



Domestic violence prevention and victim protection possibilities in Estonia

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A close relationship in Estonian Penal Code

- **A close relationship is a family, kinship, descent, affection or love relationship between two or more people, regardless of whether the parties to the relationship share a place of residence.** It is characterized by care, trust, security, emotional support, and emotional connection. **Intimacy may or may not include physical intimacy.**
- Consequently, the establishment of a close relationship cannot be limited to the formal features of the relationship alone - it may not be sufficient to establish a relationship of family, kinship, descent, etc as a fact. More important than the latter is the substantive social connection between people, which may or may not always include raising children, sharing a household, etc. **What is important, is the real social and, in most cases, the emotional connection between the people, which is based on, for example, the sharing of responsibilities, mutual support and trust.** The close relationship creates and secures the parties' sense of social security (RKKK 1-19-3377/32 p 10).
- **If the marriage or cohabitation has actually ended, it should be assumed that the close relationship has also ended.** The opposite, ie the continuation of the close relationship even after the departure, must be established on a **case-by-case basis**, taking into account the circumstances. **The existence of common children and common property may not always be enough to affirm a close relationship** (RKKK 1-19-3377/32 p 11).



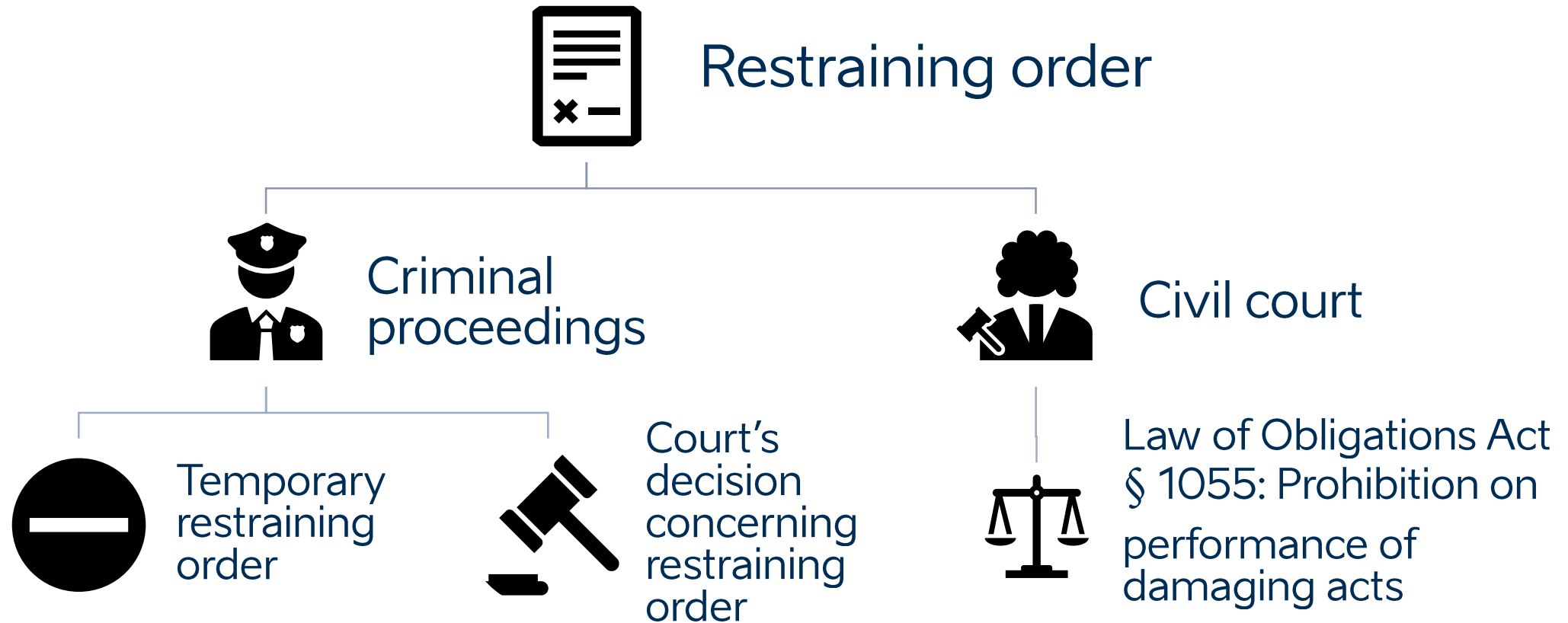
Domestic violence crimes in Estonia



- 14% of all crimes are domestic violence crimes, **½ of all violent crimes are domestic violence crimes.**
- **84% of perpetrators in 2021 were men, 78% of victims were women** (the same numbers for intimate partner violence were accordingly 89% and 89%)
- 70% of domestic violence crimes were intimate partner violence.
- About 20% of the victims and perpetrators are recurring within the same year
- **About 1/3 of the domestic violence cases involve children** — either as victims or witnesses of domestic violence (27% in 2021)



Restraining order





Law of Obligations Act § 1055: Prohibition on performance of damaging acts

- If unlawful damage is caused continually or a threat is made that unlawful damage will be caused, the victim or the person who is threatened has the right to demand that behaviour which causes damage be terminated or the making of threats with such behaviour be refrained from.
- **In the case of bodily injury, damage to health, violation of inviolability of personal life or any other personality rights, it may be demanded, inter alia, that the tortfeasor be prohibited to approach other persons (restraining order), the use of housing or communication be regulated or other similar measures be applied.**
- The right to demand that behaviour which causes damage as specified in subsection 1 of this section be terminated does not apply if it is reasonable to expect that such behaviour can be tolerated in human co-existence or due to significant public interest. In such case, the victim has the right to make a claim for compensation for unlawfully caused damage.
