

English summary

1.1. Introduction

Protection orders, such as street injunctions and no-contact orders, are rules of conduct imposed within the context of a civil, criminal or administrative procedure aimed at protecting a person against dangerous and/or disturbing behavior of another person. If effective, protection orders offer (violence) victims exactly what many of them desire most: peace and safety. The first report depicted the legal framework and the enforcement of protection orders in the Netherlands. This second report focuses on the *nature* and *incidence* of protection orders in the Netherlands.

According to the European Council approximately 118.000 protection orders were issued within the European Union in 2008, but it is unclear where this number is derived from. On the national level reliable estimates on the number of protection orders are lacking as well, with the exception of the barring order (*huisverbod*) and some criminal provisions. Awareness of the incidence of protection orders can nevertheless be useful, for instance, to get an idea of the possible impact of the European protection order on the Dutch legal system, to identify the provisions which are rarely used for protection purposes, and to assess to what extent the legal system is taxed by those orders.

Not only the number, but also the content of protection orders is important. To ensure that both foreign and national victims receive a comparable level of protection, an inventory needs to be made of the exact implications of this protection per provision. An analysis of the content of protection orders can also provide information on the possibilities to enforce protection orders.

Very little is known on the nature and incidence of Dutch protection orders and the studies that have paid attention to this topic only did so sideways. Expanding knowledge in this area can contribute to a(n) (even) more effective formulation of protection orders, to the facilitation of their enforcement in practice and – perhaps even – to an increase in their effectiveness.

This research, executed by INTERVICT and commissioned by the WODC, aims to outline the nature and incidence of protection orders in the Netherlands. This goal is expressed in the following research question:

How many civil and criminal protection orders are issued on a yearly basis in the Netherlands, what are the characteristics of the cases in which these protection orders are imposed, and what is, in essence, the content of these protection orders?

From this central research question, several sub-questions were derived:

- 1) *How many civil and criminal protection orders were approximately issued during the period 1 April 2011 - 1 April 2012?*
- 2) *What are the characteristics of the cases in which these protection orders were imposed?*
- 3) *What was the content of these protection orders?*

1.2. Research methods

The research into the nature and incidence of protection orders focused on protection orders imposed within the context of the following seven legal provisions:

- a temporary injunction issued in civil summary proceedings
- a condition to a conditional decision not to prosecute / dismissal
- a special condition to a conditional suspension of the pre-trial detention
- a special condition to a suspended sentence
- a measure for the restriction of freedom (*vrijheidsbeperkende maatregel*)
- a special condition to a conditional release from prison
- a condition to a temporary leave from penitentiary

The research questions 1 to 3 have been analyzed with the help of two research methods: an analysis of (digital) registration systems and a file research. First of all, the registration systems of the Central Fine Collection Agency (*Centraal Justitieel Incassobureau*), the Council for the Judiciary (*Raad voor de Rechtspraak*), and four different penitentiaries were studied. Based on this information a first estimate of the incidence of protection orders in the Netherlands could be made.

Sometimes, however, the registration files reproduced an *underestimation* of the actual numbers of protection orders – for instance, because there was no obligation to record protection orders – while on the other hand *overestimating* the number of protection orders – for example, because only the total number of cases was registered, not their outcome, or because no distinction was made between orders aimed at protecting a person and orders aimed at another goal. The registration systems also contained little information on the nature of protection orders.

An additional file research was therefore required. Civil and criminal case files were examined in the following court districts:

- Amsterdam
- Breda
- Den Bosch
- Den Haag
- Haarlem
- Leeuwarden
- Lelystad (civil) / Utrecht (criminal)¹
- Roermond
- Rotterdam
- Zutphen

The temporary leave files were examined in four penitentiaries (Achterhoek, Almere, Dordrecht, and Zuid-Oost).

1.3. Conclusions

The goal of the study was to make an inventory of the nature and the incidence of protection orders in the Netherlands. The results are summarized below per research question:

¹ For the examination of criminal case files Lelystad was replaced by Utrecht, because there were too few relevant case files present in Lelystad.

1. How many civil and criminal protection orders were approximately issued during the period 1 April 2011 - 1 April 2012?²

The registration from the Council for the Judiciary shows that in this period 338 civil cases in which a protection order was requested were settled. Additional file research unveiled that in approximately 58% of these cases a protection order was imposed. This brings the estimated total of civil (summary proceedings) protection orders in the Netherlands in that period to approximately 196. In reality, however, the number of protection orders will be somewhat higher because of the aforementioned underestimation.

