Summary

Stalking, or *"systematic persecution"*, is a behaviour which entails a person repeatedly subjecting someone else to violence, threats or harassment.

In November 2010 the Government presented a bill which was intended to improve the protection against stalking. Among other things, the Government decided to reform the Restraining Order Act in force at that time. The amendments to the Act entered into force on 1 October 2011 and were intended to "strengthen the order's crime prevention effect and improve the protection the order is intended to provide." The Act was altered in a number of different respects:

- It was clarified that in their risk assessments, prosecutors should particularly take into account whether the individual concerned had committed offences against any other person's life, health, freedom or peace.
- The length of the term and extension period of domestic exclusion orders was doubled.
- The possibility of using electronic monitoring in connection with specially extended restraining orders was introduced.

In its appropriation directions for 2013, the Swedish National Council for Crime Prevention was instructed by the Government to investigate how the provisions on restraining orders are being applied in practice. The Council was further instructed to direct a special focus at examining "what impact the electronic monitoring of specially extended restraining orders has had and whether the exclusion area to which the order applies is well-balanced."

Approximately 13,000 applications – of which one-third are approved

The National Council´s follow-up of the implementation of the Act shows that the number of applications for restraining orders has not changed appreciably between 2010 and 2013. In 2010

there were a total of 12,583 applications, while in 2013, a total of 12,850 applications were made. However, over a ten year period the number of applications has increased by 65 per cent – in 2003 there were approximately 7,800 applications (Brå 2007:2).

As the number of applications has increased, there has been a decline in the proportion of applications that have been approved. In 2003 almost half of the applications, a total of 3,741, were approved. Ten years later, this proportion had declined to one-third. Between 2010 and 2012, the years around the reform, the proportion of applications that were approved was 31 per cent. In 2013 this increased to 33 per cent, which involved a total of 4,321 applications being approved.

Little change in prosecutors' practice regarding risk assessments

One of the amendments to the Act which came into force as a result of the 2011 reform stated that the prosecutor, when conducting a risk assessment prior to a decision on a restriction order, should in particular take into account whether the individual concerned had committed offences against any other person's life, health, freedom or peace. The amendment was considered necessary since the Government was of the view that the Act was being applied too restrictively. The bill referred to a previous evaluation conducted by the National Council for Crime Prevention (2007:2) which showed that in practice, approving a restraining order often required legal proof that the individual who was to be subject to the restraining order had committed offences specifically against the protected person. The amendment to the Act means that offences against individuals other than the protected person shall also be taken into consideration in the context of the prosecutor's assessment. According to the Government, this makes it clear that a restraining order can be granted even in the absence of previous offences against the person who is applying for the restraining order (prop. 2010/11:45, p. 40).

The National Council´s study shows that the 2011 amendment to the Act has not been of any major significance for the practice of prosecutors. In total, 279 more restraining orders were granted in 2013 than in 2010 (4,231 compared to 3,952), but the increase was largely comprised of decisions related to the extension of previously approved applications. The number of "standard" restraining orders that were issued only increased by 24. Furthermore, only one-fifth of the prosecutors in the National Council´s survey stated that the amendment to the Act had impacted their practice.

Primary cause of rejection is that applications do not meet the relevant criteria

The proportion of applications for restraining orders that are rejected has increased continuously over the last decade, as the number of applications has increased. In 2003, 52 per cent of the applications were rejected (Brå 2007:2) and in 2013 this same proportion was 67 per cent. According to the police officers and prosecutors interviewed by the National Council, the large number of rejections can primarily be explained by that many applications do not meet the criteria for approval. The National Council´s report from 2007 also stated that this was the reason applications were rejected (p. 39).

The interviewed prosecutors and police officers believed that this was in turn a result of the fact that those who provide information about restraining orders do not always establish whether the necessary conditions exist to approve a restraining order application. This situation was often said to occur when applications are made via the police's contact centres (PKC), which are required to provide information on restraining orders in connection with the reporting of certain types of crime, but which do not then prepare the applications. It also occurs when an application is drawn up by police officers who are not accustomed to dealing with cases involving restraining orders, and whose knowledge of the Act is therefore inadequate.

