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Het gebiedsverbod in perspectief

Wettelijke (on)mogelijkheden, cijfers en ervaringen

Samenvatting

Wetenschappelijk onderzoek- en kennisinstituut voor het ministerie van Justitie en Veiligheid

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Wettelijke (on)mogelijkheden, cijfers en ervaringen

Samenvatting

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Cahier
De reeks Cahier omvat de rapporten van onderzoek dat door en in opdracht van het Wetenschappelijk Onderzoek- en Documentatiecentrum is verricht. Opname in de reeks betekent niet dat de inhoud van de rapporten het standpunt van de Minister van Justitie en Veiligheid weergeeft.

Summary

Perspectives on the area ban

Legal (im)possibilities, numbers and experiences

Background

The goal of the present study was to examine if long-term area bans for (mentally ill) sex and violent offenders under the Long-Term Supervision Act (LTSA; *Wet langdurig toezicht*) are sufficient to prevent confrontations between victims or their next-of-kin of serious crimes and perpetrators. With 'confrontations' we mean physical encounters in the (living) environment of the victims or their next-of-kin that could be prevented by area bans. With 'area bans' we mean orders that prohibit the perpetrator to go to certain geographical areas around a certain radius, usually of 5 kilometres around an address. With 'sufficient' we mean to indicate the degree to which the imposition, execution and enforcement of area bans contributes to the prevention of confrontations between victims or their next-of-kin and perpetrators in their living and/or work environment. With enforcement, we mean supervision as well as responses to potential violations of the area bans by probation services as well as by police and/or municipalities.

The study was set up as a result of a parliamentary motion in which it was observed that it is undesirable that victims and their next-of-kin of violent crimes are confronted with their perpetrators upon relocation of these perpetrators (re)locate in their vicinity. The minister of Justice and Security was requested to examine if the LTSA offers enough clarity on the possibilities to prevent these confrontations. The research and documentation centre (WODC; *Wetenschappelijk Onderzoek- en Documentatie Centrum*) of the ministry of Justice and Security therefore conducted a study in which three research goals were set:

1 Describe all legal possibilities, both within the LTSA as well as in other acts, to impose an area ban to prevent confrontations between victims or their next-of-kin of serious crimes and the perpetrators in their (living) environment,
2 To determine if and if so, in what manner and to what extent, these possibilities are used,
3 To determine if these legal possibilities are sufficient to prevent confrontations.

To reach these goals, we posed seven research questions. These research questions are answered below. In the corresponding chapters in this report, there is more information to be found.

Methods

For the present study several research methods were used. In order to come to a proper operationalization of the terms 'confrontation' and 'sufficient', eight exploratory interviews were conducted: one with a family member of a victim, three with lawyers specialised in victims or their next-of-kin, one with Victim Support Netherlands (VSN;

Slachtofferhulp Nederland), two with probation services (3RO; *de drie reclasseringsorganisaties*) and one with the Central Provision of Conditional Release (CPCR; *Centrale Voorziening Voorwaardelijke Invrijheidstelling*). In order to make a list of all legal possibilities to enforce an area ban in the Netherlands, an analysis of rules and regulations of Dutch law was conducted, which were complemented with several scientific publications (research question 1). The researchers then formulated criteria to determine if and if so which laws and regulations could work complementary to the LTSA (research question 2). In order to determine the number and efficacy of applications of area bans in everyday practice (research questions 3, 4, 5 and 7) datasets were requested from the Custodial Institutions Agency (CIA; *Dienst Justitiële Inrichtingen*), the Central Judicial Collection Agency (CJCA; *Centraal Justitieel Incassobureau*), the Council for the Judiciary (CJ; *Raad voor de rechtspraak*), the CPCR and the probation services. A Privacy Impact Analysis (PIA) was performed prior to the acquisition of the data, and formal letters seeking approval from the heads of the aforementioned agencies were sent. The researchers analysed the raw data. In addition, 28 interviews were conducted with all of the above mentioned organizations that are involved in the application of area bans. To determine the human rights that possibly play a part in the imposition, execution and enforcement of area bans, a further legal analysis was conducted (research question 6).

