REGLAMENTATION OF SOCIAL SAFETY OPERATIONAL MEASURES IN EUROPEAN UNION

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Used Abbreviations

UK – United Kingdom

ASBO – Anti-Social Behaviour Order

PO – Parenting Order

CSO – Child Safety Order

SOO – Sex Offender Order

CL – Criminal Law

CCP – Code of Criminal Procedure

LAVC – Latvian Administration Violations Code

LR – Republic of Latvia

CPO – Crime Prevention Order

CBO – Criminal Behaviour Order

POM – Preventive Operational Measures

TPMoPR – Temporary Protection Measures of Personal Rights

IG – Inter-institution Group/ Inter-institution cooperation Group

BCO – Behaviour Control Order

N-Ireland – Northern Ireland

Introduction

The rights of at least two persons collide in case of implementation of preventive operational measures. On the one hand, for example, the rights to life, health and safety, on the other hand, for example, the rights to freedom, freedom of expression, inviolability of private and family life, property. Thus, it is to be assessed whether the limitation of rights is determined on the basis of law, whether it has a legitimate aim and whether it is proportionate with that whether the society's gain from the limitations imposed on a private person is greater than the limitation of the rights of a private person or legal interests in each case.

The institute for preventive operational measures does not contradict the concept of freedom, the founder of which, the legal philosopher John Stuart Mill points out that one of the unquestionable functions of the state is to prevent criminal offence prior to its commitment, as well as to resolve it and to punish the doer after that. Preventive function, most likely, can be used for the suppression of freedom rather than as a punishment function. If the state establishes accurate information that someone intends to commit a crime, it does not have to watch passively, while the crime is being committed, but rather has to interfere in order to prevent it. Society's rights to fight off criminal offences against it by taking premature protection measures include demonstrative limitations for the maxim, which states that it is only the violations referable to one's self that are not allowed to be interfered in order to prevent them and to punish. For example, getting drunk is not usually subjected to the law control, yet it is fully legitimate, if a man, who was once punished for violence against others while in drunkenness, is subjected to special lawful limitations referable exactly to him. If later he is spotted in drunkenness, he has to receive a penalty, and if he has committed another violation being in this state, the penalty for it has to be more severe. Drinking itself is already a crime against others for a person, who is forced to harm anyone by drunkenness.[1]

Person's freedom is not absolute and its use is limited by the rights and lawful interests of other persons. The state has a positive and compulsory responsibility to ensure that each private person does not violate the rights and fundamental freedoms of other private persons. *Firstly*, the state bears the responsibility, if competent institutions were objectively aware (i.e. they could and must have known) of already occurred or expected violation of fundamental rights, and they were objectively capable of preventing the violation by using their public authority means. For example, the European Court of Human Rights in the case *Opuz v. Turkey*[2]; the applicant and her mother regularly and protractedly suffered violence and threats on the part of applicant's husband, the fact of which was repeatedly reported to the local police and prosecutor's office. Eventually the husband stabbed the applicant with a

[1] Mill J.S. On Freedom. Riga: Tapals, 2007. - p. 116-119

[2] Judgement of the European Court of Human Rights of 9 June 2009: 33401/02 Opuz v. Turkey, para. 129.

knife and later murdered her mother. The European Court of Human Rights established that the state institutions did not do everything possible to protect the applicant and her mother from husband's violence, therefore, Turkey violated the liabilities imposed on it by Articles 2 and 3 of the Convention. The court found that the state had to ensure not only the punishment and supervision functions, but also the prevention functions in order to ensure person's fundamental rights. State institutions bear positive responsibility to apply preventive operational measures, if a person is subjected to the risk of criminal offence on the part of other person. Preventive operational measures are to be applied only in a manner, which respects the guarantees of procedural justice[3]. In the case *Opuz v. Turkey* the court also established gender discrimination within the meaning of Article 14 of the Convention, taking into account that domestic violence against women in the defending country is a systemic problem. *Secondly*, the volume and content of the state's responsibility under such conditions depends on the essence and content of particular fundamental rights. In this case two situations are to be distinguished: a) if it is a case of gross violation of essential fundamental rights (life threat, torture, constant and unbearable interference into private life, etc.), state's liabilities with regard to the offended person are rather wide: responsibility to perform quick and effective investigation; if necessary, to apply criminal-procedural operational measures and criminal-judicial sanctions against the offender, etc.; b) if it is a case of dispute between two or more private persons, in which each of the parties invokes prima facie legitimate rights and interests, than state's responsibility is generally limited by the possibility guaranteed by Article 6 of the Convention to protect one's rights and lawful interests in an equitable court.[4]

Of course, the positive responsibility of the state cannot be absolutized. It is necessary to assess, whether state institutions were aware or had to be aware of the risk of threat to person's rights or judicial interests on the part of third person and whether state institutions did not act in compliance with the conditions of a particular case in order to prevent the risk.[5]

Therefore, according to the policy of the European Court of Human Rights, in case of violation of essential fundamental rights or in case of such risk there is a positive responsibility of the state to actively act with an aim to protect the rights of private persons, which necessitates preventive operational measures.[6] In case of less important rights and freedoms, when the consequences of offence are less gross, the state bears the responsibility to provide private persons only with the possibility to prevent the already existing or potential threat. Private person him/herself is to act actively for its prevention.

