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Restraining Order – Experiences and developments in Finland



MINISTRY OF JUSTICE
FINLAND

Restraining orders in Finland

- The Act on Restraining Orders sets out temporary protection orders as an emergency measure and longer-term protection orders
- **Temporary protection orders can be issued immediately by a civil servant with power to arrest** (senior police officers and prosecutors) as well as by the district courts (Chapter 3, Section 11 (2)), provided that both parties have been heard
- Such temporary measures must be brought before the competent court for judicial review within three days
- **Longerterm protection orders can only be issued by district courts** upon hearing both parties and any witnesses to the case.

Restraining order inside the family

- The Act on Restraining Orders distinguishes between protection orders among family members who **share a permanent residence** (“inside-the-family restraining order”), and those imposed on anyone who is suspected of or threatening to commit an offence against the life, health, liberty or privacy of another person
- Both orders prohibit contact with the protected person, but only the “inside-the-family restraining order” **may expel a person from the shared residence with the protected person** – for a maximum of three months, renewable once. Extended restraining orders widen the protection to specific places such as the workplace, holiday home or other place to be included in the order
- “inside-the-family restraining orders” require proof of **more severe threats and risk**

Background and recent developments

- Finnish Act on Restraining Orders since 1998
- Government Programme: "Act on Restraining Orders to be updated in order to better safeguard the rights of the victim"
- Ministry of Justice published a memorandum on increasing the efficiency of restraining orders (OMSO 2019:4)
- In 2019, GREVIO in its Baseline report on Finland, noted a number of factors that seem to hamper the effective implementation of the Finnish Act on Restraining Orders: *"The absence of awareness, among law enforcement agencies, of the positive effects which such orders can have on victim safety is one of them."*

Concerns raised by GREVIO

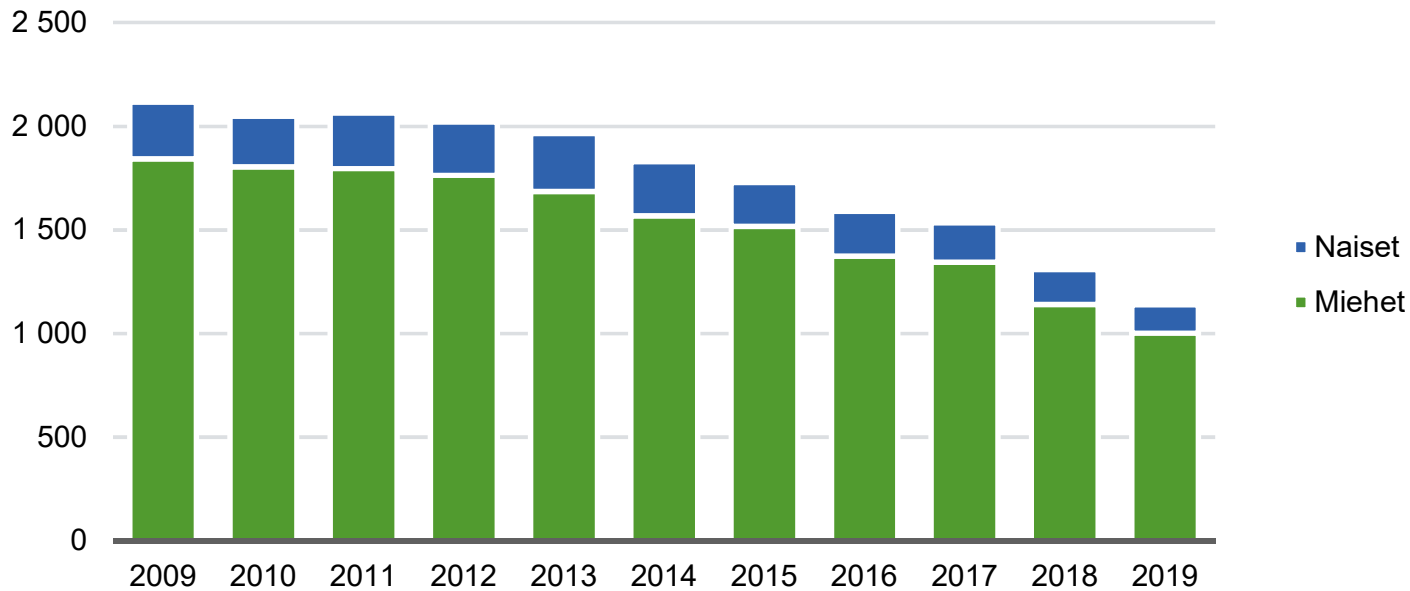
- restraining orders in Finland do not have a bearing on the abuser's right of access to their child unless the order has been specifically issued to protect the child
- current conceptualisation of the “inside-the-family restraining order” does not seem to fully comply with the requirements for emergency barring orders as set out in Article 52 because it is only available to victims who permanently share a residence
- emergency barring orders may be ordered ex officio, but not all officers who respond to an emergency call for domestic violence are granted the power to do so. In many cases, victims are thus required to apply for the order themselves
- even where police are equipped with the power to expel, this is done very rarely

GREVIO's recommendations

- GREVIO strongly encourages the Finnish authorities **to step up efforts to increase the use of emergency barring and protection orders** by promoting their usefulness and ensuring their vigilant enforcement.
- GREVIO **urges** the Finnish authorities to **assess the level of implementation** of the Act on Restraining Orders with a view to identifying and remedying any obstacles in the letter of the law or in its practical implementation
- GREVIO strongly encourages the Finnish law-enforcement authorities to **actively refer victims to specialist women's support services** to ensure support in exercising their right to protective measures.
- GREVIO strongly encourages the Finnish authorities to **end the practice of allowing for exceptions** in prohibitions on contact.

