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

## NATIONAL REPORT BELGIUM

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## EXECUTIVE SUMMARY

In Belgium, protection orders can be imposed through criminal, civil and administrative law. Most of these laws are generic laws. One exception however is the '**short term barring order**' (*huisverbod*). The *Law of May 15<sup>th</sup> 2012 concerning the short term barring order in case of domestic violence* is a specific law, situated at the intersection of criminal law, civil law and administrative law, and came into force on January 1st, 2013. Under this Act, a person who is (forming a threat in) committing acts of domestic violence can be barred from the family home and be prohibited to contact the co-residing person(s). The purpose is to protect victims of domestic violence, create a cooling-off period, and offer a chance for support. The barring order can be imposed by the public prosecutor for a maximum duration of ten days, starting from the notification to the person concerned. It can be prolonged by the justice for the peace for a period of maximum three months, one-time only. The violation of an imposed barring order is being criminalized by the law of June 15<sup>th</sup> 2012. However, the violation of the prolongation of the order by the judge for the peace is not criminalized and can't be punished.

Seen the very recent introduction of the short time barring order, it is not yet possible to evaluate the effectiveness of the order. However, the introduction is in itself positive since it provides police and justice with a legal instrument to act preventively in crisis situations, and enhance safety for victims. One of the main concerns is the taxation of the risk involved. There is a need for the development of a reliable risk taxation instrument. Besides this, the referral to social assistance should be regulated more clearly, since the support and assistance of the barred person and his co-residents is the priority of the short term barring order. Sound cooperation structures and protocols between different services involved (police, judiciary and social services) are essential to achieve this, and to monitor compliance with the order.

**Civil Law** provides in the possibility to request the judge for a street or contact restraining order (e.g. for victims of stalking) through a preliminary injunction. In that case, it is required that the victim lodges a complaint. Non-compliance with a street or contact restraining order can be sanctioned with a penal sum. It also provides the possibility for the police to remove the person under compulsion. The violation of civil protection orders is not criminalized.

In **criminal law**, protection orders can be imposed in all stages of the criminal procedure (before, during and after the trial) and through different legal provisions. They can be part of an out-of-court settlement like a conditional dismissal or a mediation settlement. A protection order can also be a condition to release in case of pre-trial detention. Or it can be a modality to the conviction, for example a suspension or delay of probation. It can be a condition based on a measure like in case of internment or detention during her Majesty's plea. Finally, it can be used during the enforcement phase, imposing conditions as part of a conditional release, limited detention, electronic surveillance or penitentiary leave. Protection orders are a condition to these criminal measures and can be generally issued for all types of crimes. They are not dependent on the willingness of the victim to press charges.

Main concerns relate to the vagueness of conditions attached to criminal measures. This makes it often difficult to monitor and control if offenders comply with them. Besides that, there exists ambiguity concerning the authorization to decide on modalities of sentences during the enforcement phase. For sentences up to 3 years of imprisonment, the Minister of Justice was responsible. The enforcement courts are authorized to decide on sentences above 3 years of imprisonment. The Law External Legal Status aims to transfer all authorization to the enforcement courts. However, the Law has only partly come into force. The full inception has been delayed several times because of budgetary reasons. As a consequence, the division of power between the Minister and the enforcement courts continues.

## 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?

a-c. In Belgium, protection orders can be imposed through criminal, civil and administrative law. Most of these laws are generic laws. One exception however is the 'short term barring order' (*huisverbod*). In Belgium, the *Law of May 15<sup>th</sup> 2012 concerning the short term barring order in case of domestic violence* (Short Term Barring Order Act STBOA) is a specific law, providing for the possibility of imposing a short term barring order in cases of domestic violence<sup>1</sup>. This law was the result of a proposal (May 14<sup>th</sup> 2004) for changing Art. 223, 1447 and 1479 of Civil Law, and Art. 587, 594 and 1280 of Judicial Law, concerning preventive barring orders and other measures to control and

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<sup>1</sup> Law of May 15<sup>th</sup> 2012 concerning the temporary barring order in case of domestic violence  
([http://www.ejustice.just.fgov.be/cgi\\_loi/change\\_lg.pl?language=nl&la=N&cn=2012051518&table\\_name=wet](http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&cn=2012051518&table_name=wet))

restrain domestic violence<sup>2</sup>. This law came into force on January 1<sup>st</sup>, 2013, and aims to extend the previous laws on domestic violence of 2003<sup>3</sup> and 1997<sup>4</sup>. The violation of an imposed barring order is being criminalized by the law of June 15<sup>th</sup> 2012<sup>5</sup>. The short term barring order is situated at the intersection of criminal law, civil law and administrative law. It is a complementary measure, supplementing existing civil and criminal procedures. These procedures are integrally maintained, but they were often deemed insufficient in practice to intervene quickly in crisis situations. The law maker provided the possibility for an alternative procedure in criminal cases (and extended it to non-criminal offences) that also immediately launches a civil procedure. Belgian legislation concerning barring orders constitutes legislation sui generis, meaning it exists autonomous of existing areas of law. For this reason, the short term barring order will be treated as a separate category in this report.

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

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

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

### **Short term barring order**

Under the Short Term Barring Order Act, a person who is (forming a threat in) committing acts of domestic violence can be barred from the family home and the immediate residential environment, and be prohibited to contact the co-residing person(s).

### **Criminal Law**

a-b. In criminal law, protection orders can be imposed in all stages of the criminal procedure (before, during and after the trial) and through different legal provisions. They can be part of an out-of-court settlement like a

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<sup>2</sup> Proposal of law of May 14<sup>th</sup> 2004 for changing Art. 223, 1447 and 1479 of Civil Law, and Art. 587, 594 and 1280 of Judicial Law, concerning preventive barring orders and other measures to control and restrain domestic violence (<http://www.senate.be/www/webdriver?MItabObj=pdf&MIcolObj=pdf&MInamObj=pdfid&MItypeObj=application/pdf&MIvalObj=50332748>)

<sup>3</sup> Law of January 28<sup>th</sup> 2003 concerning the assignment of the family home to the married or cohabiting partner who is the victim of acts of physical violence from his partner and to extend Article 410 of Criminal Code (<http://reflex.raadvst-consetat.be/reflex/pdf/Mbbs/2003/02/12/79801.pdf>).

<sup>4</sup> Law of November 24<sup>th</sup> 1997 to counter violence between partners (<http://reflex.raadvst-consetat.be/reflex/pdf/Mbbs/1998/02/06/38348.pdf>)

<sup>5</sup> Law of June 15<sup>th</sup> 2012 concerning the criminalization of the violation of the short term barring order and the adaptation of the Articles 594 and 627 of Judicial Law ([http://www.ejustice.just.fgov.be/cgi\\_loi/change\\_lg.pl?language=nl&la=N&cn=2012061516&table\\_name=wet](http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&cn=2012061516&table_name=wet))

conditional dismissal or a mediation settlement. A protection order can also be a condition to release in case of pre-trial detention. Or it can be a modality to the conviction, for example a suspension or delay of probation. It can be a condition based on a measure like in case of internment or detention during her Majesty's plea. Finally, it can be used during the enforcement phase, imposing conditions as part of a conditional release, limited detention, electronic surveillance or penitentiary leave.

