'punishment order' (*strafbeschikking*) is set at one year) or it is self-evident (e.g., the suspension from pre-trial detention ends when the case is brought to trial).¹⁶ The longest PO can be imposed by means of a conditional sentence: the maximum is usually three years, but this can be prolonged to ten years if there is a serious risk of recidivism causing one or more persons to be in physical danger (Art. 14b CC).

None of the civil or criminal POs have a minimum duration.

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

Factors that possibly play a role in deciding on the duration of a PO are: the effectiveness (how long is the protection required?), proportionality (is the duration in proportion with the crime/unlawful behavior?), seriousness of the offense. There is, however, no research conducted into which factors the legal authorities take into account.

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

Civil POs have an average duration of 11 months, administrative short term barring orders last between 10 to 28 days, and the duration of criminal POs varies per PO. Sometimes the duration of a criminal PO is more or less set (e.g., the 39 hours of an average temporary leave from prison), but with other criminal POs, the judges have more liberty. The average duration of a conditional sentence is 24.3 months; the average duration of a conditional release is 13.2 months.¹⁷

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?

Victims are most influential when it comes to civil POs. After all, they are the ones requesting such as PO. They can also request the cessation of a civil PO.

With short term barring orders the influence of the victim is much less. Barring orders can even be imposed against the wishes of the victim. The same goes for criminal POs. Victims can request the cessation of these orders, but the legal authorities are not obliged to pay attention to this request.

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

In the case of short term barring orders both parties are heard and the police will then inquire with the victim how (s)he feels about a barring order. With criminal POs it works differently. When the case involves a crime of

¹⁶ There is one exception: the duration of the conditional dismissal is not specified in the law. However, it is generally assumed that art 14b(2) CC is also applicable, which means that the PO can only last for a maximum of two years (Reijntjes, note 17.3 to article 167).

¹⁷ Van der Aa e.a. 2013, p. 266.

domestic violence, the police are obliged to inquire about the victim's desire for a PO,¹⁸ but there is no such obligation with regard to victim of other types of crimes. Of course, the victim can always express their wishes spontaneously.

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

As for civil POs, the victims/claimants request a certain type/scope/duration of PO in their summons. Civil judges can deviate from this request, but only in the sense that they can impose a PO that is less extensive/long/etcetera. Here victims are very influential. This is not the case when it comes to administrative or criminal POs. Victims can express their wishes and desires in this regard, but it is up to the PPS or the judges if and how they incorporate the victim's wishes.

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

In principle, all civil, administrative and many of the criminal POs can be challenged or appealed by the offender. There are some exceptions: the conditional dismissal, the court order for the maintenance of the public order, the conditional suspension of pre-trial arrest, and the conditional leave from prison cannot be challenged, because these provisions can only be imposed if the offender voluntarily cooperates. If (s)he does not cooperate, the PPS will, for instance, prosecute, the offender will be detained in pre-trial detention, the conditional leave will not be granted, etcetera. This is also true for the conditional release from prison and the conditional amnesty. However, offenders can always appeal against the conditions of these provisions in civil interlocutory proceedings.

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

In civil proceedings both parties can express their feelings towards a PO. During trial, the offender can, for instance, call the judge's attention to possible disadvantageous consequences of the requested PO, such as, for instance, the fact that the PO would no longer allow him to visit family, friends or work. Civil judges will try to strike a fair balance between protecting the claimant and limiting the negative consequences for the offender as much as possible, so in that sense, the offender could have an influence.

The wishes of the offender are not (really) taken into account when it comes to short term barring orders. Typically, these orders are imposed regardless of the wishes of any of the parties involved and they also entail the same conditions: the offender has to hand in the keys, has to leave the family home for 10 days, and is forbidden to contact the persons who stay behind. The offender can of course appeal the decision to impose a barring order.

In criminal law, the offender is also allowed to express his/her opinion towards a PO, and the public prosecutor or judge can take this into account. Some criminal POs, the offender first has to agree with. As for other POs, if the offender disagrees with them (s)he can always appeal and try to reverse the PO or to change the conditions of the PO.

¹⁸ See the Domestic Violence and Honour Based Violence Instruction of the PPS (*Aanwijzing huiselijk geweld en eengerelateerd geweld*).

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

See question 13b. In civil law, the claim of the claimant binds the judge, so if the offender wishes to propose a completely different type of PO, (s)he first has to take this up with the claimant. If both parties agree on a completely different PO, the civil trial can be cancelled or the civil judge can confirm this agreement in his/her judgment.

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

There is no empirical material available in the Netherlands to answer this question. Anecdotal evidence suggests that public prosecutors and judges can have a different approach.¹⁹ Some of them impose the PO, regardless of possible practical impediments, in which case the PO has a more symbolic function, whereas others will only impose POs that can actually be enforced in practice.