[3] See also: Judgement of the European Court of Human Rights: 87/1997/871/1083 *Osman v. The United Kingdom*, para.116.
[4] Comments on the Constitution of the Republic of Latvia. Section VIII. Fundamental Human Rights. Collective body of authors. Riga: Latvijas Vēstnesis, 2011. – p. 38-39.
[5] See Judgement of the European Court of Human Rights: 7510/04 *Kontrova v. Slovakia*.
[6] See Judgement of the European Court of Human Rights: 57/1996/676/866 *Aydin v. Turkey*.

1. Analysis of the Legal Regulation of Estonia

Legal regulation - *Law on Obligations Act*[7], *Code of Civil Procedure*[8], *Code of Criminal Procedure*[9], *Police and Border Guard Act*[10] and *Penal Code*[11] - and policy of Estonia with regard to preventive operational measures are analysed in this chapter. Legal regulation of Germany and Austria are also analysed in addition to the experience of Estonia, since the basis of regulatory enactments of Estonia has been formed according to the model of both countries.

Unlike Finland, the institute of rights of preventive operational measures in Estonia is included into different laws both as material and procedural norms of rights. Legal regulation encompasses the whole segment of legal relations, in which a private person might necessitate preventive protection of rights. With the help of these measures a person is assigned to act within the framework of behaviour requirements specified in the law.

Legal regulation of Estonia complies with the European Convention on Human Rights and Fundamental Freedoms, which is binding for Estonia, and the policy of the European Court of Human Rights. There are no doubts regarding the necessity and significance of this regulation for the protection of human rights in Estonia; yet the actual effectiveness of these measures is currently being questioned.[12] If it is assessed from the point of view of the policy of the European Court of Human Rights, the compliance of these rights-protection measures with Article 13 of the European Convention on Human Rights and Fundamental Freedoms, which prescribes that anyone, whose rights and freedoms determined in the Convention are violated, is provided with effective protection in the state institutions, regardless of the fact that the violation was committed by the persons fulfilling official duties, is being questioned. In any case of unjustified violation of rights, a private person has the rights to protection determined in the aforementioned Convention.[13] The European Court of Human Rights has clearly pointed out that the rights are to be ensured practically and effectively[14] rather than theoretically or illusively, thus, the possibility of rights protection always has to be "effective" both in

[7] Law of Obligations Act. Passed 26 September 2001. Entered into force 1 July 2002. Available: http://www.legaltext.ee/en [viewed on 07.08.2012.].
[8] Code of Civil Procedure. Passed 22 April 1998. Entered into force 1 September 1998. Available: http://www.legaltext.ee/en [viewed on 07.08.2012.].
[9] Code of Criminal Procedure. Passed 12 February 2003. Entered into force 1 July 2004. Available: http://www.legaltext.ee/en [viewed on 07.08.2012.].
[10] Police and Border Guard Act. Passed 6 May 2009. Entry into force 1 January 2010, partially 1 January 2012. Available: http://www.legaltext.ee/en [viewed on 07.08.2012.].
[11] Penal Code. Passed 6 June 2001. Entered into force 1 September 2002. Available: http://www.legaltext.ee/en [viewed on 07.08.2012.].
[12] Human rights in Estonia 2010. Annual Report of the Estonian Human Rights Centre, 2011, p.15., 16. Available: http://humanrights.ee/wp-content/uploads/2011/09/aruanne2010-en-3.pdf [viewed on 08.08.2012.].
[13] See, e.g., Judgement of the European Court of human Rights in the case: 28957/95 Christine Goodwin v. The United Kingdom, para.111.
[14] See, e.g., Judgement of the European Court of human Rights in the cases: 6289/73 Airey v. Ireland, para.24; 41211/98 Iovchev v. Bulgaria, para.142.

practice and in theory[15], exactly in the sense that its implementation cannot be interfered by the action or inaction of state institutions or officials in any unjustified way.[16]

Preventive operational measures of Estonia were included into regulatory enactments in 2006 in response to the appeal of the European Council to create judicial tools in order to decrease domestic violence.[17] Estonia, unlike other countries (Germany, Austria, Norway, Sweden, etc.),[18] has not yet criminalized the actions, which are limited by the Protection Order, as separate components of criminal offence.