Regional differences may be the result of several different factors

The National Council for Crime Prevention also notes that there are still large regional differences regarding the proportion of restraining order applications that are approved, between the prosecution offices. In 2013, the proportion of approved restraining orders varied between 20 and 48 per cent from one prosecution office to another. The National Council for Crime Prevention (2007:2), the Swedish Prosecution Authority (2013:4) and The Foundation Safer Sweden (2011:1) have all previously noted that there are large differences in the proportion of restraining orders that are approved.

The Swedish Prosecution Authority suggests that this may in part be the result of differences in the quality of the applications that are received from the police (p. 4). Some of the prosecutors interviewed in the National Council´s current study support this hypothesis. They stated that the deadline of seven days in which they must make a decision may contribute to the rejection of low-quality applications. Other interviewed prosecutors did not believe that the low quality of an application was important for

whether or not the application would be approved. They stated that in cases of this kind they make a note to file that they will extend the deadline in order to obtain more information regarding the case. Prosecutors from prosecution offices with a high proportion of approved restraining orders described no problems relating to either a lack of quality in the applications or there being insufficient time to process them. Another explanation for the differences noted by both the National Council for Crime Prevention and The Foundation Safer Sweden may be that each prosecutor makes an individual risk assessment.

One way for prosecutors to increase the uniformity and consistency of risk assessments would be to utilise the structured risk and threat assessments [6] employed by the police. These structured assessments make it easier to assess the risk of continued harassment, provided that the assessments are made by specialised and well-trained staff and that the quality of the assessments is subsequently reviewed (Brå 2010:20).

For this reason, the National Council has conducted a survey of prosecutors with experience of cases involving restraining orders and asked how often they have used structured threat and risk assessments as a basis for their decisions. Almost 40 per cent of the prosecutors stated that they had obtained information from a structured threat and risk assessment conducted by the police on one or more occasions subsequent to the 2011 amendments to the Act. A substantial majority of the prosecutors who had done so felt that the threat and risk assessment had provided additional information that was important for the decision on whether to grant a restraining order. Seven of ten prosecutors who participated in the survey stated that they would also use structured threat and risk assessments to a greater extent if it was possible to withhold sensitive information about the protected person from the individual who is the subject of the restraining order.[7] This desire for confidentiality in relation to certain information is something that has also been noted in previous studies (Brå 2010:20, p. 34-35).

Increased number of domestic exclusion orders

Another important amendment to the Act in 2011 involved a doubling of both the term and the length of the extension period associated with domestic exclusion orders, in order to increase the extent to which such orders were used. The results of the National

6 In their safety work, the police use several different structured threat and risk assessment protocols, including SARA (for partner violence), SAM (for stalking) and Patriarch (for honour-related violence).

7 I.e. to make those parts of a structured threat and risk assessment which may be harmful for the protected person confidential, and to exempt these from the obligation to disclose information pertinent to the case to both parties and from party insight.

Council´s study show that the number of decisions on domestic exclusion orders has increased by 32 per cent during the period 2010–2013, from 101 to 133. In contrast to 2010, some of the decisions made in 2013 relate to several protected persons in the same family, including children. However, this type of restraining order still accounts for a very small proportion (only three per cent) of the total number of restraining orders that are approved.

According to the prosecutors interviewed by the National Council of Crime Prevention, one reason for domestic exclusion orders not being used is that prosecutors are uncertain about when these orders should be used in practice. Arresting and detaining the person involved has often been assessed to constitute a better option in situations where an application for this form of restraining order has been appropriate, i.e. when there has been a "substantial risk" for crime. The same finding was noted in a previous report by the National Council (2005 p. 19). However, the "substantial risk" requirement was removed on 1 January 2014. This means that the criteria for domestic exclusion orders have now become less restrictive than the criteria for arrest. It has not however been possible to follow up the effects of this change in the context of the current study.

Electronic monitoring has to date been used only once

The most significant amendment to the Act in 2011 involved the possibility of using electronic monitoring in connection with specially extended restraining orders, with the aim of improving the protection that the orders are intended to provide. In terms of the impact of this amendment, the National Council notes that during the period up to October 2014, electronic monitoring has only been used once.[8] As regards decisions on specially extended restraining orders, these are still used sparingly even subsequent to the amendment of the Act, at most twice per year.