Out-of-court settlement	Investigation phase (pre-trial)	Conditions as a modality of the conviction (during trial)	Conditions based on a measure (during or post trial)	Enforcement phase (post-trial)
Praetorian probation or conditional dismissal ( <i>Pretoriaanse probatie of voorwaardelijk sepot</i> )	Conditional release in case of pre-trial detention  (Preliminary Detention Act <sup>6</sup> )	Suspension of probation ( <i>probatie-opschorting</i> )  (Art. 1 §1 & art. 3 Probation Act <sup>7</sup> )	Internment ( <i>internering</i> )  (Art. 7 Protection of Society Act <sup>8</sup> )	Preliminary release ( <i>voorlopige invrijheidsstelling</i> )  (Law External Legal Status <sup>9</sup> )
Mediation in criminal cases ( <i>bemiddeling in strafzaken</i> )  (Art. 216ter Sv. Code of Criminal Procedure)		Delay of probation ( <i>probatie-uitstel</i> )  (Art. 1 §1 & art. 8 Probation Act)	Detention during her Majesty's plea ( <i>terbeschikkingstelling van de regering</i> )  (Art. 22 to 23bis Protection of Society Act)	Limited detention ( <i>halve vrijheid</i> )  (Law External Legal Status)

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<sup>6</sup> Law of July 20<sup>th</sup> 1990 concerning preliminary detention (Preliminary Detention Act) ([http://www.ejustice.just.fgov.be/cgi\\_loi/change\\_lg.pl?language=nl&la=N&cn=1990072035&table\\_name=wet](http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&cn=1990072035&table_name=wet))

<sup>7</sup> Law of June 29<sup>th</sup> 1964 concerning the suspension, the delay and the probation (Probation Act) ([http://www.ejustice.just.fgov.be/cgi\\_loi/change\\_lg.pl?language=nl&la=N&table\\_name=wet&cn=1964062930](http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&table_name=wet&cn=1964062930))

<sup>8</sup> Law of July 1<sup>st</sup> 1964 concerning the protection of society against abnormal persons, recidivists and offenders of certain sexual offences (Protection of Society Act) ([http://www.ejustice.just.fgov.be/cgi\\_loi/change\\_lg.pl?language=nl&la=N&cn=1964070102&table\\_name=wet](http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&cn=1964070102&table_name=wet))

<sup>9</sup> Law of May 17<sup>th</sup> 2006 concerning the external legal status of convicts to imprisonment and to the victim assigned rights in the framework of the enforcement (Law External Legal Status) ([http://www.ejustice.just.fgov.be/cgi\\_loi/change\\_lg.pl?language=nl&la=N&table\\_name=wet&cn=2006051735](http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&table_name=wet&cn=2006051735))

Restorative mediation ( <i>herstelmiddel</i> )  (Art. 3ter V.T.Sv. & art. 553 e.v. Sv. Code of Criminal Procedure)				Electronic surveillance ( <i>elektronisch toezicht</i> )  (Art. 2 Law External Legal Status)
Extension of the amicable settlement ( <i>uitbreiding van de minnelijke schikking</i> )  (Art. 216bis Sv. Code of Criminal Procedure)				Permit to leave, penitentiary leave and interruption of the sentence ( <i>uitgaansvergunning, penitentiair verlof en strafonderbreking</i> )  (Law External Legal Status)

## Civil Law

Civil Law provides in the possibility to request the judge for a protection order, like a street or contact restraining order, through a preliminary injunction (e.g. for victims of stalking, domestic violence, or during divorce proceedings).

In case of domestic violence, *married partners* can ask the judge of the peace for (urgent) preliminary injunctions, including the prohibition for one spouse to enter the family home (Art. 223 Civil Code). In case of serious indications of rape or violence, the family home will be assigned to the spouse who is victim of the abuse and asks for an injunction. In case of child abuse, the judge can allocate the use of the family home to the non-abusing parent. A married partner can also sue for a divorce based on an irretrievable breakdown of the marriage (Art. 229 Civil Code). The president of the Court of First Instance will impose preliminary injunctions for the duration of the divorce procedures (Art. 1258 and 1280 Judicial Code). *Legally cohabiting partners (registered partnership)* can also ask the judge for preliminary injunctions including the allocation of the family home (Art. 1479 Civil Code). *De facto cohabiting partners (domestic partnership)* can't make use of these divorce procedures or preliminary injunctions. In urgent cases, they can turn to the president of the Court of First Instance (Art. 584 Judicial Code).

Victims of stalking can also ask the judge for a contact or restraining order through summary proceedings.

- 3) a. Who can apply for such an order (victims/complainants or only the police/the public prosecution service)?
- b. Which organizations or authorities are involved in applying for and issuing protection orders? (Do, for instance, probation services play a role in the issuing of criminal protection orders?)
- c. Can protection orders be issued on an *ex parte* basis (without hearing the offender)?

## Short term barring order

a-b. Only the public prosecutor is authorized to *impose* a short term barring order. The justice of the peace can prolong, lift or change the barring order. However, he will only treat the case if the public prosecutor or the parties involved apply for it.

The police de facto performs an important role in implementing the law by its central position between the prosecution counsel and the parties involved. The police is not entitled to take a decision on a barring order. They immediately have to contact the public prosecutor of the place of residence that needs to be protected, and have to inform him in a correct and swift way.

c. The public prosecutor is not obliged to hear the barred person. But Circular 18/12 stipulates that the decision for a barring order is in principle only taken after the hearing of the barred person. In case the person refuses to be heard, the police officer will inform the person that the public prosecutor will be notified, and possibly can order a barring order. The police records the refusal to be heard in the report. When the decision to issue a barring order is made, the police invites the barred person by order of the public prosecutor to be heard at the prosecution office. This decision can also be made when the threatening person is not present. Even when the threatening person doesn't show for the hearing by the public prosecutor, he can still impose a barring order. When the threatening person can't be heard because he has disappeared, the public prosecutor orders to trace and signal him to be heard concerning the facts and circumstances, and concerning the possibility of a short term barring order.