1.1. Preventive Operational Measures

Part 1 of Article 1055 of the Law on Obligations Act prescribes that Restraining Order might be applied, residence in shared living-space or communication (meet and contact (by telephone, mobile telephone, Internet, etc.) might be regulated or other similar operational measures might be applied in case of bodily injuries, health threat, inviolability of private life or in case of other personal rights. Likewise in Germany, the court can issue a Protection Order with regard to violence, threats and molestation based on Article 1 of the German Protection From Violence Act (*GewSchG*) and Article 1666 of the Civil Code[19]. The court can forbid to contact, to visit working place or place of residence, etc.[20] Similarly in Austria, the Family Court can forbid to contact (to call, meet, send letters, etc.), to visit certain places, etc. under the civil procedure.[21]

Article 23 of the *Family Law Act* describes in more detail, how a case, when the court has set the responsibility for spouses to live separately for a period determined in the Protection Order, is resolved.[22] Ownership and rights to use are taken into account, when carrying out a decision regarding separate living of the spouses. In Germany, the court can limit the rights of the guilty person to stay at a shared place of residence based on Article 1361b of the Civil Code and Article 14 of the Partnership

[15] Judgement of the European Court of Human Rights in the case: 31333/06 *McFarlane v. Ireland*, para. 114.
[16] Judgement of the European Court of Human Rights in the case: 21987/93 *Aksoy v.* Turkey, para. 95.
[17] Memorandum to the Estonian Government Assessment of the progress made in implementing the 2004 recommendations of the Commissioner for Human rights of the Council of Europe. Strasbourg, 11 July 2007, CommDH(2007)12. Available: https://wcd.coe.int/ViewDoc.jsp?id=1163131 [viewed on 08.08.2012.]
[18] International Stalking Legislation. Available: https://www.stalkingriskprofile.com/what-is-stalking/stalkinglegislation/international-legislation [viewed on 08.08.2012.].
[19] German Civil Code. Available: http://www.gesetze-im-internet.de/englisch_bgb/englisch_bgb.html [viewed on 08.08.2012.].
[20] Domestic violence: your rights. Protection provided by the police, criminal law, and civil law. Bigkordinierung, Berlin, 2010. - p.16.
[21] Violence against women: Good practices in combating and eliminating violence against women. UN Division for the Advancement of Women. Vienna, 2005. - p.9. Available: http://www.un.org/womenwatch/daw/egm/vaw-gp-2005/docs/experts/logar.dv.pdf [viewed on 07.08.2012.].
[22] Family Law Act Act. Passed 18 November 2009. Entered into force 1 July 2010. Available: http://www.legaltext.ee/en [viewed on 07.08.2012.].

Law, even though the guilty person has signed a lease agreement.[23] The fact that the guilty person has signed a lease agreement has no decisive significance in Austria as well.[24]

The pluralism of preventive operational measures also results from Article 544 of the Code of Civil Procedure. Similarly, it is also prescribed by Article 141[1] of the Code of Criminal Procedure.

Thus, the types of preventive operational measures are not limited by the law. The state institution, which applies them, can select the most appropriate Protection Order for particular actual and legal conditions. In the civil procedure, the Protection Order is applied in compliance with criminal procedure (see further) or in cases, when there is no ground to initiate the criminal procedure, since the incurred or potential damage does not reach the set minimal threshold of invasion. For example, if any person insistently disturbs other person by sending exceedingly many e-mails or SMS, and such action causes unpleasant and disturbing feelings to the addressee.

The diversity of the types of preventive operational measures is evaluated positively, because it ensures the application of the most appropriate one for the conditions of each case, thus, guaranteeing physical and psychological inviolability of a person.

1.2. Persons, to whom Preventive Operational Measures are Applicable

In the civil procedure, preventive operational measures can be applied only against a private person (in court - the defendant), who has caused or threatens the rights and freedoms of other private person (in court - the applicant).

In the criminal procedure, preventive operational measures can be applied against the suspected or the accused within the framework of the criminal procedure, within which the person, in favor of whom they are determined, is a victim (Part 1 of Article 141[1] of the Code on Criminal Procedure).

Whereas according to the Police and Border Guard Law, they can be applied to anyone, who causes threats to the rights and freedoms of other person in cases specified in this law (see Paragraph 3).

Thus, a person, who is causing threats to another person, is to be precisely identified in each case.

1.3. Institution, which Applies Preventive Operational Measures

According to Part 1 of Article 544 of the Code on Civil Procedure and Part 1 of Article 141[1] of the Code on Criminal Procedure, preventive operational measures can be applied by a court of general

[23] Domestic violence: your rights. Protection provided by the police, criminal law, and civil law. Bigkordinierung, Berlin, 2010. - p.17.