For the criminal protection orders, the following estimates were found:

Legal provision (total issued in reference period)	No contact order N (%)	Prohibition to enter a certain area N (%)
Measure for the restriction of freedom (n=1)	- (-)	- (-)
Conditional dismissal (n=572)	5 (0.9%)	0 (0%)
Conditional suspension of pre-trial detention with a special condition (n=3817) ¹	1201 (30.2%)	619 (15.6%)
Suspended sentence with a special condition (n=6453)	280 (4.3%)	149 (2.3%)
Conditional release with a special condition (n=521)	36 (6.9%)	20 (3.8%)
Temporary leave (-)	- (-)	- (-)
Total	1522	788

¹ For the calculation of the percentages of the conditional suspension of pre-trial detention, see paragraph 3.4.1.

The table contains the absolute numbers followed by the percentage of the total amount of conditional dismissals, conditional suspensions of pre-trial detention with special conditions, suspended sentences with special conditions, and conditional releases from prison with special conditions in which a no contact order (*contactverbod*) or a prohibition to enter a certain area (*gebiedsverbod*) was issued. It shows that a conditional dismissal is rarely used to impose a protection order.

² Because the measure for the restriction of freedom only came into force on April 2012 another reference period applied to this provision: 1 April 2012 - 1 October 2012.

The information gathered from the temporary leave files in the four penitentiaries could not be generalized to national estimates and there was no further information available on the only measure for the restriction of freedom (*vrijheidsbeperkende maatregel*) imposed in the reference period.

The table above only depicts the separate protection orders. Because one case can contain multiple protection orders – for instance a combination of a no contact order with a street prohibition – the percentages were also estimated on a case level. Of the total amount of conditional dismissals 0.9% contained a protection order, of the total amount of conditional suspensions of pre-trial detention with special conditions 40.5% contained a protection order, of the total amount of suspended sentences with special conditions 6.3% contained a protection order, and of the total amount of conditional releases with special conditions 11.3% contained a protection order.

2. What are the characteristics of the cases in which protection orders were imposed?

A substantive analysis of the different case files generated the following results:

Both in civil and in criminal law the overwhelming majority of protection orders were issued against a man, while the protectees usually consisted of females or multiple persons. The only exception to this rule was the conditional release from prison, where the number of male and female protectees was more or less equal.

Protection orders were generally issued in cases involving assault, threat, stalking and vice crimes between (ex)partners, albeit that the conditional release forms an exception to this rule as well. In cases involving a conditional release, the released person and the protectee were often strangers or they shared a non-intimate relationship.

The case files – both criminal and civil – indicated that a large number of defendants, suspects or convicts had another protection order imposed against them at an earlier stage (30.1% of the civil files, and between 12.6% and 14.7% of the criminal files). Sometimes these orders were issued in response to one and the same incident, but often they bore witness to a prolonged problem in which previous orders had not been effective.

The case files furthermore contained little evidence for an international dimension. The persons involved generally had a Dutch nationality and address and other indicators of cross-border issues were practically absent as well. In addition, the evidence usually referred to countries outside the EU. Based on the current study, only few requests for a European protection order are expected to come from the Netherlands.

A final step in the analysis of the civil cases was to look for possible connections between certain background characteristics of cases and the refusal or granting of a protection order. When the file mentioned multiple victims, when the defendant had another protection order issued against him or her at a previous stage, or when the defendant had not appeared in court or had not forwarded a defense, the odds of having the protection order awarded increased. A logistic regression analysis, however, showed that of these variables, only the defense of the defendant had a significant influence on the decision of the judge in civil summary proceedings.

3. What was the content of these protection orders?

In general. In both the civil and the criminal files, 'no contact' orders were most popular. Over 90% of the files contained such an order, except for the temporary leave from penitentiary: 'only' 66.7% of these case files contained a 'no contact' order. The 'no contact' orders were followed by the prohibitions to enter a certain area, varying from 29.4% (conditional release from prison) to 86.5% (civil summary proceedings). Other types of protection orders, such as the prohibition to enter a certain location or to approach a person were much less prevalent.

It furthermore appeared that protection orders are often imposed in combination with each other (e.g., a 'no contact' order in combination with a street injunction). In civil cases the vast majority of the cases contained a combination of orders. Combinations were also found very often in the criminal case files, but most criminal files contained only a single 'no contact' order.

