

English summary

1.1. Introduction

Many victims of violent crimes harbour a need for protection against the offender. One way of meeting that need is by issuing a protection order. A common example is a protection order which prohibits the offender to enter a certain area – e.g., near the victim's home – and to contact the victim. In the present study, the following definition of the term protection order is used, partly derived from Directive 2011/99/EU:

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

Although all European Member States offer the possibility to obtain a criminal, administrative and/or civil protection order, until recently these were not mutually recognized. Victims who travelled or moved to another Member State were forced to initiate new proceedings to acquire a substitute protection order. Directive 2011/99/EU (the European Protection Order) has changed the situation for protection orders in criminal procedures. From now on, protection orders issued in one EU Member State (issuing Member State) are recognized in the other EU Member State (executing Member State), whereupon the latter can adopt a measure to replace the original protection order 'which it deems adequate and appropriate under its national law in a similar case in order to provide continued protection to the protected person'. In other words, the replacement protection order does not have to be identical to the original order. The rationale is that the executing state provides the victim from another EU country with the same level of protection it would provide its own citizens in a similar case.

The Netherlands has a wide range of criminal, administrative and civil law provisions on which protection orders can be based. At the moment, they are at the centre of renewed attention and confidence in their effectiveness is high. This can be witnessed from the creation of new provisions, like the temporary restraining order (*huisverbod*) and the *vrijheidsbeperkende maatregel*, but also from the thorough revision of previously established protection orders.

There are, however, so many ways in which protection orders can be imposed, each subjected to multiple, rapid successive changes, that it is hard to see the forest for the trees. With an eye on the transposition of the Directive on the European Protection Order, it is important to gain insight in the operation of the different protection orders and the legal provisions that form their basis. For, in the future, the Netherlands can be requested to convert a foreign protection order into a national one. Expanding knowledge on the extant legal instruments can furthermore contribute to an increased decisiveness in the enforcement by the chain partners. This research, executed by INTERVICT and commissioned by the WODC, aims to map the legal framework of protection orders in the Netherlands. In addition, the enforcement of protection orders in practice is explored.

The central research question of the present study reads as follows:

What is the prevalent legislation on civil, administrative, and criminal protection orders in the Netherlands and how does their enforcement work out in theory and in practice?

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

- 1. What are the legal provisions based on which a (civil, administrative, and criminal) protection order can be imposed in the Netherlands, and how is their enforcement formally regulated?*
- 2. Which types of (civil, administrative, and criminal) protection orders exist in the Netherlands?*
- 3. How does the enforcement of protection orders work out in practice?*

1.2. Research methods

Data was collected through two methods. First, a *legal desk research* was conducted. By studying all relevant laws and regulations, literature, case law, and parliamentary (policy) documents research questions 1 and 2 were answered.

Research question 3 was explored with the help of *semi-structured interviews* with stakeholders in (law) enforcement agencies. In three court districts (Amsterdam, Den Haag, and Assen), members of the Public Prosecution Service, the police, the Dutch probation service, the judiciary, the Custodial Institutions Agency, the Support Offices for Domestic Violence, bailiff-, and law firms were interviewed. Each interview focused on a particular field of law, but some respondents were interviewed regarding multiple fields. In each court district, the following persons were invited to participate in the interviews (divided over the fields of law):

- Criminal law: a public prosecutor, a police officer, a judge, a probation officer, a penitentiary officer, a lawyer (who represents victims)
- Civil law: a judge in interlocutory proceedings, a specialized lawyer, a bailiff
- Administrative law: a casemanager from the Support Office for Domestic Violence, a municipal officer involved in the execution of the Temporary Restraining Order Act, a police officer (e.g., the domestic violence coordinator), and an assistant public prosecutor

In total, thirty-five interviews were held with a fairly good distribution amongst both professions and court districts.¹ With the permission of the respondents, all interviews were recorded, transcribed, and analyzed per relevant sub-question. The interviews were reported anonymously.