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

In civil proceedings, the claimant can call the judge's attention to the fact that there have been prior POs. This may increase the likelihood of being awarded another PO. Empirical data shows that when another PO was issued against the defendant at a previous stage, the odds of having the PO awarded in the current trial increased.²⁰

With short term barring orders, the police have to fill out a risk assessment instrument. One of the factors that are taken into account when deciding on the imposition of a barring order is whether there have been any antecedents or incidents (based on police registration) of violence, vice crimes or crimes related to weapon use or possession. If previous POs show up in the police registration, these can be taken into account.

As for criminal POs: there is no information available on whether this type of information can or is taken into account in ensuing legal proceedings against the same offender. Again, previous antecedents or police records also help determining the punishment, which makes it likely that previous POs (violations) can play a role in this respect.

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

Children are not automatically included in a civil PO. The claimant has to request the order to extend to contact with (mutual) children as well.

As for the short term barring order: this order automatically extends to the children if they are living in the family home. In that case, the barring order has to explicitly contain the names of the children as well (art. 2(4)(c) Short term barring Order Act). If the mayor or assistant public prosecutor suspect child abuse, (s)he first

¹⁹ Van der Aa e.a. (2013), p. 90 and 103.

²⁰ Van der Aa e.a. (2013), p. 278.

has to consult with the Youth Care Agency before imposing a short term barring order (art. 2(3) Short term barring Order Act).

Criminal POs do not automatically extend to children. As with civil POs, criminal POs have to explicitly state that they extend to the children as well.

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

If the offender has visitation rights, POs that only apply to the partner can take these rights into account – e.g., by formulating the prohibitions so that it does not violate visitation rights or in a way that still allows for contact with the children to some extent.²¹ If the PO also extends to the children, it can supersede visitation rights. (check)

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

I do not know this at the moment, but will try to find it out with the help of a lawyer specialized in juvenile law. Anecdotal evidence, however, suggests that in practice there are indeed problems with custody/visitation decisions by the courts and PO decisions.

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

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

a) In civil procedures mutual protection orders are sometimes issued. This can happen when both parties act as a claimant: the defendant argues that the claimant has behaved wrongfully against him/her as well (or instead) and requests the civil judge to impose a civil PO onto the initial claimant as well (or instead). If the civil judge considers the counterclaim plausible, both parties can be bound by a PO. Another possibility is that both parties voluntarily agree not to contact each other (settlement).

The short term barring order only applies to the person who is barred from the family home: it is (s)he who is no longer allowed to contact the persons left behind, so officially there is no mutuality in the order. Practitioners, however, indicate that when the victim contacts the offender him/herself, a violation of the barring order by the offender will no longer be enforced.²² Also, some practitioners warn the victim that (s)he may be liable to committing incitement.

Criminal POs are never mutual, although there is no explicit prohibition to this extent. In theory, if both parties have committed criminal offenses against one another, it could be possible to impose mutual POs, but empirical research into criminal case files shows that this never occurs.²³

²¹ An example would be a father who is no longer allowed to contact his ex-wife, but still has visitation rights. When this is the case, the PO can, for instance, instruct the father to end all direct contact with his ex-wife. If he needs to contact his ex-wife for business related to the children this contact has to pass through her attorney, and the actual visitation has to be arranged with the help of a third party so as to avoid direct contact with his ex-partner.

²² Van der Aa e.a. (2013), p. 118.

²³ During the case file study in Van der Aa e.a. (2013) not a single criminal case contained a mutual PO.

b) The rationale behind criminal POs not being mutual is that the criminal investigation and prosecution revolves around the suspect/offender, not the victim. The criminal justice authorities cannot impose criminal POs on victims. Although short term barring orders strictly speaking are not applicable to the victims, they are advised to refrain from contact themselves. Still, they are not mutual, because the legislator only wanted to restrain the person who formed the biggest threat.

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

18 a-c) Administrative barring orders and criminal POs are provided free of charge. Only civil POs cost money, mostly court fees and costs for legal representation. Usually, the party who loses the civil trial has to pay for the legal costs. However, the civil judge can decide differently and order both parties to pay for their own costs. This happens very often in cases involving family or (ex)partners, *regardless of the outcome of the trial*. Whether these costs constitute an undue financial burden for the victim and whether (some) victims are hindered in applying for civil POs because of these financial risks is unknown, but that could certainly be the case. Especially the costs for legal representation can be very high.

2.2.2. ENFORCEMENT OF PROTECTION ORDERS

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

- 19) Where and how are protection orders registered?

Civil POs are not registered, yet the claimant receives a copy of the verdict.

Short term barring orders are registered in the digital systems of each of the separate partners involved in the barring order (police, *Steunpunt Huiselijk Geweld*, Probation Service, Municipal Health Service, etc.). Usually, they register short term barring orders in the same way as they register other cases. Some partners, however, use *Khonraad*, a web application specifically designed for registering short term barring orders. As soon as a short term barring order is registered in *Khonraad*, all the other partners signed up to the system receive a notification.