Answers to the research questions

Research question 1: *Which components of the LTSA can contribute to prevent confrontations between victims or their next-of-kin of serious crimes and the perpetrators in their (living) environment and what differences occur according to the type of crime and the type of victim?*

In the LTSA, three changes to the (forensic psychiatric) conditional release of (mentally ill) offenders were made: 1) the Conditional Release after Forensic Psychiatric treatment (FPCR; *voorwaardelijke beëindiging van het bevel tot verpleging van de tbs-maatregel*) of mentally ill patients with a mandatory treatment order (tbs-order; *maatregel terbeschikkingstelling*) is no longer maximized in duration, 2) a one-year conditional release (CR; *voorwaardelijke invrijheidstelling*) of offenders from the prison system is now mandatory, with the general condition that no further crimes are committed, along with any special conditions that may be imposed; it is now possible to prolong CR for as long as the offender is still considered dangerous and 3) an independent supervision measure, the Measure on Behavioral Influence and limitation of freedom (MBI; Gedragsbeinvloedende en Vrijheidsbeperkende Maatregel) was introduced. The tbs-order is a judicial measure that entails mandatory hospitalization and treatment in a forensic psychiatric hospital (Article 37a.1 Dutch Criminal Code [DCC]). From the legal analyses into these three changes, it was found that all three components of the LTSA offer the possibility to impose a long and under certain conditions lifelong area ban to protect victims and their next-of-kin against confrontations with their perpetrator. Not only the area bans but also other special conditions may have this influence. The researchers made a distinction in the manner in which special conditions can serve to prevent confrontations. Three categories were formed: conditions that directly serve to prevent confrontations, conditions that indirectly serve to prevent confrontations and other conditions. Since the operationalization of 'confrontation' used in the current report involves a prohibited area, the conditions that directly serve to prevent confrontations are area bans, orders that oblige a person to remain in a certain location, subsequently called commandment

orders, orders that prohibit the person involved to travel across international borders, a prohibition to relocate and an order against the settlement in a certain area. These conditions are explicitly listed in Dutch legislation for CR and for the MBI but not for the FPCR. Conditions that may indirectly work to restrain a perpetrator from confronting the victim or their next-of-kin are restraining orders (no-contact orders), an order to report oneself to probation services on a regular basis, mandatory hospitalization, an obligation to live in a supported housing setting and a prohibition to conduct voluntary services of a specific nature.

The conditions with an indirect effect are the restraining order, the reporting obligation, compulsory admission to a forensic psychiatric hospital, an obligation to stay in an assisted living facility and, finally, the prohibition to do voluntary work of a certain nature. The restraining order, which prohibits the offender from contacting the victim in any way, occupies a special place here, because although it directly aims to prevent a confrontation between offender and victim, it does not involve a prohibited area, but a person with whom contact is prohibited. As a result, the restraining order is seen in this study as a condition with indirect effect. The other special conditions deal with other aspects of the offender's life and behaviour and do not aim to prevent confrontations.

The requirements for the imposition, modification and termination of area bans under all three LTSA modalities usually include a so-called danger criterion. At the start of FPCR and CR, a certain degree of danger has passed, but some degree of danger also remains. This danger is expected to be sufficiently controlled by imposing conditions. For example, under FPCR, it is necessary that the risk of recidivism has been reduced to such an extent that the mandatory hospitalization can be conditionally terminated. In addition, under the old regulations, CR was postponed or waived if the imposition of conditions did not sufficiently reduce the risk of recidivism, and under the new regulation, CR is only granted if the risks associated with the release can be limited and controlled. With the MBI, the law regulates that this supervision measure can only be enforced if there is a serious risk that the convicted person will commit another MBI-worthy crime or if it is necessary to prevent seriously incriminating behaviour towards victims or witnesses. However, if combined with and preceded by a tbs-order, a certain degree of danger will also have passed at the outset, otherwise the tbs-order would not have been terminated.
When changing the conditions in FPCR, the potential danger clearly plays a role, as does non-compliance with conditions. In addition, FPCR can only be extended if there is still some degree of danger. In the case of CR, one requirement is that changes to conditions must be necessary and proportionate. The first extension of CR is possible for all offenders with CR, with no grounds for this in the law. In the MBI, no further provisions have been made for the modification of conditions. Both the (second and possibly further) extension of CR and the extension of the MBI include a provision in the law that takes into account victims and their next-of-kin. If there is expected to be 'seriously incriminating behaviour towards victims or witnesses', CR and the MBI and thus also area bans and other special conditions, can be extended. In addition, for the second and any further extension of CR and the MBI, the danger emanating from the convicted person can be a ground for extension. There are no differences in the way the various components of the LTSA can be used depending on the type of offence and the type of victim.