Despite the balanced composition of the group respondents, the fact that only three court districts were selected may have implications for generalizing the findings. The work on the enforcement of protection orders in practice can therefore best be viewed as explorative.

1.3. Results

1.3.1. The legal framework

The aim of depicting the legal framework of protection orders was to get a complete overview of the legal provisions on which a protection order can be based in the Netherlands. The results are summarized per research question.

¹ At least two respondents were interviewed from each profession. The only persons that are lacking are a criminal judge (Assen), a police officer (Assen), a criminal lawyer (Den Haag), and a bailiff (Amsterdam).

1. What are the civil, administrative, and criminal provisions based on which a protection order can be imposed in the Netherlands, and how is their enforcement formally regulated?

Legal provisions

In the Netherlands, there are no less than fourteen legal provisions within criminal (procedural) law which can form the basis of a protection order. They are represented in figure 1 in chapter 2. Protection orders can be issued during all stages of the criminal procedure. Depending on the legal provision on which the order is based, they may be mutually divergent when it comes to the application requirements, the possible consequences of a violation, their maximum duration, their direct enforceability, et cetera. The legislation and policy documents demonstrate the increased interest in influencing unwanted behavior and the desire to have a violation of protection orders followed by a swift judicial reaction.

Within administrative law the increased attention for influencing unwanted behavior can be observed as well, for instance by the introduction of the Temporary Restraining Order Act. Other administrative protection orders are based on the Psychiatric Hospitals Compulsory Admissions Act (conditional hospital order, leave and discharge from a psychiatric hospital).

Within private law, there have been fewer developments in this area, but private law has long offered the possibility to obtain a judicial order or prohibition, namely via interlocutory proceedings.²

Formal regulation of enforcement

Formally, the supervision of criminal provisions is in the hands of the public prosecution service. The actual supervision in practice, however, is often delegated to the probation service and the police. The public prosecution service can react in various ways to a violation of a criminal protection order ranging from issuing a warning to bringing the suspect to trial (by issuing a summons in the case of a punishment order, prosecuting still in the case of a conditional dismissal, et cetera). A criminal judge then has the authority to change the conditions of the protection order or to have the underlying penalty executed. A violation during leave can be sanctioned by a revocation of the present leave or by a negative advice on future applications for leave.

If the protection order was imposed in a civil procedure, its enforcement is left to the person who claimed the protection order, although he or she is often authorized to execute the order 'if necessary with the strong arm of the law'. Upon violation of the protection order, the claimant (then executor) will often call in the help of a lawyer, who, in turn, contacts a bailiff. Depending on the means on enforcing the judgment mentioned in the underlying verdict, the bailiff can either collect the incremental penalty payment (*dwangsom*), or he can request a committal for failure to comply with a judicial order (*lijfswang*). The judge only becomes involved again if the defendant

² In theory, a civil protection order can be obtained in substantive proceedings as well, but in practice this will rarely happen.

contests the violation or if the claimant sues for a new means of enforcing the judgment (e.g., committal for failure to comply with a judicial order).

The supervision on protection orders that were issued on the basis of the Psychiatric Hospitals Compulsory Admissions Act is assigned to the patient's medical attendant, whereas the supervision on temporary restraining orders (*huisverboden*) is in the hands of the police. When the conditions of the Psychiatric Hospitals Compulsory Admissions Act are violated, the medical director can decide to commit the patient to the psychiatric hospital, or to revoke the leave or the discharge; the violation of a temporary restraining order is a crime. The public prosecution service can decide to prosecute the evicted person and the mayor can extend the temporary restraining order.