Criminal POs are generally registered in the automated registration system of the PPS (*COMPAS*). The information then passes onto the digital registration of the Central Fine Collection Agency (*Centraal Justitiele Incassobureau*) which, in turn, sends the information to the police and the Dutch probation services. Sometimes, however, the conditions of the PO cannot be registered in *COMPAS*, e.g., in the case of the conditional suspension of pre-trial detention.²⁴

²⁴ Also the conditions to a temporary leave from prison are registered in the digital file of the prisoner. This file, however, is destroyed six months after (s)he leaves prison.

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

Civil POs are generally imposed immediately after the oral hearing so the victim/claimant is automatically informed of the PO and its conditions.

Short term barring orders are communicated a.s.a.p. to the victims by the mayor or the assistant public prosecutor (art. 2(8) Short term barring Act). This happens by letter and in person.

With criminal POs, victims are in principle always informed of the fact that their offender is set free, of the conditions that the offender has to adhere to, and of the organization they have to contact in case of violation of the PO.²⁵ Victims are informed by the Victim Information Point (*slachtofferloket*) or they receive of a (standardized) letter.²⁶ If a temporary leave from prison is considered, the victims are automatically informed one week beforehand, so as to give them time to react to this plan. However, this only happens the first time the offender is on leave. All the subsequent leaves are not communicated to the victim.

- 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?

With civil POs, it is the claimant who is responsible for monitoring compliance with the PO. As soon as (s)he establishes a violation, (s)he can contact the police and/or an attorney.

Short term barring orders are monitored by the police, but the probation services and social services have a signaling function as well.

Although monitoring compliance with criminal POs is officially the responsibility of the PPS, in practice, this is mainly delegated to the police and the probation services.

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

GPS can only be used for certain criminal POs (conditional suspension of pre-trial detention, conditional suspension of the sentence, conditional release from prison, restriction of freedom measure, conditional suspension of the treatment under a hospital order, and temporary leave from prison) and only if a judge allows this. The probation services are responsible for checking the GPS, so GPS is also dependent on a positive advice of the probation services.

Extra surveillance, such as house visits can be used at the discretion of the police. Also, the probation services can ask during their meetings with the offender whether (s)he obeyed the PO, and the social services can do the same when they meet the victim. Apart from this, the probation services are entirely dependent on GPS when it comes to monitoring POs.

The police are being informed of the existence of POs during 'briefings'. In serious cases, a so-called 'alert notice on location' (*aandachtsvestiging op locatie*) can be issued. The police can then watch this address more

²⁵ The exception to this rule is the conditional dismissal: whether the victim is informed is up to the public prosecutor.

²⁶ It is not clear though whether this letter contains the conditions to the PO.

closely, e.g., by means of extra surveillance, and if a violation is reported from such an address, the central control room will send out a patrol car immediately.

Another option to monitor POs is to have the victim carry an AWARE alarm system. (S)he can push the alarm button once the offender violates the order, which will immediately alert the police. Although strictly speaking, the AWARE alarm system is not meant as a device to check compliance with criminal or administrative POs – its primary aim is to prevent (re)victimization – and although the alarm system cannot be imposed as part of a criminal procedure, the quick reaction of the police may increase the odds of catching the offender *in flagrante*. AWARE is becoming more and more popular. (include reference)

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

Generally POs are not actively monitored with the help of GPS, extra surveillance or house visits. The police have a more reactive approach instead: they wait for the victim to report violations.

Possibly, some districts have a more proactive approach when it comes to monitoring the short term barring order. Some practitioners mention that the policeman on the beat will always make a house visit within the 10 days of the order (also) to inform whether there are any violations.

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

GPS is used rarely and only in the most serious cases, since it is seen as a drastic measure. To illustrate this, of the 103 suspensions of the sentence in which a PO was administered included in the Van der Aa (2013) study, only 1 was monitored with the help of GPS. GPS as part of a conditional release from prison was somewhat more prevalent: of the 34 cases in which a PO was imposed as part of a conditional release from prison, 6 were monitored with the help of GPS (17.6%).²⁷

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

It is generally left to the victim to report violations (see 22b).

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?

Consequently, monitoring authorities generally become aware of violations through the victim, not pro-active monitoring activities (see 22b).

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

It depends on how the PO is formulated. If the PO reads that the offender is not allowed to ‘initiate and have contact’ with the victim – instead of only ‘initiate contact’ – contact initiated by the victim would officially also constitute a breach if the offender enters into the conversation. For that reason, probation service workers sometimes advise their clients on the appropriate course of action if the victim initiates contact.

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

I am not sure whether contact initiated by the victim would constitute a problem in establishing or proving a PO violation. It does, however, have an effect on the official reaction to PO violations (see 23c).

²⁷ Van der Aa e.a. (2013), p. 238 and p. 248.

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?