One of the explanations for not using electronic monitoring to a larger extent is that it has not been possible in practice – the technology has not been available for long periods of time. Over the 37 months that have passed since the legislation came into force and up until October 2014, electronic monitoring has been available for approximately 14 months.

Another explanation for the very limited number of decisions on specially extended restraining orders may be that the criteria for issuing these orders are strict. Granting such an order requires that an extended restraining order has first been approved, and such orders are uncommon. During the period 2010–2013, an average of 37 extended restraining orders were granted per year.

[8] In November 2014 a further decision was taken regarding the use of specially extended restraining orders with electronic monitoring, which at the time of writing has not yet been implemented.

Interviews with police officers and prosecutors also revealed that during the application process, it was not always noted that an application should relate to an extended restraining order. Following the approval of an extended restraining order, the order must also have been physically violated. In this regard, several of those interviewed stated that such physical violations are relatively uncommon. This was also found in a 2005 review conducted by the National Council of 376 reported violations during the period 2003–2005, where physical violations only appeared in 13 per cent of the incidents, and the remainder primarily related to contacts by phone and SMS (Brå 2005).

In light of this, the National Council surveyed prosecutors and asked for their view of the requirements for issuing specially extended restraining orders with electronic monitoring. Most prosecutors (two-thirds of those who responded to the survey) felt that the requirements were reasonable. The remainder considered them as being too demanding and stated that in situations of this kind, it is instead appropriate to detain the individual who would otherwise be the subject of the restraining order. Several prosecutors stated that it should be possible to decide on electronic monitoring at an earlier stage.

In summary, the results correspond to a large extent with those noted in the National Council's report from 2005, where the low number of decisions on specially extended restraining orders was explained in part by that fact that few extended restraining orders were issued and in part by the strictness of the criteria for issuing specially extended restraining orders.

Nearly one-third of those subject to restraining orders are suspected of violations

In an earlier survey conducted by the National Council (2007:2, p. 49) among women who had been granted restraining orders, it emerged that approximately half of the orders had been violated. Most of the protected persons in these cases had reported the violation the first time it happened, but a large proportion did not then report subsequent violations.

During the period 2010–2013, an average of 5,400 violations were reported per year. As was found in a previous report by the National Council (2003:2, p. 18), the current study showed that the reported violations are committed by a small group among those who are subject to restraining orders. Register data obtained by the National Council show that 950 individuals were registered as suspects in connection with such violations in the course of 2013. Viewed in relation to the number of unique individuals who were subject to a decision on a restraining order in the same year,

this figure represents 29 per cent. This suggests that one-third of those subject to restraining orders become suspected of violations.

As regards criminal justice reaction to violations of restraining orders, the official crime statistics show that approximately half of the reported violations result in a person-based clearance [9] each year. A fine constitutes the most common sanction imposed in those cases where the violation of a restraining order constitutes the principal offence in a conviction, with this sanction being imposed in approximately half of the cases. The second most common sanction is imprisonment, which is imposed in less than one-fifth of the cases.

The National Council´s assessment

The purpose of the 2011 amendment to the Restraining Order Act was to "strengthen the order's crime prevention effect and improve the protection the order is intended to provide." On the basis of this study, the National Council has found that the application of the Act has remained largely unchanged subsequent to 2011. The aims of the reform do not appear to have been achieved.

Improve the quality of applications for restraining orders

The National Council´s study has revealed that the Act is still being implemented restrictively, even subsequent to the 2011 amendments. The proportion of applications that are rejected remains largely unchanged at approximately two-thirds. One of the reasons stated for the many rejections is that the applications do not meet the required criteria. This same reason was noted in a report from the National Council in 2007 (p. 10) and in the same way as at that time, the National Council's view is that it is important that the criteria for approving applications are made as clear and comprehensible as possible both for those who provide information about restraining orders, and for those applying for a restraining order.

One way of achieving this would be to introduce procedures whereby those who provide information about the possibility of applying for a restraining order are also required to conduct a first assessment of whether the situation in question meets the requirements for a restraining order, and to ensure that the applicant's rights and obligations are made clear to the applicant prior to the application being made. In order to achieve this, it is essential that

[9] This means that the offence has been linked to a suspect and has resulted in either a prosecution, a summary sanction order or a waiver of prosecution

those who provide information about restraining orders are themselves well-informed about the Act.