The amount of persons under Restriction Orders in 2009–2019

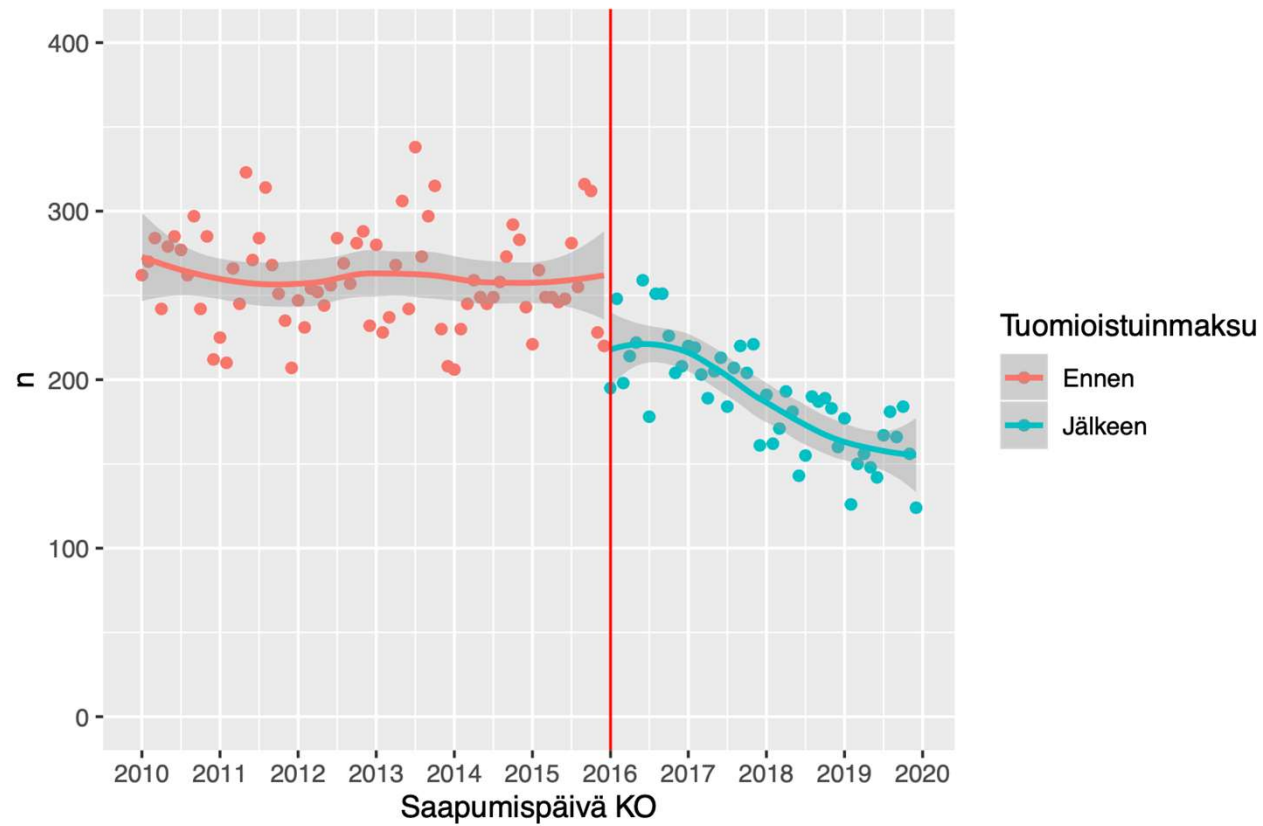
Lähestymiskieltoon määrättyjen lukumäärä



Concerns raised by the working group

- Currently: Limited means of supervision of Restraining Orders
- Plaintiff needs to be active when applying for the Restraining Order
- Since 2016, the application (if denied) has been chargeable, application fee is a few hundred euros
- In civil matters the victim does not have the right to legal aid covered by the state (unlike in criminal matters)
- The working group recognized also the concerns raised by GREVIO

The amount of RO-applications / month



Working group by the Ministry of Justice

- A working group was set up in 2020 with the task of:
 - To widely assess different means, with which it may be possible to **improve the effectivity of the restraining order, decrease violations** of it and **increase the safety of the victim** especially with regard intimate partner violence
 - The working group was also to assess the need and prerequisites for the adoption of electronic monitoring of the restraining order
- > The working group published its recommendations in 2021

Key suggestions 1/2

- Ordering temporary restraining orders should be made possible with a lower threshold than it currently is
- Referrals to support services should be improved
- Legal aid for a victim of a serious crime from state funds should be available not only for criminal cases but also for the application of a restraining order
- Applying for a restraining order should be made (again) free of charge

Key suggestions 2/2

- Electronic monitoring of restraining orders
 - The court could decide to add electronic surveillance to the extended restraining order
 - It would be necessary to combat the threat to the crime against life, health or liberty and would not be unreasonable having regard to the seriousness of the threat of the offense, the circumstances of the person to be supervised and other circumstances
 - Technical supervision would be provided by the Criminal Sanctions Agency, as in the case of an enhanced travel ban
- Urgent handling of violating a restraining order to speed up processes

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