2. Which types of (civil, administrative, and criminal) protection orders exist in the Netherlands?

Because many legal provisions contain no indication of which orders can and cannot be imposed, it is impossible to give an exhaustive account of all types of protection orders that can be applied in the Netherlands. Even if the law contains a more detailed description, the exact limitation remains unclear because of the use of open norms. This means that there is great liberty in formulating the conditions. In spite of this, there seems to be a trend to include an exhaustive list of the types of protection orders (e.g., a street injunction, a no contact, or an exclusion order) within the new provisions and to specify the scope of old provisions more clearly. Often this has to do with the fact that a protection order that seriously infringes on a human right can only be imposed on the basis of a legal provision that is sufficiently clear and predictable. There are furthermore some general restrictions, such as proportionality, the requirement that the conditions can only relate to the behavior of the offender, and the stipulation that the conditions cannot infringe on the freedom of religion or beliefs, or someone's political freedom.

1.3.2. *The enforcement in practice*

3. *How does the enforcement of protection orders work out in practice?*

The final sub-question was explored by interviewing various people working for the 'chain partners'.

When *criminal protection orders* are imposed, the respondents indicate that more and more attention is given to delineating their scope as clear as possible, often in close consultation with the other partners. This prevents uncertainty and misunderstanding in the execution phase. After their issuance, protection orders are registered in the digital systems of the respective chain partners and, according to the respondents, this generally works well, although there are some points of concern. The conditions to a suspension of the preventive custody can, for instance, not be registered, nor are all violations of protection orders taken down.

Protection orders can be supervised in different ways; proactive and reactive. An example of proactive supervision is when street injunctions or exclusion orders are checked with the help of electronic means, such as a (GPS) ankle bracelet. Electronic monitoring is not possible with all provisions (this often has to do with proportionality) and if the possibility does exist, the probation

service will have to give a positive recommendation thereto. Because of this, the proportion of electronic monitoring on the total amount of protection orders is relatively small. Other forms of proactive supervision (home visits or extra surveillance by the police) are only used in the most serious cases and/or the cases with the highest risk of recidivism. In general, supervision tends to be reactive: the police wait for the victim to report a violation. They do, however, strive to react quickly in case of a report.

Not only the police and (possibly) the probation service are aware of outstanding protection orders, if all works according to plan, the victim is being informed of their existence as well, for instance when someone is being released on parole. As soon as the police establish a violation of the protection order, they will (practically) always report this to the public prosecution service. The probation service uses its discretionary freedom in this respect and sometimes turns a blind eye to minor violations, but the respondents indicate that even for the probation service, reporting a violation is the standard reaction nowadays.

The public prosecution service can react in various ways, as described in the section on the legal framework. For a suspension of preventive custody to be terminated, the violation needs to be 'plausible', for the other provisions, the regular evidentiary rules apply (minimum rules, legally and convincing). Depending on the seriousness of the violation, the role of the victim, and the lack of bad intentions on the part of the violator, the public prosecution service can choose to change the conditions or to issue an official warning. Judges will take the same factors into account, although they (may) attribute less weight to contact initiated by the victim. A violation committed during a leave from penitentiary is usually punished by means of a negative advice on future applications for leave.

Most respondents are of the opinion that the enforcement of protection orders generally runs smoothly. Especially the electronic monitoring, the (new) possibilities of direct enforceability and provisional execution of the provisions, the smooth cooperation between the different chain partners, and the improved registration of protection orders are approved of. As bottlenecks they mention the lack of capacity with some of the chain partners and the limited possibilities to really (proactively) supervise compliance with protection orders. The registration and the reporting of protection orders to other partners can be improved as well.

One judge in interlocutory proceedings takes the practice of execution into account when imposing a *civil protection order* by clearly delineating the protection order. The other two judges show less concern for this. The supervision on compliance with civil protection orders is less regulated than it is for criminal protection orders as well: the claimant is solely responsible for the supervision and electronic means of monitoring compliance cannot be imposed.