In order to be allowed to go on FPCR, the law requires the person to explicitly declare his willingness to comply with the conditions before they can be imposed. In CR, this

cooperation is more indirect: if the convicted person is not willing to cooperate, this can be a contraindication for granting CR. Moreover, if special conditions are imposed on the perpetrator, two conditions are linked by law: to cooperate in determining their identity and to cooperate with probation supervision. The latter is understood to mean that the offender cooperates with home visits by and reporting to the probation service. In the case of the MBI, there is no requirement for the person to agree to cooperate.

In short, with (the amendments to) the three modalities of the LTSA, a longer area ban has become possible. In each case, legal principles such as proportionality and subsidiarity play a role in the imposition, modification and extension of the special conditions under all three modalities of the LTSA.

Research question 2: *Are there other legal bases than those under the LTSA that can be used to prevent victims or next-of-kin from being confronted with their perpetrator in their home environment and, if so, how do these compare with the possibilities under the LTSA?*
From the analysis of legislation, a total of 23 other modalities for imposing an area ban were found within criminal, administrative and civil law. These modalities were examined for their complementary effect compared to the LTSA modalities, using four criteria: the intended target group (perpetrators of sexual and/or serious violent offences), the moment of imposition (during or after the prison sentence and/or measure has taken place, starting at CR or FPCR), the purpose of the area ban (protecting victims and their next-of-kin from confrontations) and the duration (longer than the LTSA) or content (other prohibited areas, for example).

Although the 12 criminal law modalities found all have the protection of victims as their goal, apart from the 'restriction of freedom measure' (RFM; *vrijheidsbeperkende maatregel*, art. 38v DCC), they do not offer any addition compared to the LTSA modalities, in terms of duration or content. Three of the four modalities in administrative law require (the serious fear of) a (further) disturbance of the peace which is a different criterion from the danger the LTSA requires. Disturbance of the peace does not involve specific victims and their next-of-kin, but rather society in general and therefore has a different goal than to prevent confrontations as defined in this study. The 7 civil law modalities focus on the same target group and can be imposed during or after a prison sentence or a tbs-order. However, only 3 of them protect victims, namely the wrongful act suit in combination with a court order, the wrongful act suit in combination with compensation and the conditional authorisation under art. 28aa Compulsory Mental Health Care Act (CMHCA; *Wet Zorg en Dwang*). Only the wrongful act suit in combination with a court injunction meets all the above criteria. From this it can be concluded that only the area bans attached to the restriction of freedom measure (art. 38v DCC) and to the civil wrongful act suit (art. 6:162 Civl Law; *Burgerlijk Wetboek*) can potentially have complementary effects to the LTSA. After all, based on the restriction of freedom measure, an area ban with a maximum duration of five years can be imposed at the time of the conviction to a prison sentence or tbs order. This makes it possible for the area ban associated with the restriction of freedom measure to run concurrently with the area ban under CR, FPCR or MBI, which is potentially complementary in terms of both content and duration. Tort law allows victims and next-of-kin to claim an area ban at any time, independent of criminal proceedings, if facts and circumstances have arisen showing that the defendant has committed an unlawful act or if there is a serious fear of doing

so. As a result, it is possible that such a civil area ban may be imposed during or after the end of the CR, FPCR or MBI.

Research questions 3, 4 and 5 are taken together: *How often and in what way have the various components of the LTSA been deployed to prevent a victim or next-of-kin from being confronted with his perpetrator in his residential environment? How often and in what way have the options under a legal basis other than the LTSA been deployed to prevent a victim or the next-of-kin from being confronted with the perpetrator in their home environment? How do the options relate to each other?*

These research questions were answered based on the file review. In the 23 FPCR cases analysed, 27 area bans had been imposed. These are not from a random sample so their characteristics are a first illustration of characteristics of all area bans imposed on FPCR inmates in 2015-2019. The 25 CR cases however, also with 27 area bans, were randomly selected and thus more representative of the entire population of CR detainees with area bans in 2016-2020. However, given the small sample, the interpretation of these data should also be treated with caution. For both area ban and wrongful act suits, the prevalence is expected to be limited, as only 17 and 4 relevant cases, respectively, were found despite a very thorough search. A total of 23 area bans were imposed in the 17 cases with a restriction of freedom measure examined. The average duration of the different modalities until an area ban was 598 days (FPCR), 668 days (CR), 1,347 days (restriction of freedom measure) and 637.5 (wrongful act suit).