### **Criminal Law**

In case of *praetorian probation*, the public prosecution has the authority to decide on the conditions that have to be met in order not to prosecute, e.g. the leaving of the shared place of residence. In most cases the local police will notify the concerned person and ask him to sign the conditions. The person concerned is free to agree with the conditions or not (in the latter case, the person faces the prospect of prosecution however). The public prosecution also takes the initiative in case of *mediation in criminal cases*. A *restorative mediation* can be a confidential procedure between the parties involved, without the involvement of any judge or public prosecutor. It can also be a condition ordered by the judge to release in case of pre-trial detention. The investigation judge has the authority to decide on a conditional release in case of *pre-trial detention*. Probation conditions are also determined by the judge: the ruling judge (vonnisrechter) in case of delay of probation, and the ruling or investigating judge (onderzoeksrechter) in case of suspension of probation. They can ask advice of the Justice Houses<sup>10</sup> (Justitiehuisen), but not many judges make use of this possibility. *Conditions based on a measure* are decided upon by the judge or the Minister of Justice. Conditions during the *enforcement phase* are the authority of the Minister of Justice (sentence up to three years of imprisonment) or the enforcement court (strafuitvoeringsrechtbank) (sentence of more than three years of imprisonment).

- 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?
- 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)?

### **Short term barring order**

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<sup>10</sup> The Houses of Justice are part of the Federal Public Service of Justice in Belgium. They are responsible for providing information to administrative and juridical authorities, informing civilians, victim support and support of perpetrators during enforcement of the sentence. They provide frontline services and were established to increase access to justice.



4 a. The law on temporary barring orders was designed to protect victims of domestic violence. However, it exceeds a narrow interpretation of only 'partners', to include children and other vulnerable persons, residing in the same house on a regular basis.

b. The STBO can be issued independent from other legal proceedings.

### **Criminal Law**

Protection orders can be generally issued for all types of crimes. They are a condition to the criminal measures mentioned under 2. They are not dependent on the willingness of the victim to press charges.

### **Civil Law**

For a protection order to be imposed through civil law, it is required that the victim lodges a complaint. Preliminary injunctions can be asked for certain types of crimes (e.g. domestic violence or stalking, or during divorce proceedings) and by certain types of victims (e.g. married or cohabiting partners or victims of stalking).

- 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)
- b. Could you give an indication of the length of the proceedings?
- c. Does the protection order come into effect as soon as the decision on a protection order is made or are there any additional requirements before the orders really come into effect (e.g., in civil proceedings the notification/service of the verdict to the defendant)? In other words, is the victim immediately protected or can there be a lapse of time before the actual protection begins?
- d. Is there a regulation for interim protection that can be given immediately upon request or very quickly? For how long? What steps have to be taken in order to finalize the protection after the interim order?

### **Short Term Barring Order**

a-b.

Step 1: A temporary barring order only starts at the time of notification to the person concerned (STBOA Art. 3 §3).

Step 2: The public prosecutor immediately informs the barred person and those sharing the same place of residency on the content of the barring order (STBOA Art. 3 §5). The order needs to contain information on the scope and the duration of the measure, on the facts and circumstances that gave rise to the barring order, on the names of the person is prohibited to contact, and on the sanctions that can be taken in case of a violation of the order (STBOA Art. 3 §4).

Step 3: A copy of the decision is delivered through the most appropriate channel of communication, to the local chief of police of the police area responsible for the place of residence mentioned in the barring order (STBOA Art. 3 §5).

Step 4: The public prosecutor contacts the victim support service of his counsel with a view to support and inform the people co-residing with the barred person (STBOA Art. 3 §5).

Step 5: The barred person informs the public prosecutor within 24 hours from the notification of the order, on the place where and the manner in which he can be contacted during the term of the barring order (STBOA Art. 3 §6).

Step 6: Ultimately on the first day that the chancery is open, following the day that the order was issued, the public prosecutor informs the justice for the peace from the district where the place of residence is located (STBOA Art. 4 §1 1°). The public prosecutor also informs the justice for the peace and the parties on the warrants that gave rise to the barring order and, if applicable, of his decision to lift the barring order or change its content, and of the warrants concerning violations of the barring order (STBOA Art. 4 §1 2°).

The procedure before the justice for the peace is optional. Only if the parties or the public prosecutor apply for it, the justice for the peace treats the case.

Step 7: The justice for the peace puts the case on the agenda. Within 24 hours after the notification of the order, the justice for the peace determines the day and the hour of the court session. The court session takes place within the designated timespan (maximum 10 days) (STBOA Art. 4 §2 1°).

Step 8: The justice for the peace summons the parties. The clerk of the court informs the parties, mentioned in the public prosecutor's barring order, by court letter on the place, the date and the hour of the court session, and invites them, if applicable, to apply for urgent preliminary measures or preliminary measures concerning the shared place of residency (STBOA Art. 4 §2 2°). He also informs the public prosecutor that imposed the order on the day and hour of the court session (STBOA Art. 4 §2 3°).

Step 9: The justice for the peace passes judgment during the court session, upon request, on the compliance of the conditions mentioned in Article 3 and 4 (STBOA Art. 5 §2 1°). 1) The justice for the peace can lift the barring order if the conditions are violated. Or he can judge that the maintenance of the order no longer is required. 2) The justice for the peace can, by a reasoned verdict, extend the barring order of the public prosecutor with a maximum term of three months starting from the time of the verdict if the facts or circumstances at the time of the verdict justify this (STBOA Art. 5 §2 2°). 3) The justice for the peace can prolong the barring order, at the same time changing its modalities (STBOA Art. 5 §4).

Step 10: The clerk of the court informs the parties by court letter on the verdict, as well as on the legal remedies they have at their disposal. He also communicates the verdict to the public prosecutor.

Step 11: The case continues to be subscribed with the justice for the peace until the barring order has ended. In case of new elements, the case can be brought again before the justice for the peace (STBOA Art. 5 §5).

c-d. The emergency barring order has to be announced to the barred person before becoming effective. The barring order comes into effect as soon as the defendant is notified. The law does not specify how this notification needs to take place. However, Art. 3 §5 3° specifies that the barring order can be communicated orally to the barred person, when the urgency of the situation requires this. In this case, a copy of the order is sent to the barred person. Since the temporary barring order is a crisis intervention and a safety issue, it is necessary that the decision can be taken immediately, and therefore communicated orally. The decision concerning the cessation or prolongation of the order by the judge of the peace is immediately effective (uitvoerbaar bij voorraad), even in case of an appeal (Art.5 §3 STBO).

## **Criminal Law**

In case of *Praetorian probation*, the public prosecutor sends a letter to the local police, to be signed by the person concerned. In this way he acknowledges the notification of the conditions. A *conditional release in case of pre-trial detention* is possible during the judicial inquiry and can be continued during the enforcement phase. However, no new conditions can be imposed after the investigation phase has been closed. To submit a *delay*

or suspension of probation, the judge has to inform and hear the defendant (Art. 1 §2 Probation Act). The defendant has to agree with the imposed conditions. His informed consent is a vital condition to permit a suspension of probation. To make a decision, the judge can ask the House of Justice (Justitiehuis) for an advice based on a social inquiry, but this is optional.