With civil POs, contact initiated by the victim could lead to the refusal of the incremental penalty payment (which is a sort of fine for violating the PO).

With short term barring orders if the contact is initiated by the victim him/herself – a problem which is particularly relevant in the case of short term barring orders which can be imposed against the wishes of the victim – the authorities will be less inclined to enforce the PO. At best, both the victim and the offender are reminded of the conditions of the PO and the offender receives a warning.

With criminal POs, contact initiated by the victim can play an important role as well. If the victim clearly wants to provoke the offender, the authorities would only issue a warning if the offender reacts. For cases of domestic violence this can be different, at least according to some public prosecutors. In those cases, especially ones involving children, contact initiated by the victim can nevertheless be a reason for more formal means of enforcement, if only to protect the children.

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

Civil POs: Violations of civil POs are easily established. It suffices if the attorney of the claimant tells the bailiff (who collects the incremental penalty payment) that the PO was violated. The bailiff will not ask for further evidence. If the offender disagrees with the claimant, (s)he can institute proceedings (*executiegeschil*) with the civil interlocutory judge. In that case, the claimant will have to prove that the violation indeed happened (the violation has to be ‘plausible’).

Short term barring order and criminal POs: The evidentiary requirements for a violation of a short term barring order and a criminal PO are the same as for any other crime:²⁸ the minimum evidentiary requirements have to be met (e.g., one piece of evidence is not enough), and the violation has to be ‘legally and convincingly proven’ (art. 348/350 Code of Criminal Procedure). For some criminal POs, however, the evidentiary requirements are more relaxed.²⁹

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

Civil POs: Once the victim becomes aware of a violation, (s)he has to contact his/her attorney who, in turn, will contact a bailiff. The bailiff will then collect the incremental penalty payment. If the offender disagrees with the enforcement, (s)he can turn to the civil interlocutory judge.

Short term barring order: The victim and/or other organizations that become aware of the violation of a short term barring order can contact the police and file a report (the latter is not a necessity). The offender can, in turn, be arrested, but this is not necessary either. As soon as the police hear of the violation, they have to report this to the PPS, which decides on further (prosecutorial) steps.

²⁸ This is, for instance, true for the conditional suspension of the sentence or a conditional release from prison.

²⁹ In the case of a conditional suspension of pre-trial detention, for instance, it suffices if the violation has become ‘plausible’, and when the prison officers are informed of a violation during the temporary leave from prison by a police officer, they automatically assume that the violation occurred. A single report by the victim, however, does not suffice (Van der Aa e.a. 2012, p. 98).

Criminal POs: Violations of criminal POs have to be communicated to the police and/or PPS. As soon as the public prosecutor is informed (s)he will decide on further (prosecutorial) steps (compare short term barring order).

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

Civil POs: The most prevalent formal reaction to a PO violation is to have a bailiff collect the incremental penalty payment (some sort of fine). Another possibility is to have the offender committed for failure to comply with a judicial order, but this is very rare and only possible if the civil interlocutory judge has allowed this measure of execution when the PO was imposed. A requirement for both the execution of both the incremental penalty payment and the committal is that the verdict was serviced on the offender. Another possibility is to try to come to a settlement (e.g., the claimant's attorney can warn the offender and persuade him/her to cease violating the order). Claimants can also (in addition to or instead of civil execution) turn to the police. The police are allowed to escort the offender out of the restricted area and order him/her to stay away. It is, however, unclear how the police react in practice.

Short term barring order: The following reactions to a violation of a short term barring order can be displayed by the police/PPS: ignore the violation, issue a warning, arrest the offender, bring the offender before a public prosecutor, dismiss the case, bring the offender before the criminal court and have him/her sentenced.

Criminal POs: With criminal POs, the reaction to a violation differs per PO. If the offender violates a conditional dismissal, the public prosecutor can decide to (re)open a prosecution. If a condition to a conditional suspension of pre-trial detention is violated, the public prosecutor can ask for the termination of the suspension. If the condition to a conditional suspension of the sentence is violated, (s)he can ask for the execution of the suspended part of the sentence, etc. etc. Other reactions are: ignore the violation, issue a warning, change the conditions of the PO or ask the judge to change these conditions.³⁰ When a condition to a temporary leave from prison is violated, the leave can be revoked, future requests for leave can be refused, the offender can be reprimanded, and/or internal sanctions can be imposed.

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)?

Next to formal reactions, it is also possible to give an informal reaction to a PO violation (see 25a).

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

The most prevalent reaction to a civil PO is to have the incremental penalty payment collected by the bailiff. Which reaction usually follows on a violation of the short term barring order is unknown. Even though many districts have agreed to always arrest the offender, it seems that in practice, some (?) offenders get away with a warning. Also, in some districts these cases often end in a dismissal. The same goes for the violation of criminal POs. Although the public prosecutors indicate that PO violations are usually followed by an official reaction (see 25a), in practice they also use informal reactions (e.g., warning or change of the conditions). Prison officers say that the standard reaction to a violation during temporary leave is to withdraw the leave and to have the violation play a role in decisions on future requests for leave. There are no empirical data available on the prevalence of formal and informal reactions to PO violations.