The National Council would therefore once again like to emphasise the proposals that were presented in its previous report (Brå 2007:2): The police need to improve how they work with restraining orders by means of specialisation and additional training for those staff who have the task of providing information about the Act. In combination with closer collaboration with prosecutors regarding what an application needs to contain, this would also improve the quality of the applications. A greater number of high-quality applications that meet the required criteria would free up useful time for both police officers and prosecutors. A similar argument was made in the Swedish Prosecution Authority's supervision report (2013:4, p. 20): "an organisation for processing restraining orders that is based on shared priorities among police and prosecutors, continuity and close collaboration with fixed procedures, is essential for the cases to be processed with a high quality within the prescribed deadline."

Use structured threat and risk assessments

In order for decisions on the approval of restraining orders to be made in a uniform way, independently of the individual prosecutor or the culture of a given prosecution office, the National Council proposes that prosecutors should utilise the police's structured threat and risk assessment instruments as an aid. The assessments should in turn be performed by specialised and qualified staff and should be subject to quality reviews. The purpose of the risk assessment conducted by prosecutors is to assess the risk that the protected person will be subjected to crimes, persecution or other serious harassment. This is a difficult assessment to make, but is necessary for the prosecutor to be able to arrive at a well-considered decision on a restraining order. This study has shown that structured threat and risk assessments have been useful to the prosecutors who have used them, and that a majority of the prosecutors in the National Council´s survey would like to use them to a greater extent, as long as doing so does not result in harm to the protected person.

The National Council would therefore again like to emphasise that the criminal justice system needs to improve its existing procedures in order to work with structured threat and risk assessments in a systematic manner. This means that specialised and well-trained staff should perform the structured assessments within the police, and that the assessments should be subject to subsequent quality reviews. One way for prosecutors to make use of the results may be to give the police a directive to produce a *summary* of the assessment, which does not include the supporting documen-

tation, in order to avoid any sensitive details about the protected person being communicated to the person who is the subject of the restraining order application.

Continued need for measures for victimised women and children

The National Council´s study also shows that the number of decisions on domestic exclusion orders has increased subsequent to the reform, which is in line with the legislator's intention. In 2013, 133 such restraining orders were approved, compared to 101 in 2010. Several of the orders also appear to have been approved for two or more protected persons from the same family, including children.

The original aim of the exclusion order when it was introduced in the Act in 2003 was to give a person subjected to violence the opportunity to continue residing in the shared home. The bill (prop. 2002:03/70, p. 30) refers to the activities of women's shelters as a means of illustrating the need for this new form of restraining order. The Government's view was that it was the abuser, not the person being abused, who should be subjected to a restriction in the event of a conflict, i.e. who should have to move. The Government also wanted to protect the children who grow up in families where violence occurs, since they are exposed to harm even when they themselves are not subjected to violence.

Despite the fact that use of the exclusion orders has increased, statistics from both Unizon (formerly the Swedish Association of Women's Shelters and Young Women's Empowerment Centres) and the National Organisation for Women's Shelters and Young Women's Shelters in Sweden (ROKS) show that in 2013 a total of 2,233 women and 2,218 children were placed in their shelters. They also had to refuse a large number of women and children due to a shortage of places.[10] Given these figures, the National Council feels that there may be reason to question whether the domestic exclusion order is achieving its original purpose.

Follow-up and evaluate the use of electronic monitoring

In terms of the amendments to the Act that provided an opportunity to use electronic monitoring in connection with specially extended restraining orders, this option had only been used once up until October 2014. Based on this case alone, the National Council cannot assess whether the amendment to the Act has improved the protection for protected persons as was intended by

[10] The statistical data were obtained from each national association's website.

the Government. On the basis of a single case, it is also impossible for the National Council to assess whether the specification of the exclusion area in which the electronic monitoring is to be applied is well-balanced.

However, it is still important to conduct future follow-ups of how electronic monitoring has been used and of whether it has achieved a crime prevention function, particularly since both the Stalking Inquiry (SOU 2008:81) and this study have noted a desire to extend the opportunities for the use electronic monitoring in various ways. The National Council therefore recommends that the use of electronic monitoring should be followed up and evaluated again, when it has been used more often.