The procedure for a *preliminary release* (voorlopige invrijheidstelling) differs according to the duration of the sentence. For sentences between one and three years, the prison warden can decide to impose individualized conditions, but these are exceptional. However, in case of a conviction for sexual offences against minors, contraindications (e.g. the risk of harassment of the victim) are examined, and individualized conditions can be imposed. Contraindications are also examined for convictions above three years.

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

### Short term barring order

a. A short term barring order can be imposed under following conditions: if *facts or circumstances show* that the *presence* of an *adult person* in the *place of residence* produces a *severe and imminent danger* for the *safety of one or more persons* sharing the same place of residency, the *public prosecutor can* order a barring order towards this person (STBOA Art.3 §1).

### Criminal Law

As a condition to *release in case of pre-trial detention*, the judge can base his decision on an information report or social enquiry by a justice assistant, but this is optional (Art. 35 §1 °3 Preliminary Detention Act). The only legal requirement is that the conditions relate to the reason why the person can be detained, namely when there is a risk for recidivism, withdrawal, collusion or the removing of evidence (Art. 35 §3 Preliminary Detention Act). In case of *probation*, the judge can also ask for an information report or a social enquiry. The commitment of the defendant to comply with the probation conditions is a vital condition to grant a delay of probation. In case of *internment*, the Commission for the protection of Society can also ask the House of Justice to make an information report or a social enquiry (Art. 18 Act Protection Society). When conditions are imposed during the *enforcement phase*, these are preceded by an examination of contra-indications, like the risk for violation of the physical integrity of other persons, or the risk of harassment of the victim. In case of electronic surveillance, the social enquiry is obligatory.

- 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)?
- 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?
- c. Which of these types of protection (e.g., no contact order) are imposed most often in practice?
- 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)?
- e. If so, which combinations are most often imposed in general?

## Short term barring order

a-e. A short term barring order imposes three types of measures (STBOA Art. 3 §2). First of all the obligation to leave the shared place of residency (obligation to leave). The person barred from the house is prohibited to enter, to be located near or to be present in the place of residence (prohibition to return). Finally it is prohibited for this person to contact the appointed persons sharing with him/her the place of residence (contact prohibition / restraining order). The public prosecutor is entitled to decide who the barred person is not allowed to have contact with. He can also decide not to impose a contact prohibition.

b. The STBOA prescribes that the public prosecutor needs to contact the victim support service of its prosecution counsel aiming to support and inform the persons sharing the same residence with the barred person (Art. 3 §5).

Circular COL 18-2012 from the College of Procurators General concerning the short term barring order<sup>11</sup> refers to existing procedures regarding victim support for police officers (Circular GPI 58<sup>12</sup>) and public prosecutors (Circular COL 16-2012<sup>13</sup>).

## Criminal Law

In case of a *praetorian probation* or a conditional dismissal, the public prosecutor is free to decide on the conditions that have to be met in order to dismiss the case. An example can be the leaving of the shared place of residence. For *mediation in criminal cases*, conditions are listed restrictively: the central condition of reimbursement or reparation of the victim, the public prosecutor can impose a therapy or treatment, service delivery or a training (Art. 216ter §1 Sv.). Other behavioral or restraining conditions are legally not possible. *Restorative mediation* offers the possibility for different behavioral or restraining conditions, agreed upon by offender and victim, e.g. the promise of the offender not to approach the victim. The judge decides on the conditions for release in case of *preliminary detention*, e.g. the prohibition to enter certain areas or contact certain persons or a prohibition to pursue certain professional activities. The 'prohibition to exert an activity which requires contact with minors' is explicit included in the law since 2009 (Art. 35 §1 °2 Preliminary Detention Act). However, the judge needs to avoid conditions that produce a violation of privacy or of human dignity, or that constitutes a very drastic restriction of freedom. The judge also decides in case of *probation*. He can impose several conditions like the obligation to change the place of residence or the prohibition to pursue a certain professional activity. The law prohibits conditions that are unnecessary 'teasing', that limit the freedom of opinion, freedom of action or the joy of civil rights, or that produce the persistence of a criminal condition. In case of sexual offences against minors, following conditions are imposed regularly: medical or psychosocial treatment, prohibition to contact victims, prohibition to enter certain areas, prohibition to enter places where minors are present (schools, playgrounds, etc.), prohibition to have contact with minors without the presence of an adult, prohibition to pursue professional activities involving contact with children.

- 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?

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<sup>11</sup> Circular COL 18-2012 from the College of Procurators General concerning the short term barring order ([http://www.om-mp.be/extern/getfile.php?p\\_name=4347951.PDF](http://www.om-mp.be/extern/getfile.php?p_name=4347951.PDF)).

<sup>12</sup> Circular GPI 58 concerning victim support within the integrated police (<http://www.srp.be/downloads/gpi058.pdf>).

<sup>13</sup> Circular COL 16-2012 from the College of Procurators General concerning victim support in prosecutors counsels and courts ([http://www.om-mp.be/extern/getfile.php?p\\_name=4339236.PDF](http://www.om-mp.be/extern/getfile.php?p_name=4339236.PDF)).

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

### **Short term barring order**

a. The order of the public prosecutor has to include a description of the scope and duration of the measure; the facts and circumstances leading to the order; the names of the persons to whom the restraining order applies; and the sanctions for non-compliance with the barring order (STBOA Art. 3 §4). The precise description of the barring order is the responsibility of the public prosecutor. It has to be completely clear for the barred person where he is not allowed to hang out, what the duration of the barring order is, and who he is not allowed to contact. He also has to be informed on the fact that violation of these conditions is a legal offence.

### **Criminal Law**

There are no legal requirements for the formulation of protection orders.

- 9) a. Are there any legal limitations to the scope of these protection orders – e.g., only a couple of streets – or are the legal authorities free to decide the scope of protection orders any way they see fit?  
b. If there are limitations, which factors do the legal authorities have to take into account when deciding on the scope of protection orders?  
c. Which factors do they take into account in practice?

### **Short term barring order**

The authorization to determine the scope of the barring order is entirely in the hands of the public prosecutor. It is his duty to clearly define the area that can't be entered (STBOA Art. 3 §4 1°).

### **Criminal Law**

The judge decides on the scope of the protection order.

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

### **Short term barring order**

The authorization to determine the scope of the barring order is entirely in the hands of the public prosecutor. It is his duty to clearly define the area that can't be entered (STBOA Art. 3 §4 1°).

- 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?  
b. Which factors do legal authorities generally take into account when deciding on the duration of a protection order?  
c. What is the average duration of the different protection orders (half a year, one year, two years)?

### **Short term barring order**

a. The barring order can be imposed for a maximum duration of ten days, starting from the notification to the person concerned (STBOA Art. 3 §4). The duration was consciously kept short, seen the impact on the freedom of movement of the barred person. This time-span is meant as a cooling-off period, during which steps for

social assistance can be taken, and an application for urgent and provisional measures can be filed with the justice for the peace. The Public prosecutor is also allowed to issue a barring order for a shorter time-span.