Prevalence

The prevalence of area bans and commandment orders could only be reliably determined in FPCR and CR cases. In the years under study, CR detainees were significantly more likely than FPCR probationers to be subjected to an area ban, a commandment to stay in a certain area or both, 38.5% and 16.7% respectively. In the years prior to the LTSA, an area ban, commandment order or both were imposed on average to 15% of FPCR detainees and 37.1% of CR detainees, respectively. In the first three years of the LTSA, this percentage averaged 19.8% of the FPCR detainees and 39.5% of the CR detainees.

Background characteristics of offenders

On average, FPCR probationers are the oldest at the start of the area ban, 52.2 years (compared to 36.2 years for CR and 40.9 years for the restriction of freedom measure). The age difference at the start of CR and FPCR can perhaps be explained by the difference between the average duration of the tbs-order and that of the prison sentence. The average number of offences does not differ much (3 in FPCR and the freedom-restricting measure and 4 in CR). A strikingly large number of the investigated probationers with FPCR have been diagnosed with paedophilia (8 out of 23 persons). In addition, 20 of the 23 inpatients with FPCR have a personality disorder. Among the CR probationers and those with a restriction of freedom measure, no (extensive) pre-trial investigation was usually carried out, nevertheless 9 CR probationers and 5 persons with a freedom restricting measure were found to have disorders. The area bans under the FPCR were imposed about equally often on probationers with a violent offence and those with a sex offence, while the area bans under CR and the restriction of freedom measure were almost always imposed on violent offenders.

Type of prohibited area and radius

In both the FPCR, CR and the restricting of freedom measure, most of the area bans relate to the residential area of the victims or their next-of-kin (44%, 56% and 70% respectively). The radius of the area bans in these three modalities varies and usually concerns (part of) a village, city or municipality. It is notable that almost all area bans imposed in the context of the FPCR, in which the living environment of the victims and their next-of-kin was declared a prohibited area, were imposed on perpetrators of serious violent crimes (10 out of 12 times) and only once in respect of a perpetrator with a sex offence. In CR, this distinction between offender types is not there, as these area bans were almost all imposed on violent offenders (22 out of 25 offenders). Among the FPCR, there are relatively many area bans that see to areas not related to the initial victims or next-of-kin (10 out of 27 times). These were all imposed on sex offenders. They often involve bans on being in confined spaces where minors might also be present, or unspecified child-rich environments. This does not occur in the CR cases studied, which is understandable as there are only three sex offenders among the CR offenders with an area ban. It is possible that there are more sex offenders with CR with an area ban in a larger sample, but the percentage of sex offenders among inmates is also low (4.2% on average in 2015-2019).
Electronic monitoring (EM; *elektronisch monitoren*) of area bans is most common in CR (in 19 out of 27 area bans). For FPCR, EM was imposed only twice and zero times for the restriction of freedom measure. The low number of FPCR cases with EM is partly explained by the fact that 10 of these 27 area bans do not include a specified geographical area (the confined spaces and child-rich environments mentioned above) and are therefore difficult to monitor with EM. The absence of EM in the restriction of freedom measure can probably be explained by the fact that EM is not mentioned in the law as a possibility in this measure.

Persons protected

The area bans tend to protect several persons: at least 53 victims and next-of-kin in the case of the FPCR, at least 47 in the CR and at least 27 in the restriction of freedom measure. Most area bans under the FPCR protect potential victims (10 times), while this is much less frequent in CR (2 times) and only once in the restriction of freedom measure. In CR, on the contrary, most area bans see to the protection of original victims (21 times), which is three times more often than in FPCR (7 times). Next-of-kin are protected a bit more often in the FPCR, 7 times, while only 2 times in the CR. The majority of all victims and next-of-kin are adults. Most victims who are currently protected by an area ban under the FPCR or CR were random victims at the time of the offence, while most of those protected under the restriction of freedom measure were the offender's (ex-)partner or an acquaintance.

Conditions to prevent confrontations

Concerning the FPCR cases, not many other special conditions with a *direct effect* on preventing a confrontation (i.e., in addition to the area ban), were imposed: no commandment orders, relocation orders or settlement bans. However, a prohibition to leave the country was often imposed (21 times). In the CR cases, relatively many commandment orders were imposed (13 times), but no orders to relocate, settlement bans or prohibitions to leave the country were imposed. The lack of obligations to relocate and settlement bans are due to the fact that the possibility to impose these orders was not included in the law until the (partial) entry into force of the Act on

Punishment and Protection (APP; *Wet straffen en beschermen*) on 1 July 2021, and all cases that were studied relate to earlier years. With regard to the restriction of freedom measure, there were no area bans in the cases studied.
With regards to the special conditions with *indirect effect* to prevent confrontations, restraining orders were often imposed (14x in the FPCR, 19x in the CR and 17x in the restriction of freedom restricting). The obligation to report to probation services is also common in the FPCR (16x) and CR (23x) cases, while this occurs in only 1 case with a restriction to freedom measure. In addition, a ban on moving without consent was almost always imposed in the case of the FPCR (21x).