[24] Violence against women: Good practices in combating and eliminating violence against women. UN Division for the Advancement of Women. Vienna, 2005. - p.7. Available: http://www.un.org/womenwatch/daw/egm/vaw-gp2005/docs/experts/logar.dv.pdf [viewed on 07.08.2012.].

jurisdiction, as well as by an investigative judge within the criminal procedure. In Germany, the decision is carried out by a specialized court as well – the Family Court.[25]

Likewise as in Germany, where a special application form is prepared, court cases on preventive operational measures are considered outside the general procedure [26] in accordance with their significance for human safety and society's interests. The court considers the request within couple of days.[27] The procedure can be prolonged because of the collection of additional evidence. Similarly in Austria, according to the *Austrian Protection Against Violence Bill*, the protection can be determined for 3 months or more.[28]

In the criminal procedure, state fee is not to be paid, while in civil procedure, state fee is to be paid according to Article 22 of the *State Fees Act*[29] according to the procedure set by Section 8 of the Code on Civil Procedure.

Moreover, police rights specified in Articles 7^{1} and 7^{31} of the Police and Border Guard Act to apply preventive operational measures supplement both procedural measures. The police can issue a Restraining Order, if immediate supervision of person's rights and freedoms is necessary for the benefit of society, because there is no possibility to use these rights and freedoms or it is extremely hindered, and it cannot be accomplished according to the procedure set in the Code on Civil Procedure and Code on Criminal Procedure. The police can determine short-term restriction to approach any particular person, to visit certain places, etc., if the existing threat threatens the health and life of other person, protection is in the interests of the society, the risk is recognized as important one, fast and immediate action is necessary in order to ensure person's safety. The police can determine the restriction for up to 12 hours. The restriction for a longer period of time can be determined by the Minister of Internal Affairs.

Likewise in Germany, the police can determine temporary protection measures for up to 14 days, for example, to leave the shared place of residence, to confiscate house keys, not to approach the place of residence, school or working place and to forbid communication. Even the short-term detention of a person can be a final decision. In addition to the measures determined by the police, a person can also request for determination of preventive operational measures according to the civil procedural

[25] Domestic violence: your rights. Protection provided by the police, criminal law, and civil law. Bigkordinierung, Berlin, 2010. - p.15.
[26] Ibid. – p.16.
[27] Crime prevention policies – Estonia. Available: http://www.eucpn.org/policies/results.asp?category=2&country=6 [viewed on 08.08.2012.].
[28] Violence against women: Good practices in combating and eliminating violence against women. UN Division for the Advancement of Women. Vienna, 2005. - p.7. Available: http://www.un.org/womenwatch/daw/egm/vaw-gp2005/docs/experts/logar.dv.pdf [viewed on 07.08.2012.].
[29] State Fees Act. Passed 22 April 2010. Entry into force 1 January 2011. Available: http://www.legaltext.ee/en [viewed on 07.08.2012.].

procedure in compliance with the Violation Prevention Law.[30] Similarly in Austria, according to the Violation Prevention Law, the police, while establishing the threat for life, health or freedom, immediately determines temporary protection for 10 or 20 days. 20-day term is set, if a person is planning to apply to the Family Court for determination of Extended Protection Order. The court informs the policy about it.[31]

Thus, in Estonia, only the court authority institutions are entitled to apply extended preventives and simultaneously the measures limiting the rights and freedoms of private persons. The police are entitled to determine them only for a short term and in urgent cases. It can be concluded that the decision on preventive operational resources is to be carried out by independent and objective state institution. This institution has to evaluate and correlate the fundamental rights of at least two private persons fairly and lawfully. On the one hand, for example, the rights to life and health, on the other hand, for example, the rights to private life, the rights to freedom.

1.4. Acquisition and Summarization of Information on Violence Risk

Part 1 of Article 1055 of the Law on Obligations Act prescribes that the victim or yet only threatened private person is entitled to request for stopping the behavior of the other person, which threatens his/her rights and lawful interests. Therefore, the victim or a threatened private person him/herself is to actively apply to the court with a claim statement for determination of preventive operational measures.

Whereas in the criminal procedure, according to Paragraph 10 of Part 1 of Article 38 of the Code on Criminal Procedure, one of the victim's rights is to give his/her consent and to request for application of Temporary Protection Order. Parts 1 and 2 of Article 141^1 of the Code on Criminal Procedure prescribe that the State Prosecutor's Office can request to determine preventive operational measures, yet victim's consent is necessary in all cases. The consent of a private person, in favor of whom preventive operational measures can be determined, has the decisive significance. This condition is evaluated ambiguously, since it can cause situations, when the victim does not give his/her consent due to the influence of the guilty person or due to other subjective reasons.[32]

Thus, both in civil procedure and criminal procedure, preventive operational measures are an individual rights-protection measure. Such preventive operational measures are applied with an aim to