 - Entry into force 01.01.2006
- **A state fee is 50€**



Code of Criminal Procedure § 310¹: Court's decision concerning restraining order

- **At the request of the victim, the court may apply, for protection of private life or other personality rights of the victim on the basis of § 1055 of the Law of Obligation Act, a restraining order with a term of up to three years to an offender convicted of a crime against the person or against a minor.**
 - Entry into force 01.02.2007
- A court may apply a restraining order together with the electronic surveillance provided for in § 75¹ of the Penal Code with the consent of the suspect or accused. The term of the electronic surveillance may be up to twelve months.
 - Entry into force 01.01.2015



Code of Criminal Procedure § 141¹: Temporary restraining order

- For protection of private life or other personality rights of a victim, a person suspected or accused of a **crime against the person or against a minor** may be prohibited to (at the request of the Prosecutor's Office and on the basis of an order of a preliminary investigation judge or on the basis of a court order):
 - **stay in places determined by a court,**
 - **to approach the persons determined by the court or**
 - **communicate with persons determined by the court**
 - Entry into force 16.07.2006
- A court may apply, together with a temporary restraining order, the electronic surveillance provided for in § 75¹ of the Penal Code with the consent of the suspect or accused.
 - Entry into force 01.01.2015
- **A temporary restraining order is applied to a suspect or accused with the consent of the victim.**
 - Entry into force 16.07.2006



Code of Criminal Procedure § 141¹: Temporary restraining order

- **In urgent cases, the temporary protection order may be established by an order of a prosecutor's office and regardless of the consent of the victim.** In this case, the prosecutor's office shall inform a court of the establishment of the protection order within **two working days** and the court decides, taking into consideration **the consent of the victim**, on the admissibility of the protection order.
 - Entry into force 07.05.2020
- In order to issue an order on application of a temporary restraining order, **a preliminary investigation judge shall examine the criminal file and interrogate the suspect or accused and, if necessary, the victim** with a view to ascertaining whether the request for temporary restraining order is justified. **A prosecutor and, at the request of the suspect or accused, a counsel shall also be summoned before the court or the preliminary investigation judge** and their opinions shall be heard.
 - Entry into force 16.07.2006
- A preliminary investigation judge or court may organise the participation of the persons specified in subsection (3) of this section in the resolution of a request for application of a restraining order by means of a technical solution
 - Entry into force 01.09.2011