Other special conditions

Most of the other special conditions were imposed on the probationers with FPCR: a total of 193 conditions (an average of 8.4 per person). Undergoing outpatient treatment (22 times), an order to be transparent about issues in life (21 times), a drug and/or alcohol ban (18 times) and agreeing to the probation services contacting third parties for information (18 times) were imposed most often. There is hardly any difference in the type of special conditions imposed on sex offenders with FPCR compared to violent offenders with FPCR. In total 78 other special conditions, with no direct or indirect effect, were imposed in the CR cases (on average 3.1 per person). Of these, an order to be transparent about issues in life (18 times), having a meaningful Daytime activity (16 times) and conditions concerning the offender's finances (14 times) were the most common.

Recommendations and point of views

In slightly more than half of the FPCR cases (13 out of 23), the probation services recommended imposing an area ban. In the remaining 10 cases, the judges did not cite information from probation advices, so their advice remains unclear. Only once did the judge deviate from an area ban recommended by the probation officer. In 17 of the 25 CR cases, the probation officer advised positively on the start of CR. In the remaining 8 CR cases there was no advice from probation services available. In 13 of these 17 cases, a total of 16 recommendations for an area ban and/or commandment order were given. The CPCR adopted 7 of these recommendations exactly and deviated slightly from 9 other recommendations. In a total of 15 cases, the correctional services gave positive advice on the start of CR, and 8 of these recommendations were positive for the imposition of an area ban and/or commandment order. In 9 cases, the advice of the correction services was missing.

In only 5 of the 23 FPCR cases did the (counsellor of the) probationer take a position on the area ban. Four times the opinion sought to nuance the area ban or to limit its scope, while once it was stated that the lawyer was referring to the court's opinion. In CR, no views of the perpetrators were found. No views of victims and their next-of-kin regarding the CR decision were cited in the CR rulings by the court. In 7 of the 25 CR cases, a viewpoint of the victims or their next-of-kin can be found in the file. Five of these victims wanted an area ban, a commandment order and/or a restraining order. In addition, 2 victims explicitly did not want an area ban, in order to prevent their place of residence from becoming known.

Changes and violations

No modifications of area bans were found among the FPCR cases. In contrast, the restraining and commandment orders under CR were changed relatively often, 18 out of 25 probationers had at least one change and a total of 39 changes were found. These modifications mostly involve dropping EM (13 times) or lifting the area ban (10 times). Few violations of the area bans were observed under either FPCR or CR: none in FPCR and only once in CR. These are violations that have come to the attention of concerned parties. It cannot be entirely ruled out that there have been (more) violations, although the interview data also show that in practice few violations are seen. In the FPCR cases, we did see two violations of the restraining order and one rehospitalisation occurred (for a reason other than violation of the area ban). In addition, the area bans under CR were violated relatively often: 8 of the 13 probationers on CR with area bans violated the area ban at least once (total of 15 violations). The violations were all flagged with an EM alarm and were mostly (11 times) mild in nature: such as coming home late (6 times) or charging the electronic ankle bracelet late (3 times). None of the violations involved victims or next-of-kin. There was no data available to calculate the number of violations in the restriction of freedom measure.

Research question 6: *What human rights of the victim next-of-kin and the offender play a role in the imposition, implementation and enforcement of a long-term area ban?*
Five human rights have been discussed that may particularly play a role in the LTSA and/or the area bans that may be attached to it. These are the right to life (art. 2 European Convention for the Protection of Human Rights and Fundamental Freedoms [ECHR]), the prohibition of torture (art. 3 ECHR), the right to liberty and security (art. 5 ECHR), the right to freedom of movement (art. 2 Fourth Protocol ECHR) and the right to respect for private, family and household life (art. 8 ECHR).
Articles 2 and 3 ECHR are absolute rights, which means that violations of them cannot be justified under any circumstances, whereas Article 5 ECHR, Article 2 Fourth Protocol ECHR and Article 8 ECHR do have grounds under which these rights may nevertheless be restricted. However, one should always take into account, among other things, proportionality and subsidiarity requirements.