The temporary barring order can be prolonged by the justice for the peace for a period of maximum three months, one-time only. This means a temporary barring order can have a maximum total duration of three months and nine days.

b. The magistrate can order a prolongation when a continuing threat constitutes the need for this renewal. In theory, every party to the case and the public prosecutor can ask for a prolongation.

Several possible scenarios can terminate a temporary barring order. 1) The order extinguishes after the term imposed by the Public prosecutor or the justice for the peace has expired. 2) The Public prosecutor can lift his own decision for a barring order when he decides that the threat has disappeared (STBOA Art. 3 §7). The justice for the peace can lift the barring order issued by the Public prosecutor (STBOA Art. 5 §2) or issued by himself (STBOA Art. 5 §4), in case one of the parties or the public prosecutor ask him to. In the latter case, he has to explain that the circumstances of the case require this decision (STBOA Art. 5 §4). 3) The barring order expires automatically by law when the justice for the peace didn't take a decision within the designated timespan (STBOA Art. 5 §7) or when a court order has been issued concerning the shared place of residency (STBOA Art. 5 §7).

### **Criminal law**

The judge deciding on the conditions for release in case of *preliminary detention*, also decides on the duration of the measure. The maximum duration is three months, and this term is mostly imposed in practice. The measure can be prolonged each time for a period of three months, up until the conviction. The judge also decides on the duration of the measure in case of *probation*. Suspension of probation takes minimum one year and maximum five years (Art.3 §4 Probation Act). The same terms apply to delay of probation. Only when the sentence is less severe, the probation time amounts to maximum three years (Art. 8 §1 ¶4 Probation Act). In determining the duration, the judge has to take into account the nature of the imposed conditions. In case of *internment*, there is no time limitation. Every six months, the internee can ask the Commission for the Protection of Society to be released. In case of release, the Commission can place the internee under custody, including conditions to prevent recidivism. The Commission decides on the duration of the custody. During the enforcement phase, conditions for *preliminary release* in case of convictions between 1 and 3 years, apply for the remainder of the sentence, meaning maximum 2 years from the date of release. For sexual offences against minors, the duration is 2 years, irrespective of the remaining sentence. For convictions above 3 years, the conditions apply for the remainder of the sentence, with a minimum of 2 years. Depending on the severity of the sentence, this can term can rise to minimum 5 years or even 10 years in case of a lifelong conviction (Art. 71 Law External Legal Status). The term of limited detention and electronic surveillance is minimum one third of the sentence, with a maximum of 6 months, and can be prolonged once (Art. 44 §1 Law External Legal Status).

### **Civil Law**

In case of urgent preliminary injunctions *during marriage*, the allocation of the family home is only temporary. However, no final date has to be stipulated. Urgent preliminary injunctions during *registered cohabitation*, have to be limited in time. They cannot exceed a period of one year (Art. 1479 Civil Code). Preliminary measures during *divorce proceedings*, expire at the time determined by the judge, and at the latest at the moment of the annulment of the marriage.

- 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?
- 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?
- 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?

#### **Short term barring order**

a-c. Victims can apply for the barring order to be extended or changed by the justice for the peace. They will be summoned by the justice for the peace to appear in court. During the court session, they can request (urgent) preliminary measures concerning the place of residence.

#### **Criminal law**

In case special conditions are imposed during the enforcement phase, victims can send a written request to be informed and to be heard to the enforcement court. The chancery sends a copy to the public prosecution service, which will give an advice within 7 days. The victim can be represented or assisted by a lawyer or a government institution. The judge can ask the victim to provide information during a court session. However, this means possible objections of the victim become apparent rather late.

#### **Civil Law**

To become a street or contact restraining order through a preliminary injunction (e.g. in case of stalking), the victim has to file a complaint. Only then the order can be imposed.

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

#### **Short term barring order**

a-c. In rule, a barring order will not be imposed without hearing the offender. Only when the offender refuses to be heard by the police or the public prosecutor, the prosecutor can decide to impose the barring order anyway.

Offenders can apply for the barring order to be lifted or changed by the justice for the peace. They will be summoned by the justice for the peace to appear in court.

#### **Criminal Law**

The offender is free to decide if (s)he wants to accept the conditions in case of a *praetorian probation*. However if (s)he refuses, (s)he might face criminal prosecution. For *conditional release in case of pre-trial detention*, the consent of the offender is not legally required. However, (s)he can refuse, but the (s)he has to undergo the preliminary detention. In case of *delay or suspension of probation*, the defendant is informed and heard (Art. 1 §2 Probation Act). It is important that the defendant is informed on and commits to the imposed probation conditions. If the defendant fails to comply with his conditions, the justice assistant can inform the Probation Commission, which can adapt (but not strengthen) the conditions, or can inform the public

prosecution. The defendant as well as the public prosecutor can lodge an appeal against the decisions of the Probation Commission, to the Court of First Instance (Art. 12 §2 Probation Act) or after that the Court of Cassation.

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

### **Criminal Law**

In case of sexual offences with a sentence over 3 years, the request of the offender or the advice of the prison warden for a preliminary release needs to contain an advice from a specialized service or person, evaluating if a treatment is required (Art. 32 Law External Legal Status). Often the enforcement court refuses the preliminary release because of a lack of treatment possibilities.

- 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)?

### **Short term barring order**

In case of a notification of a domestic violence case, the police make a report. In this report they have to include all relevant information concerning judicial antecedents of the threatening person, like previous reports registered in the General database (ANG) and the police database (ISLP/FEDIS).

- 16) a. When a protection order is issued in a case of domestic violence, are the children automatically included in the protection?  
b. How is the order granted/implemented if the violent partner has visitation rights?  
c. Are there any problems with protection orders and custody/visitation decisions by the courts?

### **Short term barring order**

Apart from violence between partners, a situation of danger for other family members can also lead to a barring order. For example, violence from a parent to one or more children.

In case of a barring order, the public prosecutor has the authorization to decide which persons the barred person is prohibited to have contact with, as long as they cohabit in the same place of residence. For example, when a barred person owns a business with his major son, contact prohibition might cause difficulties.

In cases of short term barring orders, resident children are put in safety. Concerning minors, the police have to include information concerning their legal representatives in the file. The youth protection right needs to be applied.

### **Civil Law**

In case of preliminary injunctions through a civil procedure, the judge will also decide on the residence of the children. Urgent preliminary injunctions during marriage or registered cohabitation apply to all the children residing in the family. During divorce procedures, the preliminary injunctions only apply to the communal children of the divorcing partners (Art. 1254 Judicial Code). In that case, the youth authority has the authority



to decide on injunctions concerning the non-communal children that were residing in the family. Generally, the children reside with the non-violent parent.

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

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

#### **Short term barring order**

The barring order is issued against the person that forms a threat in case of domestic violence, and not against the victim. The idea behind the law is the fact that mostly in domestic violence cases, the victim leaves the communal house. This protection measure aims to change this.