The content of the 'no contact' orders varied a lot, with the civil protection orders and the protection orders imposed by means of a suspended sentence being most detailed, followed by the conditional suspension of the pre-trial detention and the conditional release from prison. The orders issued as a condition to a temporary leave from penitentiary often entailed nothing more than that the party involved 'was not allowed to contact the victim'.

The prohibitions to enter a certain area also differed considerably, varying from 25 meters from the victim's address to entire villages and cities, and in one case even an entire province. Most common, however, was a protection order prohibiting the defendant, suspect or convict to enter one or more streets for a determined period of time.

The other types of protection orders usually consisted of barring orders, orders prohibiting someone to approach another person, orders prohibiting someone to enter a specified location and orders prohibiting someone to spread libelous or defamatory remarks.

When it came to their duration, the protection orders also diverged: ranging from the 39 hours of an average leave from penitentiary or the duration of a pre-trial detention to an average of 11 months (civil protection orders), 13.2 months (conditional release from prison) and even 24.3 months (suspended sentence).

Civil protection orders. Civil protection orders are generally strengthened by incremental penalty payments (87.2%). Committal for failure to comply with a judicial order (*lijfswang*) was very rare (4.6%). In 6% of the cases, there were no means of enforcement attached to the protection order.

Furthermore, in 45.9% of the cases the plaintiff was authorized to enforce the protection order with the help of the police. When this authorization was lacking, the plaintiff usually had not requested anything of the sort, but in some cases the request for police authorization was not granted.

Finally, in 68.4% of the cases the legal costs had to be paid by both parties themselves (*compensatie*) – often with a reference to the (previous) relationship of the parties – despite the fact that most of the times the judges ruled in favor of the plaintiff and the plaintiff had requested the costs being allocated to the defendant. Only in 28.6% of the cases the legal costs were awarded to the defendant, being the one who lost the case.

Criminal protection orders. In approximately 75% (suspension of the pre-trial detention and suspended sentence) to over 90% (conditional release from prison) of the criminal cases the suspects or convicts were placed under the supervision of the after-care and resettlement organizations (*reclasseringstoezicht*). Electronic monitoring appeared much less frequent: only once as a condition to a suspended sentence and six times as a condition to a conditional release from prison.

1.4. Discussion

Based on the current study, we expect only very few requests for a European protection order to derive from the Netherlands. It is expected that only a very small groups of victims will use this instrument.

From that perspective, the improvement of the use and enforcement of national protection orders seems more urgent. The case files regularly report violations of (previous) protection orders. This makes the enforcement of protection orders of vital importance.

In that sense it is remarkable that electronic monitoring is seldom used, whereas the experts consider this one of the few means through which a protection order can be enforced. Equally remarkable were the civil cases which had no means of enforcement attached to them or in which the plaintiff's request for police authorization was not granted. Strictly speaking, this authorization is superfluous, but many police officers still derive the authority to intervene from this authorization (see first report).

Furthermore, the enforcement of protection orders could improve if the outline of the protection orders is as clear as possible. 'No contact' orders could be enhanced by the use of a standard formulation, offering complete protection and prohibiting both direct and indirect contact, as well as contact initiated by both parties.

Prohibitions to enter a specific area are probably harder to capture in a standard formulation, but it already makes a difference if the use of radiuses is constrained and prohibited areas are only indicated with the help of the surrounding streets and a map. The victim could play a bigger role in this respect.

In addition, 'vague' formulations, such as 'in the direct vicinity' or 'in the surroundings of' should be used with the greatest restraint possible. To facilitate their enforcement, a further specification of these orders – if possible – is to be preferred.

Perhaps national agreements should be made on whether or not to maximize the incremental penalty payments and on how to counter the inclination of civil interlocutory judges to award both parties with their own legal costs (*kostencompensatie*) in cases involving a 'family relationship'.

Finally, there are some recommendations with regard to the registration of protection orders and future research. Given the recent and future developments – for instance, the full-fledged introduction of the punishment order (*strafbeschikking*) and the increased attention for the protection of victims of forensic patients (*TBS-gestelden*) – it remains important to keep a close eye on protection orders. Future research should also focus on the question of why plaintiffs prefer civil law over criminal law: was the choice for civil law made on a voluntary basis or was it based on the fact that these victims found little response with the police and the Public Prosecution Service? This type of research would benefit from an improved registration of protection orders. More importantly, a proper registration would enable law enforcement agents to

track whether a specific person has violated a previous protection order: notorious violators deserve a different approach.

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