³⁰ There is one exception here: the restriction of freedom measure does not allow for the public prosecutor or the judge to change the conditions or to caution the offender.

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

There is no empirical evidence on the effectiveness and dissuasiveness of the sanctions/reactions to PO violations, so it is difficult to answer this question. In my opinion, they at least seem proportionate. Whether they really stop offenders from re-victimizing their victims will also depend on whether these sanctions/reactions are actually enforced in practice.

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

I will look this up.

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?

In the Netherlands, violation of civil POs is not criminalized. They can only be enforced through civil means of execution. The violation of a short term barring order, however, is criminalized (Art. 11(2) Short term barring Order Act).

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

Violation of the short term barring order can be punished with a maximum of two years imprisonment or a fine of the fourth category (Art. 11(1) Short term barring Act).

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

In case of a violation of a short term barring order, the police will, in principle, always report this to the public prosecution service. They can also arrest the offender, in fact, this is even the prescribed course of conduct in some districts, but this is less standard in practice. Anecdotal evidence even suggests that the police often remain inactive after a violation has occurred.³¹

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

If the victim contacts the police after a civil PO has been violated, the reactions vary. Some policemen are hesitant to interfere in what they see as a civil case, whereas others see the verdict of a civil interlocutory judge as an authorization of their interference. In that case they can exercise their regular competences (art. 2 Police Act) and, for instance, escort the offender out of the restricted area and/or they can order him/her to stay away. If the violation consisted of a crime, they can also write down a report and (possibly) even arrest the offender.

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

The 'monitoring authority' of civil POs is the claimant his/herself, and (s)he needs to report the violation to an attorney who will, in turn, contact a bailiff.

In case of the violation of a short term barring order or a criminal PO, the monitoring authorities (i.e., the police and the probation services) also have to report violations to another authority, namely the PPS. The PPS, in

³¹ Van der Aa e.a. (2012), p. 116.

turn, are authorized to sanction some PO violations themselves (e.g., in case of conditional dismissal the PPS can decide to prosecute), but most of the time they have to ask the (examining) judge to sanction the offender. When an offender violates the conditions during a temporary leave from prison, the police will have to report this to the prison (director) who will issue a sanction.

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

When it comes to the short term barring order and criminal POs, the police and the probation services are in principle obliged to report all violations that have come to their knowledge to the PPS, but in practice they sometimes assume discretionary powers not to report violations, especially probation services.

Victims can freely decide whether or not to report violations.

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

When it comes to the violation of short term barring orders, the probation service workers will not always report this to the police. They take into account factors, such as seriousness of the violation, the intentions of the offender, the evidence, and the attitude of the victim (e.g., did he/she initiate contact him/herself?). It seems as though the police are more keen on reporting violations to the PPS, although anecdotal evidence suggests that they too (sometimes) fail to report a violation (see 26c).

In the case of criminal POs, the police sometimes also decide not to report a violation to the PPS – despite the fact that they have no official discretionary power thereto. Whether they report to the PPS depends on the available evidence of the violation and the seriousness of the violation. Some policemen also take into account whether the victim initiated contact him/herself. Persons working for the probation services indicate that violations of criminal POs are practically always reported – even if they are not 100% certain that a violation actually took place – but sometimes ‘minimal’ violations (i.e., violations that were not committed with bad intentions) remain unreported.

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

To the best of my knowledge, the monitoring authorities do not receive a specific training in this regard.

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

Civil law: it is estimated that yearly a total of 196 civil POs are issued. In reality, however, the exact number of civil POs will be somewhat higher because of under-registration.³²

Short term barring orders: In 2012, 3529 offenders were temporarily barred from the family home. In 2011, this number amounted to 3139. Ever since the introduction of the Short term barring Order Act, almost 12.000 barring orders have been imposed (n=11.692).³³

³² Van der Aa e.a. (2013), p. 275.

Criminal law: Criminal (procedural) law has 14 ways of imposing a PO. Many of these ways are never or rarely used for this purpose.³⁴ The most prevalent criminal POs are issued as a condition to a conditional suspension of pre-trial detention (n=1820), a suspended sentence (n=429) or a conditional release from prison (n=56).³⁵ How often POs are imposed as a condition to a temporary leave from prison is unknown, but this probably also happens a lot.

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

30 a-b) The most popular ones are the short term barring orders (see question 29), which automatically also include a no-contact order. After that come the 'no contact' orders, followed by the prohibitions to enter an area.

The most popular combination is a short term barring order in combination with a 'no contact'- order (in the Netherlands, this is a 'package deal'). The second most popular combination of orders is a 'no contact'-order in combination with a prohibition to enter a certain area.