When the order is violated, the claimant can try to collect the incremental penalty payment. For that he needs the help of his lawyer and a bailiff. The police can be called in as well, although most respondents indicate that the police display a reticent attitude when it comes to this. They see it as a civil matter and will only interfere when an offence has been committed. Other police officers, on the contrary, see the civil judgment as a validation for their interference. For that reason, judges often explicitly authorize the claimant to call in the help of the police during the execution. If the execution is ineffective, the claimant can ask the court for a higher incremental penalty payment or a committal for failure to comply with a judicial order. The person who violates the order is in principle responsible for paying the execution costs, unless he or she has no assets from which the costs can be recovered.

The reticent attitude of the police is the first bottleneck of civil protection orders that the respondents draw attention to. Other problems are that some cases suffer from evidentiary problems and that some offenders have very few assets, thereby making the protection order less effective.

The final provision, of which the enforcement in practice was explored, is the *administrative temporary restraining order*. The chain partners are generally satisfied with the manner in which temporary restraining orders are registered – both in their own registration systems and in the shared web application Khonraad – although one or two people complained about the fact that violations cannot be (compulsory) registered in Khonraad and that temporary restraining orders have to be registered twice.

In none of the court districts are technical devices used to support supervision. This has mainly to do with the duration of the temporary restraining order (10 days) and the lack of judicial authorization. Some regions, however, do practice proactive supervision in the form of extra surveillance and home visits by the community police officer, although opinions vary on the added value of this. All respondents say that when it comes to checking the compliance with a temporary restraining order, they are to a high extent dependent on the information of and detection by the persons who stay behind. These, however, sometimes have ambivalent feelings towards the temporary restraining order and do not always report violations. If the person staying behind initiates contact with the evicted person, the willingness of the professionals to intervene declines.

The police usually prioritize a violation, but not always. Some respondents are dissatisfied with the speed with which the police react. According to the surveyed respondents, the police sometimes do not react at all, unless violence was used. In the case of temporary restraining orders, the police will usually report violations to the public prosecution service as well, whereas the probation service keeps its options a bit more open. Comparable to the reaction to a violation of a criminal protection order, the criminal justice reaction to a violation of a temporary restraining order depends on the seriousness of the violation, the intentions of the evicted person, the evidence, and the behavior of the person staying behind. The mayor can also decide to extend the temporary restraining order. A violation of the temporary restraining order will certainly be taken into account in that decision.

Bottlenecks in this application include: the lack of capacity with the police, the lack of knowledge of certain chain partners, the varying reactions from the public prosecution service, and the ambivalent attitude of the persons staying behind. The (alleged) tension between criminal and administrative law is also causing problems and misunderstandings. The ‘chain approach’ (*ketenaanpak*) and the ‘chain cooperation’ (*ketensamenwerking*), on the other hand, are considered very successful.

1.4. Discussion

Over the past few years, the many provisions which have been created to form the basis of a protection order – especially within criminal law – have made it hard to see the forest for the trees. The added value of some of these provisions is questionable. Legal provisions which appear redundant and which are applied very exceptionally, such as the *rechterlijk bevel ter handhaving van de openbare orde*, can be removed. The remaining criminal, but also civil provisions need to be examined coherently because their application requirements have arbitrary differences. In the

worst case scenario, this could affect the suspect's legal position or the effectiveness of the protection order.

When it comes to the enforcement in practice, the pragmatic approach of the professionals is striking. Proactive methods of supervision are reserved for the most serious cases and/or the cases with the highest risk of violation. If most protection orders are complied with, this approach could be valid. After all, capacity is limited, just as the possibilities of actual proactive supervision. It remains, however, to be seen how the supposed effectiveness of protection orders works out in practice. This has not been studied very often, especially not in the Netherlands.

Possibly, the use of the AWARE alarm system and of community police officers could be increased. Actual proactive supervision may nevertheless be unfeasible in most cases, which makes it all the more important to adequately react to reports of violations. In this respect, there is room for improvement (communication, registration, and the perception of the law enforcement agencies that a consistent and immediate reaction is important). Finally, the (alleged) tension between criminal and administrative law in the enforcement of temporary restraining orders could be looked into.