[30] Domestic violence: your rights. Protection provided by the police, criminal law, and civil law. Bigkordinierung, Berlin, 2010. - p.6.-7.
[31] Violence against women: Good practices in combating and eliminating violence against women. UN Division for the Advancement of Women. Vienna, 2005. - p.7. Available: http://www.un.org/womenwatch/daw/egm/vaw-gp2005/docs/experts/logar.dv.pdf [viewed on 07.08.2012.].
[32] Human rights in Estonia 2010. Annual Report of the Estonian Human Rights Centre, 2011, p.13. Available: http://humanrights.ee/wp-content/uploads/2011/09/aruanne2010-en-3.pdf [viewed on 08.08.2012.].

protect particular private person in both cases. They cannot be applied for the provision of abstractive interests of the society. In Germany, a parent can apply with a request for preventive operational measures for the benefit of his/her child based on Articles 1666 and 1666a of the German Civil Code. A child over 14 can apply to the court him/herself or with the help of lawful representative.[33]

In the civil procedure, the protected person itself is to inform about the violation or the risk of damage. Similarly in the criminal procedure, this is to be done by the victim, yet, in this case the prosecutor's office helps to obtain and summarize evidence, as well as the prosecutor's office can speak in the court on behalf of the private person.

By contrast, in Germany the threatened person can submit his/her explanations during the hearing, in which potentially guilty person does not participate, if he/she is able to substantiate that it might cause additional threat to rights or lawful interests.[34]

1.5. Assessment of Violence Risk and Evidence Standard

The already determined actions, which cause damage or certify the committal of actual damage, lay the foundation of the application of Protection Order both in Criminal Law and Civil Law. The request for determination of the Protection Order is to be clear, justified and proportionate.

Evidence standard in the civil procedure is different from the one in the criminal procedure. Often enough, when there is no sufficient evidence in the criminal procedure, private persons can individually request for application of preventive operational measures according to the civil procedural procedure, even though in practice the evidence standard required by the court in the civil procedure is so high that the protection of a private person is determined relatively rarely.[35]

The role of a judge differs in both procedure rights, even though, unlike other cases, the cases in the civil procedure are considered not only based on the competition principle, but also the judge actively cooperates in acquisition of evidence according to his/her possibilities and according to his/her initiative. Even though the judge is not only the assessor of arguments of the parties, but also the summarizer, the party is to submit enough evidence to prove his/her argument. The court assesses the evidence according to its internal conviction, as well as by adhering to legal cognition, which is based on the laws of logic, scientific findings and justice principles. The court is to make certain that the particular person threatens the rights and lawful interests of the other person by excluding all reasonable doubts.

[33] Domestic violence: your rights. Protection provided by the police, criminal law, and civil law. Bigkordinierung, Berlin, 2010. - p.15.
[34] Ibid. – p.16.
[35] Roundtable Discussion on 17 May 2012 at the State Prosecutor's Office of the Republic of Estonia.

Before carrying out the decision on determination of preventive operational measures, the court hears out both the person, against whom they are determined, and the person, in favor of whom they are determined. If necessary, the court can hear out people close to the procedure participants, representatives of municipality and police (Article 545 of the Code on Civil Procedure).

Part 1 of Article 1055 of the Law on Obligations Act prescribes that the Protection Order is applied, if unlawful damage is extended or the threats are such that the unlawful damage might be done. Whereas Part 2 of the same Article prescribes that preventive operational measures cannot be applied, if it is reasonable to expect such behavior from the second party, since it is normal bearable co-existence of people or it is in the essential interests of the society. In these cases, a person cannot request for preventive operational measures, but only for remuneration for incurred losses, moral or personal damage.

According to Part 3 of Article 141^1 of the Code of Criminal Procedure, investigative judge, while deciding on application of preventive operational measures, assesses the materials of criminal case, interrogates the suspected or the accused and, if necessary, hears out the victim in order to make sure that the request for Temporary Protection Order is justified. The court or the investigative judge must hear out both the prosecutor and upon the request of the suspected or the accused its representative.

1) Reasons for determination and 2) conditions for application of the Protection Order are to be specified in the court judgment.

The obligation to prove becomes inapplicable, if it is possible to use mediation or conciliation within the framework of preventive operational measures, thus, providing the possibility for the private persons to make it up by providing secure environment and conditions for this procedure.[36]

1.6. Appealability and Application Term of Preventive Operational Measures

According to Part 1 of Article 544 of the Code on Civil Procedure, preventive operational measures can be applied for up to 3 years. Thus, the court has the freedom of action to determine the most appropriate term for a particular situation within the framework set in the law. It is not specified *expressis verbis* in the law whether the court can prolong this three-year term, as well as there is no restriction for a person to request for determination of preventive operational measures; thus, it can be concluded that a person has to repeatedly apply to the court with request after the termination of this term, if there is a ground for application of preventive operational measures.

If conditions change, the court can cancel or amend the previously carried out decision on preventive operational measures by hearing out case participants prior to that (Article 548 of the Code

[36] Sal. Action Plan against Domestic Violence 2008-2011. Turning point. Norwegian Ministry of Justice and the Police, p.12. Available: http://www.krisesenter.com/english/Vendepunkt_eng.pdf [viewed on 07.08.2012.].

on Civil Procedure). The court repeatedly assesses the situation upon the request of any of the case participants rather than upon its own initiative.