#### **Civil Law**

Mutual protection orders are possible in civil law. In case of partner violence or divorce, the judge can impose a contact order (storingsverbod) relating to both partners.

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)?

Protection orders pursued through civil procedures have a financial cost attached to them. Other orders are provided free of charge.

#### **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?

#### **Short term barring order**

The decisions for short term barring orders are registered in the module "non-penal cases" (*niet strafzaken NIZA*) of the computer application REA-TPI of the prosecution counsel, receiving the code 'THV', under the name of the barred person.

The police register every report or notification or situation that can be qualified as domestic violence in the Integrated System for the Local Police (ISLP), where barring orders potentially could be registered as well. Some police corpses periodically make criminographic reports, where barring orders potentially could be registered.

#### **Criminal Law**

Sentences for imposing an enforcement modality are communicated to the general national database (ANG) of the police. However, in practice the data transmission sometimes causes problems. The police can see that a person has a criminal record, but can't consult the conditions the person is subjected to.

- 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?

#### **Short term barring order**

a. When a barring order is imposed, the public prosecutor immediately informs the barred person and those sharing the same place of residency on the content of the barring order (STBOA Art. 3 §5). The order needs to contain information on the scope and the duration of the measure, on the facts and circumstances that gave rise to the barring order, on the names of the person is prohibited to contact, and on the sanctions that can be taken in case of a violation of the order (STBOA Art. 3 §4).

b. The Act does not specify in which way the victim needs to be informed.

#### **Criminal Law**

In case of *penitentiary leave*, the victim is informed within 24 hours, in writing, of the decision and the conditions imposed in his or her interest (Art. 10 §2 Law External Legal Status). This is also the case for *preliminary release*.

- 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?

#### **Short term barring order**

The police have to make a warrant (*proces-verbaal*) in every case where a violation of the barring order is determined. They examine if the following four components of the crime are present: the existence of a valid temporary protection order; the notification of the order to the concerned person; non-compliance with the order; a general intent needs to be present.

The police monitors the compliance with the short term barring order, at the request of the Prosecution Counsel. This means they follow-up on the safety of the victim(s). In cases of domestic violence, the police's victim support service stays in contact with the victim. They can act swiftly when new problems arise.

During the contacts between the police's victim support service and the victim, compliance with the barring order can be checked.

#### **Criminal Law**

The monitoring in case of *conditional release*, is split up (Art. 38 §1 °1 Preliminary Detention Act).

The Houses of Justice monitor the obligating measures and the police control compliance with prohibiting conditions (e.g. to enter a certain area). This division of tasks between police and justice assistant also applies to *probation* cases. Here, the justice assistant reports to the probation commission which also fulfills a monitoring role. A breach of conditions can be reported to the public prosecutor, who can involve the court. In case of *internment*, the justice assistant is responsible for controlling the social custody and reporting to the Commission for the Protection of Society. Public prosecution and police also monitor the imposed conditions. Conditions imposed during the *enforcement phase*, are controlled by the police and House of Justice (conditional release), the prison warden (limited detention), or the National Centre for Electronic Surveillance

(electronic surveillance). For sentences over 3 years, conditions are controlled by the police and the public prosecution. The justice assistant or the National Centre for Electronic Surveillance report to the enforcement judge/court (Art. 62 Law External Legal Status).

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

### **Criminal Law**

The law does not stipulate how or how often the justice assistant or police have to control the defendant. In practice, this vagueness gives rise to disparity and non-transparency. When conditions are rather vague or not linked to a specific activity, like a prohibition to enter a certain area, limited resources can obstruct police sometimes to control (pro)actively. Often victims are best placed to monitor compliance with street or location prohibitions imposed in their interest.

- 23) a. Is contact with the offender initiated by the victim considered a breach to the protection order?  
b. What (if any) role does contact initiated by the victim him/herself play in establishing or proving a protection order violation?  
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?

No information has been found on this question.

- 24) a. Which evidentiary requirements have to be met before a violation of a protection order can be established?  
b. Which procedure(s) has to be followed in order for the protection order to be enforced after a violation?

### **Short term barring order**

a. The police have to make a warrant (proces-verbaal) in every case where a violation of the barring order is determined. They examine if the following four components of the crime are present:

- 1) The existence of a valid short term barring order
- 2) The notification of the order to the concerned person
- 3) Non-compliance with the order
- 4) A general intent needs to be present

### **Criminal Law**

In case the House of Justice establishes a violation of the conditions in case of *conditional release*, they inform the police who make a warrant and send it to the investigating judge/court that imposed the conditions. When conditions are violated in case of *probation*, the justice assistant has to report and propose measures to the probation commission (Art. 11 Probation Act). The probation commission can adapt but not strengthen the conditions (Art. 12 §1 °1 Probation Act). If the violation is grave, the probation commission can inform the public prosecution, which can initiate a summons for revocation to the Court of First Instance. The Court is not obliged to revoke but can also impose new and more severe conditions (Art. 13 §3 art. 14 §2 °2 Probation Act).

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

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)?

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

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

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

### Short term barring order

The justice for the peace, when requested, verifies if the conditions concerning procedure and content mentioned in Art. 3 and 4 were met. However, the possible sanctions in case the conditions were violated, are not mentioned. The judge for the peace *can* (but is not obliged to) release the barring order.

### Criminal Law

In case of *conditional release*, the investigation judge/court learns about the violation of the conditions through the police or the justice assistant. The investigating judge/court or the Court of Appeal can issue an arrest warrant (Art. 38 §2 Preliminary Detention Act). However, that does not happen automatically. The lawmaker wanted to avoid that non-compliance with conditions would directly lead to a preliminary detention. When conditions are violated in case of *probation*, the justice assistant has to report and propose measures to the probation commission (Art. 11 Probation Act). The probation commission can adapt but not strengthen the conditions (Art. 12 §1 °1 Probation Act). If the violation is grave, the probation commission can inform the public prosecution, which can initiate a summons for revocation to the Court of First Instance. The Court is not obliged to revoke but can also impose new and more severe conditions (Art. 13 §3 art. 14 §2 °2 Probation Act). Violation of the conditions can lead to revocation of *preliminary release*. In case of sexual offences against minors, violation of the conditions is evaluated by the Direction Detention Management. They can decide to continue the preliminary release, to reprimand the offender, to adapt the conditions, or to revoke the release. In most cases, the conditions are adapted. In case of *limited detention*, the prison warden monitors the conditions and reports monthly to the Direction Detention Management, which can revoke the 'half freedom' in case of non-compliance with the conditions. Breaches on the conditions for *electronic surveillance* are communicated by the National Centre for Electronic Surveillance to the justice assistant, who examines if there was a real violation of the conditions. In that case, the prison warden can change the conditions or revoke the electronic surveillance. Grave violations during penitentiary leave, when endangering the physical or psychological integrity of other persons, can lead to preliminary arrest by the public prosecutor (Art. 14 Law External Legal Status). In case of sentences over 3 years, the violation of the conditions can lead to revocation of the enforcement modalities (Art. 62 Law External Legal Status).