Articles 2, 3 and 8 ECHR entail positive obligations for the Dutch authorities, on the basis of which they must (1) draft laws and regulations so that actions contrary to these human rights are prevented and discouraged, (2) arrange for adequate and effective implementation and enforcement of these laws and regulations, and (3) take preventive measures if the life or physical integrity of one citizen is endangered by the threat of criminal conduct by another citizen. Thus, applied to the LTSA and the area bans to be associated with it, the ECHR provides no basis to oblige the public prosecutor (in the case of CR) or the judge (in the case of FPCR or MBI) to impose an area ban when they do not (are not deemed to) have knowledge of such a threat at the start of supervision. In short, the fact that, pursuant to the LTSA and related legislation, the district attorney and the judge may only decide on CR of FPCR when the risk of recidivism, whether or not through the imposition of special conditions, has been reduced to an acceptable level, also does not automatically mean that the Netherlands complies with all of its positive obligations. After all, these laws and regulations should also be implemented and enforced in an adequate and efficient manner, and if, in short, there is a real and direct threat against a certain person, the Dutch government should also take preventive measures.

As mentioned, Article 5 ECHR and Article 2 Fourth Protocol to the ECHR have circumstances under which violations can be justified. Because deprivation of liberty (art. 5 ECHR) is more intrusive than restriction of liberty (art. 2 Fourth Protocol ECHR), a violation of the former article is subject to more safeguards. The categorisation of the restriction or violation as either restriction or deprivation of liberty is therefore of great importance. However, the boundary is not black and white, but gradual in nature and lies, among other things, in the intensity of the measure and/or condition(s) imposed. Applied to the LTSA, this means that the imposition of area bans in any case constitutes a violation of Article 2 Fourth Protocol, as it restricts the right to move freely and possibly also the right to leave the country. However, this violation will usually be justifiable on the basis of factors such as protecting national or public security, maintaining public order, preventing criminal offences, and protecting the health, morals or rights and freedoms of others.

Given the wide range of rights guaranteed by Article 8 ECHR, the right to respect for private family life, home and correspondence, many of the special conditions that can be attached to LTSA supervision potentially entail a large number of violations of these rights. One thinks, for example, of a violation of the right to privacy through the imposition of EM with GPS or a restriction on the offender's contact with his family. However, these violations may be justified if the special conditions have been imposed in pursuit of interests such as national security or prevention of crimes. Moreover, the LTSA allows for customisation by imposing the most appropriate conditions for each individual. Here, too, a trade-off must always be made in which factors such as proportionality, subsidiarity and legal legitimisation are important. No strict rules can be derived for this from the case law of the ECHR: one will always have to consider, based on the circumstances of the case, whether the violation can be justified.

Research question 7: *Are the possibilities offered by the law to prevent the victim or next-of-kin from being confronted with his perpetrator in his residential area sufficient?*
a *How do victims and next-of-kin judge the options for area bans within the LTSA?*
It strongly emerges from the interviews that victims and next-of-kin each have different wishes, views and judgements on the possibilities of area bans: there is no 'average' victim. Nevertheless, certain factors in particular play a role in their wishes and judgements about area bans. If the offence is more serious, if victims or next-of-kin and offenders are known to each other and if minors are involved, those involved are more likely to want an area ban. The more victims and their next-of-kin have felt recognised during the criminal process, the less often they want a (strict) area ban. Victims and surviving their next-of-kin often want an area ban at least for their residential area, and in the case of victims or their next-of-kin and perpetrators who know each other, the working environment and/or school and/or locations where hobbies are carried out are added. In our experience, these wishes can often be met and they are thus generally considered sufficient.

Some points of interest were indicated. Victims and next-of-kin who did not know the offender indicated more often that they did not ask for an area ban, because this would reveal their home address and they did not want that. Among victims and next-of-kin who did know the offender, the residential address is often already known and this issue does not play a role. Some victims and next-of-kin would like a larger area to be declared off-limits than usual, e.g. for several provinces, and do not consider a smaller area sufficient. Finally, when victims and their next-of-kin have been subjected to serious crimes, they generally never want to encounter the perpetrator again at all, whether or not the encounter would create a new dangerous situation or not. The legal

framework under which this happens does not matter to them. The duration of area bans is thus essential, and it is precisely this that is often seen as inadequate.

b *How do agencies and individuals involved in implementation and enforcement assess the possibilities of area bans within the LTSA?*