The court judgment on application of preventive operational measures can be appealed according to the appeal procedure by the person, to whom any of the lawful obligations is applied with the aim to protect the other person (Part 1 of Article 549 of the Code on Civil Procedure). Whereas the court judgment, by which preventive operational measure is denied to be applied, or the court judgment, by which preventive operational measure is cancelled or amended, can be appealed according to the appeal procedure by the person, in favor of whom lawful protection measures are determined (Part 2 of Article 549 of the Code on Civil Procedure).

In the criminal procedure, a term, for which Protection Order is determined **at the pre-trial stage**, is not specified in the law. Thus, it can be determined for the whole period of the criminal procedure until the judgment of the court comes into effect.[37] Article 141^2 of the Code on Criminal Procedure prescribes that the suspected or the accused, as well as its representative, can ask the court or the investigative judge to reconsider the necessity of the determined limitation or to amend its conditions in three months after the determination of Protection Order. The court considers it within five days from the day of receipt of the request. All procedure participants are to be heard out once again. If Part 5 of Article 141^1 of the Code on Criminal Procedure grants the rights to appeal initial judgment of the court or the investigative judge on determination or non-determination of Protection Order to the victim, prosecutor, the suspected and the accused, repeated judgment of the court or the investigative judge cannot be appealed, except if the Protection Order is cancelled or amended. Repeated request for reconsideration can be submitted once again in three months.

Moreover, the victim him/herself and the prosecutor's office (upon victim's consent) can ask the court or the investigative judge to amend the conditions of the Protection Order or to cancel it. The procedure is similar to the one used for carrying out the initial decision (see Article 141^3 of the Code on Criminal Procedure).

Whereas **at the posttrial stage**, the victim can ask the same court to determine additional protection based on the Law on Obligations Act, namely Protection Order for up to 3 years (Part 1 of Article 310^1 of the Code of Criminal Procedure).[38]

1.7. Procedural Status of Threatened (Protected) Person

[37] Human rights in Estonia 2010. Annual Report of the Estonian Human Rights Centre, 2011, p.13. Available: http://humanrights.ee/wp-content/uploads/2011/09/aruanne2010-en-3.pdf [viewed on 08.08.2012.].

[38] See Suzan van der Aa . Protection Orders in the European Member States: Where Do We Stand and Where Do We Go from Here, p.190. Available: http://rd.springer.com/static-content/0.4995/pdf/805/art%253A10.1007%252Fs10610011-9167-6.pdf?token=1344343075893-f351a1b7ddcbd42a6ae1bae8a73021aedf8392c263b17cb11bc72c0d257ee476689c37211c6a9896ebe63855067ed3e0b7c [viewed on 08.07.2012.].

In the civil procedure, the status of a threatened (protected) person is the applicant, while the status of a person, which caused the damage or is causing threats, is the defendant.

In the criminal procedure, preventive operational measures can be applied against the suspected or the accused within the framework of the criminal procedure, within which the person, in favor of whom they are determined, is a victim (Part 1 of Article 141^1 of the Code on Criminal Procedure).

1.8. Supervision of Fulfillment of Preventive Operational Measures

According to Part 5 of Article 408 of the Code on Criminal Procedure, the decision on Protection Order is to be fulfilled upon its approval. Part 6 of Article 141^1 of the Code on Criminal Procedure prescribes that the decision of the court or the investigative judge on determination of Protection Order is sent not only to the victim, the suspected and the accused, but also, similarly as in Germany, to the police department at the place of residence of the victim.[39] The court and the investigative judge send it to other persons, who can be affected by the Protection Order, as well. The situation is similar in the civil procedure as well. De jure the control is determined, yet de facto it is difficult to ensure its effectiveness. It is difficult for the private persons to prove that the other person has violated the limitations set by the court. It is difficult to immediately notify the police at the moment of violation and such violations rarely have lasting evidence. Electronic supervision (with the help of GPS technology) can be the solution.[40] By contrast, in USA and Spain, it is already implemented for this purpose, while in Norway[41], Sweden and Portugal it is being tested. Ministry of Justice of Estonia has calculated that the use of such technology in 50 cases will cost EUR 133,000, as well as it cannot be used in order to prevent phone calls, text messages and other similar forms of communication, which are nowadays one of the most widely-used forms in Estonia. Protection Order was determined 112 times within the period from 2006 to 2012; 102 cases of violations were established. Most of the violations were committed by the same persons. For example, in 2010 90% of violations were committed by only two persons, whereas in 2011 70% of violations were committed by 4 persons.[42]

[39] Domestic violence: your rights. Protection provided by the police, criminal law, and civil law. Bigkordinierung, Berlin, 2010. - p.16.
[40] Roundtable Discussion on 17 May 2012 at the State Prosecutor's Office of the Republic of Estonia.
[41] Action Plan against Domestic Violence 2008-2011. Turning point. Norwegian Ministry of Justice and the Police, p.8. Available: http://www.krisesenter.com/english/Vendepunkt_eng.pdf [viewed on 07.08.2012.].
[42] Tammik O. Ministry Considers GPS Trackers for Restraining Orders. Available: http://news.err.ee/society/8329aef0c164-4974-9df8-eade15208878/ [viewed on 07.08.2012.].