### Civil Law

Non-compliance with a street or contact restraining order can be sanctioned with a penal sum. It also provides the possibility for the police to remove the person under compulsion.

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?

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

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

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

#### **Short term barring order**

a. Yes, the violation of the temporary barring order is criminalized under the *Law of 15<sup>th</sup> 2012 concerning the punishment of the violation of the temporary barring order and concerning the adaptation of Articles 594 en 627 of Judiciary Law*. The penalty clause is not included in the Criminal Code, and applies as special criminal law.

The attempt has not been criminalized. Also, only the violation of a barring order by the Public prosecutor forms an offence. The prolongation of the barring order by the justice for the peace cannot be punished.

b. The violation of a temporary barring order can be sanctioned by a prison sentence of eight days to six months and a fine of 26 euros to 100 euros, or by one of these sentences alone.

c. In every case where a violation of a protection order is established, the police have to make a report (criminal code 53G). The police also examines if following four elements of the crime are present: 1) the existence of a valid short term barring order 2) the notification of the barred person 3) the violation of the barring order 4) a general (not a specific) intention is required.

#### **Civil Law**

The violation of civil protection orders is not criminalized.

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

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

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

#### **Short term barring order**

The police have to make a report (proces-verbaal) in every case where a violation of the barring order is established, but they cannot make an arrest warrant (aanhoudingsbevel). Non-compliance with the emergency barring order is punishable with a fine of 26€ to 100€ and/or imprisonment from 8 days to 6 months. This is not enough to allow for the arrest of the perpetrator. An arrest warrant can only be issued for criminal offences punishable with imprisonment of minimal 1 year. Also, the prolongation of the STBO is not criminalized. These

problems are in practice sometimes solved by issuing an arrest warrant for the criminal offence of stalking. Condition is that the perpetrator was aware that he was disturbing the peace of the victim, and the victim has to file an official complaint.

### **Criminal Law**

In case of *conditional release*, the investigation judge/court learns about the violation of the conditions through the police or the justice assistant. The investigating judge/court or the Court of Appeal can issue an arrest warrant. When conditions are violated in case of *probation*, the justice assistant has to report and propose measures to the probation commission (Art. 11 Probation Act). The probation commission can adapt but not strengthen the conditions (Art. 12 §1 °1 Probation Act). If the violation is grave, the probation commission can inform the public prosecution, which can initiate a summons for revocation to the Court of First Instance. The Court is not obliged to revoke but can also impose new and more severe conditions (Art. 13 §3 art. 14 §2 °2 Probation Act). In case of *preliminary detention*, the police and justice assistant exert control, but the Direction Detention Management decides on the sanctions. They also decide on revocation in case of *limited detention*. Electronic surveillance violations are registered by the National Centre for Electronic Surveillance, which informs the justice assistant. The sanctions are imposed by the prison warden.

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

### **Short term barring order**

A joint circular (COL 18/2012) from the Minister of Justice and the Minister of Home Affairs and the Board of the Attorney General provides some guidelines for police and judiciary concerning the short term barring order in cases of domestic violence<sup>14</sup>. Circular COL 4/2006<sup>15</sup> also regulates police performance in cases of domestic violence. Some trainings have been given on an ad hoc basis, but these are not structurally embedded.

### **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

### **Short term barring order**

The Short Term Barring Order Act only came into effect on January 1<sup>st</sup> 2013. As a consequence, there is no empirical information available on the number of orders imposed on a yearly basis yet.

### **Criminal Law**

A protection order can be imposed as a condition to several criminal measures (see 2). Some empirical information is available on the number of criminal measures imposed. However, it is not clear in how many of

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<sup>14</sup> Circular COL 18-2012 from the College of Procurators General concerning the short term barring order ([http://www.om-mp.be/extern/getfile.php?p\\_name=4347951.PDF](http://www.om-mp.be/extern/getfile.php?p_name=4347951.PDF)).

<sup>15</sup> Circular COL 4/2006 from the Minister of Justice and the College of Procurators General concerning criminal policy in cases of domestic violence ([http://www.om-mp.be/extern/getfile.php?p\\_name=3316961.PDF](http://www.om-mp.be/extern/getfile.php?p_name=3316961.PDF)).

these cases protection orders were imposed as a condition. The *praetorian probation* is an out-of-court settlement, so jurisdiction can hardly be found. In 2003 1100 cases were registered, in 2010 5.000 cases. *Mediation in criminal cases* decreased from 7300 in 1999 to 6600 in 2009. The number of cases of *conditional release in case of pre-trial detention* where the Houses of Justice were responsible for control, almost doubled from 1900 in 1999 to almost 5000 in 2009. *Probation* cases with conditions attached to them also almost doubled in ten years, from 3000 cases in 2000 to 6700 in 2009. The system of *preliminary release* granted by the Minister of Justice (for sentences up to 3 years of imprisonment) aims to reduce the overpopulation in prisons, so conditions are not often attached to them. Only in 278 of the 5870 preliminary releases granted in 2009 the Houses of Justice were engaged. Preliminary release was granted by the enforcement courts (for sentences above 3 years) 320 times in 2010.

- 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?

### Short Term Barring Order Act

The short term barring order implies three obligations for the barred person: 1) the obligation to leave the family home 2) the prohibition to enter the family home or stay in the vicinity of the family home 3) the prohibition to contact the victim(s). However, the public prosecutor has the discretionary power to allow exceptions.

#### Civil Law

In case of partner violence or divorce, civil PO's can imply the allocation of the family home to one of the partners, the prohibition for one partner to enter the family home and/or a contact order (*storingsverbod*) that can relate to both partners. Victims of stalking can request a contact or street order.

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

### Short Term Barring Order

The STBO was developed to protect victims of domestic violence, and is usually imposed in cases of partner violence.

#### Civil Law

Civil PO's are generally imposed in cases of domestic violence, stalking, or during divorce proceedings.

- 32) Is there any (empirical) information available on specific victim and offender characteristics?
- Are protection orders generally imposed against male offenders on behalf of female victims?
  - Which percentage of the restrainees already had a prior police record?
  - Which percentage of the restrainees already had a previous protection order imposed against him/her?

Seen the recent introduction of the Short Term Barring Order Act, there is no empirical information available.

### 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)?

#### **Short Term barring Order**

There is no information available on the effectiveness of the short term barring order yet, seen the recent introduction of the Act in 2013.

- 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?

#### **Short Term barring Order**

There is no information available on the effectiveness of the short term barring order yet, seen the recent introduction of the Act in 2013.

- 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?

#### **Short Term barring Order**

There is no information available on the effectiveness of the short term barring order yet, seen the recent introduction of the Act in 2013.