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

Although civil interlocutory proceedings (officially) do not revolve around crimes, but around unlawful behavior, most of these cases do involve (repetitive) assault, (repetitive) threats and stalking, often between (ex)partners.

Short term barring orders are by definition only imposed in cases where domestic violence has occurred or is on the verge of occurring.

Criminal POs are also generally issued in cases involving assault, threat, stalking and – to a lesser extent – vice crimes, often between (ex)partners.

- 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?

POs (civil, criminal, and administrative) are generally imposed against male offenders on behalf of female (or multiple) victims.³⁶ More than 90% of the POs are imposed against a male offender. The protectee, on the other hand, is more often female (e.g., 82.7% of the civil POs aimed to protect a female). The only exception to this rule is the conditional release from prison, where the number of male and female protectees is more or less equal.

³³ These numbers can be found at: http://www.huiselijkgeweld.nl/nieuws/2013/180413_bijna-12-000-huisverboden-sinds-invoering-wet.

³⁴ This is, for instance, true for the court order for the maintenance of the public order; the behavioral instruction issued by the public prosecutor; the conditional dismissal, the punishment order issued by the public prosecutor (not introduced yet); and the measure for the restriction of freedom; the conditional hospital order; the conditional placement in an institution for repeat offenders; conditional amnesty; and conditional suspension of the treatment under a hospital order (Van der Aa e.a. 2013, p. 181-182 and p. 276).

³⁵ These numbers are estimations in the period 1 April 2011 until 1 April 2012 (Van der Aa e.a., 2013).

³⁶ Van der Aa e.a. (2013), p. 277.

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

The answer to this question is only available for (some of the) criminal POs. With the conditional suspension of pre-trial detention 76.7% of the restraints already had a prior police record; with the conditional suspension of the sentence 67% of the restraints already had a prior police record; and with the conditional release from prison over 94% had a prior police record.³⁷

Check for statistics on short term barring order

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

Both criminal and civil PO files bear witness to the fact that many offenders had another PO imposed against them at an earlier stage (30.1% of the civil files, and between 12.6% and 14.7% of the criminal files).³⁸ Sometimes these orders were issued in response to one and the same incident, but often they were a sign of a prolonged problem in which previous orders had not been effective. Check for statistics on short term barring order

2.2.4. PROTECTION ORDER EFFECTIVENESS

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

- 33) a. Is there any empirical information available on the effectiveness of protection orders in your country? Do protection orders stop or reduce the unwanted contact? Or do they have another effect (e.g. improve the well-being of the victims, change in the nature of the violence)?
- b. Which percentage of the imposed protection orders are violated?
- c. If protection orders are still violated, are there any changes in the nature of the violence (e.g., violent incidents are less serious)?
- d. Is there any empirical information on the role that victims play in protection order violations (e.g., percentage of cases in which the victims themselves initiated contact)?

33 a-d) There is no empirical information available on these matters. However, given that many restraints already had a previous PO issued against them which apparently did not stop them from engaging in further violent behavior (see question 32c), this may indicate that POs are not always very effective in the sense that they stop the violence.

- 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?

34) There is no empirical information available on this matter.

³⁷ Van der Aa e.a. (2013), p. 224, 233, and 244.

³⁸ Van der Aa e.a. (2013), p. 277.

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?

35 a-c) There is no empirical information available on these matters.

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

Over the past few years, many legal measures have been created that can form the basis of a PO – especially within criminal law – which has made it hard to see the forest for the trees. The added value of some of these provisions is questionable (also because they are hardly ever used in practice). Redundant measures could be removed. Furthermore, the system of criminal, but also civil provisions needs to be critically examined on its coherency. At the moment, their application requirements have arbitrary differences. For instance, some of the legal provisions with less procedural safeguards (e.g., civil proceedings, conditional dismissal) are less regulated and leave more freedom to the authorities than provisions with more procedural safeguards (e.g., suspension of the sentence). In the worst case scenario, this could affect the suspect's legal position or the effectiveness of the PO.

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

A barrier with civil POs is that victims run a high risk of having to pay for their procedural costs. Especially, since civil judges have a tendency to have both parties pay their own costs, even when the victim wins the trial. Also, not all civil judges automatically authorize the police to intervene. Although, strictly speaking, this is redundant, many police officers see this authorization as a legitimization of their actions and will not interfere if it is absent. Also, civil POs are not registered with the police.

A problem with issuing short term barring orders is that this can happen without the consent of the victim. Although this makes sense from a victimological perspective, it could have negative consequences for the subsequent monitoring and enforcement of these POs (see 36 c and d).

A huge problem with criminal POs is that, at the moment, victims are practically never involved in designing the PO. They are, for instance, rarely asked for their wishes in this regard, even though they are the principal beneficiaries of the PO.