If in Austria the police have determined the Protection Order, it checks the situation with the protected and the guilty person in three days upon its own initiative. In case of violation, the person is punished with a fine or even arrest.[43]

1.9. Consequences of Violation or Non-fulfillment of Preventive Operational Measures

Special rights norm, which prescribes criminal liability for violation of Protection Order, is included in the Criminal Law. Article 331^2 of the law prescribes that the person is called to criminal liability and is punished with pecuniary punishment[44] or even imprisonment for up to one year 1) for the violation of the Protection Order, issued by the court, if threats to person's life, health or property occurred as a result of it, or 2) if the Protection Order is violated repeatedly.

However, the responsibility for violation of the Temporary Protection Order accepted during the criminal procedure is not set in the Criminal Law. Article 331^2 of the Criminal Law is applicable only for the Protection Order determined by the court. In this situation the victim loses the motivation to request for determination of preventive operational measures and the guilty person has no fear to violate them, thus, there is no effective mechanism, how to prevent the guilty person from repeated violation and wish to influence the victim.[45]

Whereas, if the person does not fulfill lawful order of the police on preventive operational measures, the person is to be punished with fine in the amount of up to 200 fine units or with an arrest according to Article 276 of the Criminal Law.[46]

In Germany, pecuniary punishment is to be paid for the violation or the imprisonment is determined in certain cases.[47]

1.10. Steps and Activities of Implementation of Preventive Operational Measures

In Estonia, the amendments of several aforementioned regulatory enactments were carried out in order to ensure the implementation of this institute of rights. Estonia adopted this institute of rights together with the whole legal regulation of civil rights from Germany. It can be said that it did that even unquestionably. This explains the fact that in Estonia, the rights doctrine was not fully developed for

[43] Violence against women: Good practices in combating and eliminating violence against women. UN Division for the Advancement of Women. Vienna, 2005. - p.8. Available: http://www.un.org/womenwatch/daw/egm/vaw-gp2005/docs/experts/logar.dv.pdf [viewed on 07.08.2012.].
[44] See Article 44 of the Penal Code of Estonia on Pecuniary Punishment.
[45] Human rights in Estonia 2010. Annual Report of the Estonian Human Rights Centre, 2011, p.13. Available: http://humanrights.ee/wp-content/uploads/2011/09/aruanne2010-en-3.pdf [viewed on 08.08.2012.].
[46] See Article 47 and 48 of the Penal Code of Estonia regarding fine and imprisonment.
[47] Domestic violence: your rights. Protection provided by the police, criminal law, and civil law. Bigkordinierung, Berlin, 2010. - p.16

particular issues and no stable and wide court policy was formed. Of all types of preventive operational measures the court mostly carries out the decision on restriction to communicate.[48]

1.11. Implementation and Application Problems of the Institute of Preventive Operational Measures

One of the main problems is the fact that Estonia adopted legal regulation from other countries without performing the all-embracing analysis of the institute of preventive operational measures prior to that.

Wide theoretical doctrine of this institute has not yet been developed in Estonia and the society lacks information. Private persons are unable to ensure sufficient amount of evidence in order for the court to apply Protection Order against one of the persons, who threatens or is actually intending to threaten another person.[49]

It is also not clear for the courts what the minimal limit for evidence is in order to apply Protection Order, and how this standard in civil procedure differs from the one in the criminal procedure. It is also impossible to be established in practice, since the number of such type of cases is relatively small. The representative of the Tallinn Crisis Centre for Women pointed out[50] that the existing procedure in Estonia regarding prohibition from approaching, which can be issued by the court, is considered to be unsuccessful, since according to the law, the victim bears the responsibility to submit the evidence to the court, but often enough it is very difficult or even impossible to be accomplished, especially in cases when the dispute has taken place between the persons of the same household. The practice shows that approximately 50% of all clients of the women's home would gladly use a Restraining Order and request the court for it. Yet, it is easier to use these protection measures in criminal cases, while it is difficult to provide sufficient evidence for that according to the civil procedure.