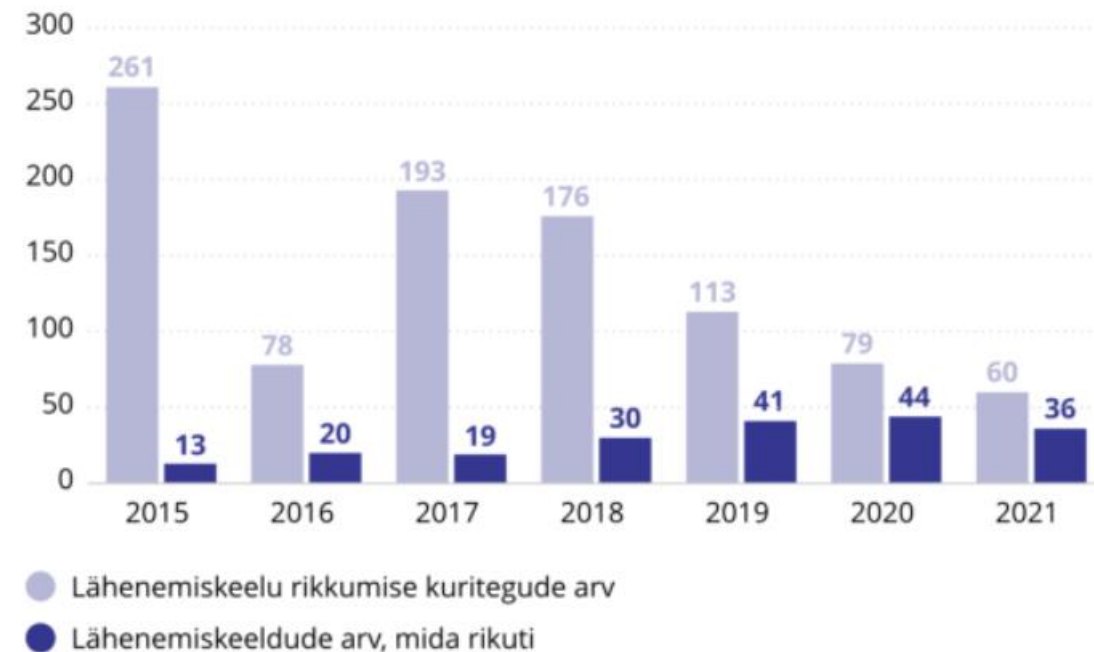
Code of Criminal Procedure § 141¹: Temporary restraining order

- A copy of an order on establishment of temporary restraining order shall be submitted to a suspect or accused and victim and shall be sent to the Police and Border Guard Board. A preliminary investigation judge or court shall also immediately notify other persons whom the restraining order concerns of the application of temporary restraining order.
 - Entry into force 01.01.2012
- A victim, Prosecutor's Office, suspect, accused or his or her counsel may file an appeal against application of temporary restraining order or refusal to apply temporary restraining order.
 - Entry into force 16.07.2006
- **43 temporary restraining orders were applied in 2021 and 11 of them were applied in urgent cases by the prosecutor's office.**



Penal Code § 331²: Violation of restriction order

- Violation of a restriction order or other measure of protection of personal rights imposed by a court decision, **if this poses a danger to the life, health or property of persons, or repeated violation** of a restriction order or other measure of protection of personality right is punishable by a pecuniary punishment or up to one year's imprisonment.
 - Entry into force 20.12.2009
- In 2021 60 criminal proceedings were commenced for violation of 36 different restriction orders.
 - 63% of the violations were physical approaches
 - 37% of the violations were calling or sending messages/emails to the victims