The majority of respondents are of the opinion that the LTSA is generally adequate to provide long-term supervision of offenders through area bans if there is a threat of danger. After all, in the legal bases for imposing, modifying and extending area bans under the LTSA, the presence of a certain risk or danger is necessary to make this imposition, modification or extension possible. The law thereby assumes that the risk or danger can be sufficiently curbed through the imposition of special conditions. According to the majority of respondents, there are no better legal bases for acting in case of danger. The LTSA is thus seen as an adequate instrument to reduce the risk of recidivism, which is also the aim of the law. However, to prevent *all* confrontations, the area bans under the LTSA are not always adequate, according to respondents. This is because (by far) not all confrontations also involve danger or are new crimes, for example if the perpetrator and victim or their next-of-kin happen to run into each other on the street.

c *How do victims and/or next-of-kin and parties involved in implementation and enforcement judge the additional possibilities for an area ban?*

According to the parties involved in implementation and enforcement, it rarely happens that area bans under the restriction of freedom measure (art. 38v of the Dutch Criminal Code) apply simultaneously to or after the LTSA supervision. These respondents feel that the disadvantages of area bans under the restriction of freedom measure outweigh the advantages. Possible advantages are that an area ban under the restriction of freedom measure can (sometimes) last longer than an area ban under CR, and that the method of sanctioning violations is better than in CR, because incarceration follows immediately after violations. A disadvantage is that the restriction of freedom measure is capped at five years, which means that in practice one cannot prevent the termination of the area ban against the wishes of the victim. Also, there is no probation supervision attached to only an area ban, nor can it -probably- be attached to EM.

Wrongful act suits within civil law, on the face of it, offer many opportunities for a complementary effect to the LTSA, as it allows area bans to be imposed after or during the LTSA. Also, victims and their next-of-kin are less dependent on public prosecutors and judges for the imposition of area bans and, finally, their content and duration are less limited. Another advantage is that an area ban following a wrongful act suit (a civil area ban) can offer victims and their next-of-kin peace of mind and recognition when criminal law can no longer be extended. However, disadvantages are that initiating civil proceedings takes a lot of time, effort and usually a lot of money. In addition, the subjective fear of victims, unless it can be substantiated with facts and circumstances, is insufficient to impose a civil area ban. Also, enforcement of a civil area ban quasi entirely dependent on the victim himself, although he can be supported by the police. In case of violations of civil area bans, the only thing that can be used as punishment is the imposition of a fine, which is not a real big threat for debt-ridden probationers (not uncommon) because they cannot pay it anyway, respondents believe. All in all, respondents therefore see no added value in this modality compared to the LTSA either.

d *How often are the various area bans violated?*
Both respondents from the probation services and public prosecutor see few violations of the area bans, in general and for the LTSA modalities in particular. Probationers with FPCR, who have already had a long trajectory of mandatory treatment, are said to almost never violate the conditions imposed on them. Although no figures were given, both respondents at the Public Prosecution Service, at the probation service and some victim representatives stated that if area bans are violated at all, it is rarely to seek out the victim. When it does happen, it is more common among members of motorbike or other types of gangs (but there are not many of them) and among sex offenders, respondents said. Those convicted of violent crimes with random victims would also be less likely to seek new confrontations. When area bans are violated, it is almost always by accident, such as by taking a wrong turn off the highway. Commandment orders are also violated more often than area bans. It should be noted that violations of area bans with EM are observed more often, while violations of area bans without EM are less easily detected. Violations of area bans are almost always relatively minor in nature, such as coming home late or not recharging the electronic ankle bracelet on time.
These results are confirmed by the small number of violations that were found in the file study, which were also only mild in nature. It should be noted, however, that only violations that have come under the attention of the authorities could be analysed and that EM facilitates their detection. However, EM was only often imposed in CR cases and not in FPCR cases.

Finally, the role of mayors and municipalities was explored, in response to the question of whether mayors have sufficient administrative or criminal law options to take measures upon the return of offenders in their municipalities. The analyses to this end showed that municipalities and Care and Safety Centres (CSC; *Zorg- en Veiligheidshuizen*) have a different approach regarding this return than probation services and public prosecutors. They focus on the general safety of the public. As a result, situations that take place between two individuals and do not affect public safety do not fall within the scope of their task, such as an offender who wants to revisit the original victim when no others are involved. However, a shooting incident between two people with danger to passers-by will, however, be seen as a situation with potential public safety implications. Administrative law area bans can thus contribute little or nothing to the adequacy of LTSA area bans that were the focus of the current study.