A problem that is applicable to civil and criminal POs is that often the scope of the PO is not clearly delineated or defined. With 'no contact' orders, for instance, it is often unclear whether contact initiated by the victim or contact through third parties also falls within the realm of the PO. Also, with prohibitions to enter a certain area, the use of radiuses is complicated. How can you measure this? In addition, 'vague' formulations, such as 'in the direct vicinity' or 'in the surroundings of' can create misunderstandings.

- c. Problems with protection order monitoring

Civil POs are only monitored by the victim, nobody else. In fact, civil POs are not even registered with the police stations, so they are not even aware of the existence of a civil PO.

A problem that is specific for the short term barring order is that many victims are reluctant to report violations to the police. This has to do with the fact that sometimes these orders are imposed against the wishes of the victim. In these cases victims are also more prone to initiate contact themselves which complicates matters even further. Also, the digital application system *Khonraad*, which is used for registering these orders, does not have a special, obligatory 'field' for registering violations of the PO.

When it comes to criminal POs, some practitioners complain about the fact that these POs (and their violations) are not always properly registered or communicated to the monitoring authorities, nor to the victims. Proper registration/communication is, however, essential for monitoring and subsequent enforcement of POs.

A problem that is applicable to all types of PO (civil, barring order, criminal) is that pro-active monitoring is practically impossible. The usefulness of extra surveillance and house visits – besides being time-consuming and costly – is questionable. Unless the use of technical devices is allowed (e.g., GPS), the possibilities of monitoring POs are very limited, and the odds of catching an offender in the act of violating a PO are small. GPS, however, is only used very rarely. As a result, the monitoring authorities are practically entirely dependent on the input of the victim and they take on a reactive approach to PO monitoring (they wait for the victim to report).

d. Problems with protection order enforcement

The biggest problem with civil POs is that many policemen are very reluctant to interfere in what they see as a private affair or a matter of civil law. Also, there appear to be evidentiary difficulties when it comes to proving a violation of the PO: often it is a matter of 'his word against hers'. Thirdly, some offenders do not have sufficient financial means to pay the incremental penalty payment upon violation of the PO. This reduces the effectiveness of a civil PO.

With regard to the short term barring order, some practitioners complain about the lack of knowledge with some of the partners. For example, in contrast to what some policemen believe, it is not necessary for the victim to file a report in order for the police to intervene. Furthermore, they report that, in contrast to Dutch policy and legislation, the police often remain inactive after the violation of the order, unless the violation constituted a threat or involved physical violence. This may be caused by ignorance, but also lack of capacity and manpower are mentioned as reasons for this inactiveness. Finally, some practitioners are disappointed in the way violations are dealt with by the PPS. In their experience, these cases very rarely lead to criminal prosecution.

A problem with criminal POs is that not all violations are reported to the PPS by the monitoring organizations. Sometimes they usurp a discretionary power not to report.

e. Problems with protection order effectiveness?

Many of the above mentioned problems – e.g., lack of monitoring possibilities, problems with registration and communication, police reluctance to act – could have a bearing on the effectiveness of POs. However, whether these factors actually play a role in PO effectiveness is unclear, since there has never been research conducted in the Netherlands on this topic.

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

In my opinion the biggest problems are: lack of monitoring possibilities, reluctance on the part of the police and/or the probation services to report and intervene when a violation occurs, lack of victim input (especially with criminal POs), and registration difficulties.

2.2.6. PROMISING/GOOD PRACTICES

38) Which factors facilitate the:

a. imposition

A factor that facilitates the imposition of POs in the Netherlands is the fact that there are many ways of imposing a PO. For instance, in criminal law, a PO can be imposed in all stages of the procedure, thereby avoiding 'protective gaps' (at least in theory), i.e. stages of the procedure where the victim cannot be protected by means of a PO.

Another factor is the fact that nowadays, (some) public prosecutors and judges pay more attention to the interests of the offender. By avoiding POs that have disproportionately negative consequences for the offender, the odds of him/her complying with the PO increase.

b. monitoring, and

In recent years, (some) judges and public prosecutors claim they pay more attention to the monitoring of POs, in the sense that they try to make life easier for the monitoring agencies by delineating POs as clearly as possible. For instance, some courts work with standard formulations for 'no contact' orders – thereby making sure that POs are properly delineated and possible misunderstandings are avoided to the greatest extent possible – and they are in the habit of indicating an order which prohibits a person to enter a certain area on a map (mainly civil courts). They try to avoid the use of radiuses (also civil courts, in criminal courts radiuses are still frequently used).

Also the registration of POs and their violation – although still flawed in some respects – has been improved, e.g., by the central administration of the Central Fine Collection Agency and by the central administration points (on national and local level) of the police.

Furthermore, some practitioners praise the fact that the cooperation between some of the central agencies (police, PPS, probation services, etc.) has improved lately. This translates, for instance, to the probation services being more willing to report violations of POs to the police, to the joint discussion and construction of PO conditions, etcetera.