### **2.2.5. IMPEDIMENTS TO PROTECTION ORDER LEGISLATION, ENFORCEMENT AND EFFECTIVENESS**

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

#### **Short term barring order**

a. The parliamentary preparations of the STBOA indicate that the short term barring order has the aim of creating a cooling-off period, and offering a chance for support of the banned person, his partner and housemates. During the banning period, assistance should be a priority. However, the Act itself barely provides in an orientation towards support services. It only prescribes that the public prosecutor needs to contact the victim support service of its prosecution counsel.



b. One of the biggest problems in *issuing* a short term protection order is the assessment of the risk of violence. A reliable procedure or instrument for risk assessment may be useful to make this assessment.

Concerning the *procedure*, the short term barring order only starts at the moment the barred person has been notified. However, the law does not clearly stipulate how this notification has to take place, or how this can be proven in case of a dispute. Also, the justice for the peace needs to inform the parties involved by letter on the timing and place of the court case. This might cause problems seen the time it takes for the letter to arrive, and seen the fact that the place of residence of the barred person might not be known.

c. Seen the very recent introduction of the order, it is not yet possible to evaluate problems with monitoring. However, a good cooperation between different sectors (police, judiciary and social services) will be important to monitor compliance with the order.

d. The violation of a short term barring order is a criminal offence. However, the violation of the prolongation of the order by the judge for the peace is not criminalized and can't be punished.

e. Seen the very recent introduction of the short time barring order, it is not yet possible to evaluate the effectiveness of the order.

### **Criminal Law**

a. A long-lasting debate has been going on in Belgium concerning the authorization to decide on modalities of sentences during the enforcement phase. For sentences up to 3 years of imprisonment, the Minister of Justice was responsible. The enforcement courts are authorized to decide on sentences above 3 years of imprisonment. The Law External Legal Status aims to transfer all authorization to the enforcement courts. However, the Law has only partly come into force. The full inception has been delayed several times because of budgetary reasons. As a consequence, the division of power between the Minister and the enforcement courts continues.

c. The vagueness of conditions attached to criminal measures makes it often difficult to monitor and control if offenders comply with them.

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

### **Short term barring order**

Concerning the short term barring order, one of the biggest problems is the taxation of the risk involved: how and by whom this risk has to be evaluated? There is a need for the development of a reliable risk taxation instrument. Besides this, the referral to social assistance should be regulated more clearly, since the support and assistance of the barred person and his co-residents is the priority of the short term barring order. Sound cooperation structures and protocols between different services involved are essential to achieve this. Finally, it is also a problem that the violation of the prolongation of the short term barring order is not criminalized. This is in practice sometimes solved by making use of the regulations for the criminal offence of stalking. Condition is that the perpetrator was aware that he was disturbing the peace of the victim, and the victim has to file an official complaint.

### **Criminal Law**

Within criminal law, the division of decision decision-making authority between the Minister of Justice and the enforcement courts continues. This issue will be regulated when the Law External Legal Status completely comes into force, but its total inception has been delayed several times. Besides this, the monitoring of

protection orders seems to be a problem in practice seen the vagueness of the conditions imposed or the budget and time constraints that police and justice assistants are confronted with.

#### 2.2.6. PROMISING/ GOOD PRACTICES

38) Which factors facilitate the:

- a. Imposition
- b. monitoring, and
- c. enforcement of protection orders?

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

Seen the very recent introduction of the short time barring order, it is not yet possible to evaluate the effectiveness of the order. The introduction is in itself positive. It provides police and justice with a legal instrument to act preventively in crisis situations, and enhance safety for victims.

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

Concerning the short term barring order, the idea of the Act to prioritize assistance for the barred person and his co-residents is a promising practice.

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

In the framework of the short term barring order act, cooperation structures between the different partners involved should be made or consolidated. Also, a reliable risk taxation instrument to evaluate the danger of the situation would improve the effectiveness of the Act.

#### 2.2.7. FUTURE DEVELOPMENTS

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

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

#### **Short term barring order**

The new law concerning the short term barring order was adopted on May 15<sup>th</sup> 2012, and came into force on January 1<sup>st</sup> 2013. The future will tell how the law is put in practice, and which difficulties may arise.

#### **Criminal Law**

Within criminal law, the division of decision-making authority between the Minister of Justice and the enforcement courts continues. This issue will be regulated by the total coming into force of the Law External Legal Status, but its total inception has been delayed several times.

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

The short term barring order act has come into effect since January 1<sup>st</sup> 2013, so no short term developments are to be expected there in the nearby future.

Concerning the enforcement of criminal protection orders, it is to be expected that the Law External Legal Status will come into force completely in the nearby future.

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

The implementation of the European Protection Order requires a certain degree of confidence between Member States, which might not be present immediately. Besides this, differences between Member States regarding sentence enforcement might cause problems.

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## GLOSSARY

### *1. General Legal Terminology:*<sup>16</sup>

#### **Crime**

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

#### **Instantaneous crime**

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

#### **Continuous crime**

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

#### **Civil law**

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

#### **Criminal law**

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

#### **Administrative law**

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

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<sup>16</sup> Merriam-Webster's Dictionary of Law ©1996. Merriam-Webster, Incorporated. Published under license with Merriam-Webster, Incorporated.

**Case law**

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

**Substantive Law**

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

**Procedural Law**

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

**Pre-trial detention or remand**

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

**Adult person**

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

**Report**

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

**Legal provisions**

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

**Formal complaint**

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

**Complainant**

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

**Victim**

A natural person who has suffered harm, including physical or mental injury, emotional suffering or economic loss, directly caused by acts or omissions that are in violation of the criminal law of a state.<sup>17</sup>

**Decision**

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

**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.

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<sup>17</sup> EU Council framework decision, 15 march 2001. (2001/220/JHA)

## **Sanction**

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

## **Notification**

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

## *2. Forms of violence*

### **Intimate partner violence (IPV)**

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

### **Domestic violence<sup>18</sup>**

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

### **Stalking<sup>19</sup>**

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

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<sup>18</sup> Rec. (2002)5. (VAW) (Committee of Ministers).

<sup>19</sup> C. Hageman-White, L. Kelly, & R. Römken (Eds.), Feasibility study to assess the possibilities, opportunities and needs to standardise national legislation on violence against women, violence against children and sexual orientation violence (pp. 127-152). Luxembourg: European Commission.



## **Rape/sexual assault**

Sexual assault is in this study defined as any sexual act committed against non-consenting persons<sup>20</sup>, even if they do not show signs of resistance. Rape is considered one form of sexual assault consisting of the sexual penetration with any means, by one person of another person's body without the consent of that other person.

### *3. Terms related to the protection order*

#### **Types/nature of protection orders**

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

#### **Injunction**

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

#### **Restraining order**

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

#### **Barring order**

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<sup>20</sup> Council of Europe Convention on preventing and combating violence against women and domestic violence, art. 36 b.

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.