Conclusions

The overarching research objective was to determine whether the possibilities offered by the LTSA to prevent the victim or their next-of-kin from being confronted with their perpetrator in his residential environment are adequate. Given the results of the study, the researchers come to the following conclusion on this adequacy:

1 The purpose of the LTSA is to prevent recidivism through three modalities of long-term supervision. Victims and next-of-kin generally do not wish to encounter the offender at all. Preventing confrontations between victims or their next-of-kin and offenders therefore does not automatically align with the objective of the LTSA, as not all confrontations are new crimes. While the LTSA is generally considered adequate to prevent recidivism, it is thus not always sufficient to prevent all confrontations.

2 The inadequacy of area bans with respect to the wishes of victims and their next-of-kin concerns not so much the content and scope, although there are sometimes additional wishes there too, but mainly the duration of area bans. Although the duration of area bans is (potentially) uncapped by law, the grounds of recidivism or danger for the imposition and/or of 'seriously incriminating behaviour' for extending area bans are such that not every form of confrontation can be avoided. Recidivism risk and 'seriously incriminating behaviour' are not the same as not wanting to confront the offender.
3 The other legal bases for imposing an area ban, whether criminal, civil, or administrative, usually have no complementary effect to the LTSA, and if they do, the disadvantages outweigh the advantages. Although two modalities have the most potential for complementary effect to the LTSA, the restriction of freedom measure and the wrongful act suit, disadvantages also play a role here.
4 Human rights of the offender, such as the right to liberty and security (Art. 5 ECHR), the right to free movement (Art. 2 Fourth Protocol ECHR) and the right to respect for private, family life (Art. 8 ECHR), and requirements of proportionality and subsidiarity limit the duration of an area ban. On the other hand, positive obligations from the ECHR may oblige the Dutch government to take preventive measures to protect victims and their next-of-kin.
5 Especially the LTSA possibilities for imposing area bans and commandment orders under CR are frequently used. As compared, FPCR area bans are less common and the number of area bans and commandment orders under the MBI is not yet known. Area bans under the restriction of freedom measure and civil area bans appear to have some complementary effect, for example by enabling longer area bans, but are less frequent.
6 Municipalities and Care and Safety Centres have a different approach regarding the return of former offenders than probation services and public prosecutors. They focus on the general monitoring of public safety, so situations that only occur between two individuals usually do not fall within the scope of their task. Administrative law area bans can thus contribute little or nothing to the adequacy of LTSA area bans that were the focus of the current study.

Scope of results, limitations and future research

Despite due diligence in the production of this report, the following points of attention can be noted. When interpreting the interview data, as always in qualitative research, these are findings and sometimes opinions of a limited group of people, based on their experiences. These do not necessarily apply to the situation in the whole country nor to all those involved. Also, besides the exploratory interviews, no victims and next-of-kin themselves were spoken to, but their representatives (lawyers, SHN staff) and people (indirectly) dealing with them (probation services, public prosecutors). Although these people thus on the one hand give an indirect picture of the opinions, wishes and ideas of victims and next-of-kin, on the other hand they were each able to share their experiences from multiple cases and thus describe multiple experiences of victims and next-of-kin. The prevalence of area bans among FPCR and CR are at population level for the years under study, 2015-2019 and 2016-2020, respectively. These prevalence figures are thus set for all probationers who started FPCR or CR in that period, but not for earlier and later years, thus it is possible that different prevalence figures of area bans apply to other years. The prevalence of area bans under the restriction of freedom measure and civil area bans could not be determined, as no (central) registration sources were found. Setting up such registries could help in

conducting research on them. The characteristics of area bans under FPCR were not determined from a sample of all FPCRs with area bans. Only after capturing that data, it turned out that there was a central source despite an earlier data request to probation services. This is a limitation to the survey, which could be solved by repeating the survey by drawing a random sample of FPCRs that probation services have on their records. The random sample drawn from the CR cases is relatively small, which means that those characteristics should also be considered with some caution. The interpretation of the data on the restriction of freedom measure and civil area bans also requires caution, as only a very limited number of these cases were found despite a thorough search. When interpreting the data on the amendments and violations of all area bans, there is a limitation that this concerns only violations that have come to the attention of the authorities. In the restriction of freedom measure, the researchers are not aware of any bodies that keep records of violations. Setting up such a register could provide insight into the number of violations of this measure. In short, despite the limitations to the study, it can be concluded that the possibilities offered in the LTSA to impose a long-term restraining order are not sufficient to prevent all confrontations in all situations.

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