A factor that greatly facilitates the monitoring of criminal POs is, furthermore, the use of electronic devices, such as GPS.

c. enforcement of protection orders?

A huge improvement in the enforcement of criminal POs is that recent changes to the legislation enable the provisional enforcement of, for instance, the conditional suspension of the sentence and the conditional release from prison. This enables an immediate reaction to a PO violation, without having to wait for a final judgment (see question 5c).

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

I would think that the key factors to PO effectiveness are:

- the victim's consent with POs (so as to avoid contact initiated by the victim);
- preferably also the offender's consent with the measure;
- a swift, certain and proportionate reaction to PO violations;
- and a more extensive use of technical devices to monitor compliance.

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

I think it is promising that some practitioners indicate that they pay more attention to victim safety nowadays. They are less inclined to let violations of POs go unnoticed or unreported; they devote more time and energy to the careful construction and delineation of POs (so that they can actually be enforced); and some steps are being taken to have victims play a more prominent role when it comes to criminal POs, both on the level of information and participation. A very promising practice is furthermore the short term barring order. It turns out that this measure is effective in reducing or stopping the violence. (include literature reference)

All these practices are promising because they may have an impact on the effectiveness of POs.

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

Factors which may improve the situation are:

- Use standard formulations to delineate POs such as 'no contact' orders
- Use maps to delineate POs that prohibit a person to enter a certain area instead of radiuses
- Have the victim play a more active role in PO imposition and design in all stages of the criminal procedure (e.g., through PPS guidelines)
- Make victim protection (e.g., through POs) a standard consideration in all prosecutorial decisions.
- Pay more attention to informing victims of the PO and its conditions
- Try to strike a balance between the victim's safety and the offender's interests (e.g., try to avoid POs that are disproportionately disadvantageous for the offender)
- Improve PO registration, also when it comes to violations, and avoid imposing another PO once the (criminal) record shows (repetitive) PO violations in the past.
- Include PO monitoring and enforcement in police and PPS training
- Explore possibilities of an extended use of technical devices to monitor PO compliance (if not possible through GPS, then perhaps AWARE?)
- Prioritize victim protection and reaction to PO violation
- Conduct (empirical) research on PO effectiveness

2.2.7. FUTURE DEVELOPMENTS

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

At the moment, POs are at the centre of renewed attention and confidence in their effectiveness is high. This can be witnessed from the creation of new provisions, like the short term barring order, and the restriction of freedom measure (*vrijheidsbeperkende maatregel*), but also from the recent thorough revision of previously established POs. Also, the recent introduction of the EPO has sparked an interest in national and foreign POs, which, for instance, has resulted in the Ministry of Safety and Justice commissioning several studies into this topic. However, whether POs are effective remains an open question. Research on PO effectiveness is lacking in the Netherlands.

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?

Given the changes that were already made recently to PO legislation, I do not anticipate any (drastic) changes in the nearby future even though the system of (criminal) POs could do with a thorough revision and update.³⁹ The 14 ways of imposing a criminal PO should be reduced, while the remaining options should be streamlined. Also, victim participation in the process of designing and imposing criminal POs should be increased.

b. If so, what will change?

Not applicable.

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

Not that I am aware of.

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

Although it is not official yet, people working for the Ministry of Safety and Justice have indicated that in the nearby future victims will be more involved and better informed when it comes to criminal POs in the execution stage. Also the Dutch government will have to implement the EPO.

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?

My opinion on EPO will be included later on. I do not foresee many problems with the implementation of the EPO in the Netherlands. Given that the Netherlands has many different sorts of POs in various areas of law, foreign POs can probably relatively easily be replaced or at least approximated by a Dutch PO. I could be mistaken though. Furthermore, I do not expect a sudden boom of foreign requests for an EPO – cases which would be eligible seem rather rare to me – so I don't anticipate many problems with regard to capacity either.

Include annex with brief description of study by Van der Aa e.a. (2012; 2013).

³⁹ Van der Aa e.a. (2012); Van der Aa, Groenhuijsen & Pemberton (2013).

Glossary

1. General Legal Terminology:⁴⁰

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.

⁴⁰ Merriam-Webster's Dictionary of Law ©1996. Merriam-Webster, Incorporated. Published under license with Merriam-Webster, Incorporated.

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.

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 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.⁴¹

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

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

closing the case. Some (interlocutory) decisions may be appealed. With regards to a protection order, a decision can be made by a judge, prosecutor, magistrate, or any other administrative officer or public servant.

Legal representation/counsel

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 violence⁴²

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.

⁴² Rec. (2002)5. (VAW) (Committee of Ministers).

Stalking⁴³

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

Rape/sexual assault

Sexual assault is in this study defined as any sexual act committed against non-consenting persons⁴⁴, 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.

⁴³ 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.

⁴⁴ Council of Europe Convention on preventing and combating violence against women and domestic violence, art. 36 b.

Barring order

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

Police go order

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

(The) scope

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

Radius

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

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.