Law Enforcement Act § 44: Prohibition on stay

- The police or, in the cases provided by law, another law enforcement agency may, on a temporary basis, **prohibit a person from staying in the vicinity of a certain person or in a certain place, require him or her to leave the vicinity of the said person or the said place, or to avoid coming to a certain distance from the person or place** in the following cases:
 - **in the case of an immediate threat endangering a person's life or health;**
 - for protecting dominant public interests;
 - **for ascertaining or countering a serious threat;**
 - for ensuring the safety of a safeguarded person or object;
 - for ensuring the conduct of offence proceedings; or
 - for ensuring the application of a state supervision measure.
 - Entry into force 01.07.2014
- A law enforcement agency shall be required to clearly mark, if possible, the place of the application of a prohibition on stay. The place of the application of the prohibition on stay need not be marked if the prohibition on stay is applied with regard to a specific person.



Law Enforcement Act § 44: Prohibition on stay

- A police officer or, in the cases provided by law, an official of another law enforcement agency may apply a prohibition on stay for up to 12 hours. A prohibition on stay may only be applied over 12 hours with the authorisation of a prefect or the head of the other law enforcement agency.
 - Entry into force 01.07.2014
- With regard to a person violating a prohibition on stay, direct coercion may be used insofar as it is unavoidable for the achievement of the objective.
- **273 prohibitions on stay were applied by the Police in 2021 (316 in 2020): 256 of them were given orally and 17 in written form.**



Law Enforcement Act § 26: Notification

- Within its competence, a law enforcement agency shall have the right to perform acts whereby the public or a person is notified of the prevention of a threat, a suspicion of a threat, a threat or a disturbance (notices, recommendations, and warnings).
 - Entry into force 01.07.2014
- Disclosure of personal data is only permitted in such a case and to such an extent it is unavoidably necessary for the notification of a suspicion of a threat, of a threat or a disturbance.
- **The application of the prohibition of stay must also be considered before the person is released from sobriety or detention if the threat assessment (incl. the person's previous background) indicates that the person may be violent even when sober.** 331 such notifications were made in 2021 (71 in 2020).



Code of Criminal Procedure § 202: Termination of criminal proceedings in case of lack of public interest in proceedings and negligible guilt

- If the object of criminal proceedings is a criminal offence in the second degree and the guilt of the person suspected or accused of the offence is negligible, and he or she has remedied or has commenced to remedy the damage caused by the criminal offence or has paid the expenses relating to criminal proceedings, or assumed the obligation to pay such expenses, and there is no public interest in the continuation of the proceedings, the Prosecutor's Office may request, with the consent of the suspect or accused, that the court terminate the proceedings.
- If the object of criminal proceedings is a criminal offence in the second degree for which the minimum rate of imprisonment is not prescribed as punishment or only a pecuniary punishment is prescribed as punishment by the Special Part of the Penal Code, the **Prosecutor's Office may terminate the proceedings and impose the obligations.**
- The Prosecutor's Office may resume terminated criminal proceedings by an order.



Code of Criminal Procedure § 202: Termination of criminal proceedings in case of lack of public interest in proceedings and negligible guilt

- In the event of termination of criminal proceedings, the court or the Prosecutor's Office may impose the following obligations on the suspect or accused (with the consent of the suspect or accused):
 - to pay the expenses relating to the proceedings or compensate for the damage caused by the criminal offence;
 - to pay a fixed amount into the public revenues or to be used for specific purposes in the interest of the public;
 - to perform 10-240 hours of community service;
 - to undergo the prescribed treatment;
 - not to use narcotic drugs or psychotropic substances or alcohol;
 - to participate in a social programme;
 - to submit to surveillance of compliance with prohibition on consumption of alcohol by an electronic device;
 - **to comply with other relevant obligations.**
- The term for fulfilment of the obligations listed in clauses 1)-3) and 6) of this section shall not be longer than six months. The term for fulfilment of the obligations specified in clauses 4)-5) of this section shall not be longer than eighteen months.



THANK YOU!