It is currently planned to develop socially-informative advertising campaigns in order to inform people more on the possibility to protect themselves from further harm or threat.[51] There is no sufficient understanding of the possibilities of a Restraining Order in the society, and the hopes of people for its influence do not correspond to the real situation. Victims also refuse to use this judicial mechanism due to condolence, conciliation, social and financial factors, as well as due to fears.[52]

[48] Roundtable Discussion on 17 May 2012 at the State Prosecutor's Office of the Republic of Estonia.
[49] Roundtable Discussion on 17 May 2012 at the State Prosecutor's Office of the Republic of Estonia.
[50] Roundtable Discussion on 18 May 2012 at the Tallinn Crisis Centre for Women.
[51] Roundtable Discussion on 17 May 2012 at the State Prosecutor's Office of the Republic of Estonia.
[52] Ministry of Justice (2009) Lahenemiskeelu kasutamine kriminaalmenetluses [Use of restraining orders in criminal proceedings]. Available at:

Moreover, it has to be taken into account that a Protection Order determines judicial regime in relations of two or more persons. It is also important to ensure its actual compliance and ensure the measures for prevention of reasons of this conflict. Not all persons accept the judicial prohibition as a sufficient ground for limitation of their behaviour.

http://www.just.ee/orb.aw/class=file/action=preview/id=52532/L%E4henemiskeelu+kasutamine+kriminaalmenetluses.pdf

2. Analysis of the Legal Regulation of Finland

Legal regulation of Finland regarding application procedure and problems in practice of preventive operational measures is analysed in this chapter. In Finland, application procedure of preventive operational measures is regulated by a special law "Act on Restraining Order"[53]. The law came into effect on January 1, 1999 and provides the possibility to stop unlawful and dangerous action of the offender before it reaches critical limit and becomes a crime. According to the law, responsible state institutions, taking into account circumstances of the cases, carry out a decision, by which special prohibitions or obligations are imposed on the offender, thus, protecting the victims from further violence cases.

In Finland, a Protection Order is not considered to be a type of decision in the criminal procedure nor in the civil procedure, yet it is a peculiar interdisciplinary tool and its application procedure is regulated by a special law, which is included neither in the block of criminal law nor in the block of civil law.[54]

Original version of the law prescribed three different types of Protection Order – Restraining Order, Temporary Restraining Order and Extended Restraining Order. In the course of time, the need for new special type of order appeared while applying law norms, and in 2004 the law was supplemented with an Eviction Order. This type of order differs from the orders previously existing in the law, because by applying this order, the offender is evicted from the property, where he/she resides with a threatened person, regardless of the property rights. As specified by the experts of Finland, one of the reasons to include an Eviction Order into the law was the necessity of effective protection of women, children and elderly people from domestic violence (in relations).[55]

Having assessed the available documents, it is to be concluded that the aim of the law is to develop effective and comparatively easily applicable tools of crime prevention in cases, when any particular person threatens the life, health, freedoms or privacy of another person. Similarly as in Estonia, in Finland a Protection Order is an individual protection mechanism and it can be applied only in case any particular person involves the rights of any other particular person.

As specified by the experts of Finland,[56] by developing the law it is necessary both to ensure the possibilities of state officials to control the fulfilment of a Protection Order and to provide the involved parties with measures to decrease unlawful behaviour in the future and to provide moral support to violence victims. Unfortunately, it is to be stated that in Finland the norms, which ensure the prevention,

[53] Act on Restraining Orders. Entry into force 1 January 1999. Available at: http://www.finlex.fi/fi/laki/kaannokset/1998/en19980898.pdf [viewed on 08.08.2012.]
[54] Van der Aa S. Protection Orders in the European Member States: Where Do We Stand and Where Do We Go from Here? p. 8. Available at: http://arno.uvt.nl/show.cgi?fid=122116 [viewed on 07.08.2012.]
[55] Rantala K. The problem of using rights as a means to advocate legal reforms: the example of the domestic exclusion order. Paper presented at 9th Conference of the European Sociological Association, Lisbon, 2-5.09, 2009, p. 2.
[56] Roundtable Discussion on June 6, 2012 at the Ministry of Justice of Finland.

are not interconnected with special programs, the aim of which is to directly influence the offender's behaviour by changing it and to provide effective support to the violence victims.

The experience of Finland confirms the fact that protection tools included in the law are to be balanced with other prevention measures, for example, special training or treatment programs for persons responsible for the act of violence, as well as rehabilitation programs for violence victims. In the practice of Finland the cases, when the application of a Protection Order did not solve the problem and worsened it instead, can be observed.[57]

2.1. Types of Protection Order

As it has been mentioned before, the law prescribes four types of Protection Order - Restraining Order, Temporary Order, Extended Restraining Order and Eviction Order.

2.1.1. Restraining Order

The law prescribes the possibility to issue the so-called Restraining Order. This is one of the most wide-spread types of Protection Order and it is applicable in case it is possible to stop offender's unlawful action by prohibiting the person from contacting the threatened person. According to the Part 1 of the Article 2 of the law, a Restraining Order can be issued, if there are well-grounded doubts that the person might endanger the life, health, freedoms or privacy of any other person or might trouble any other person in any other way.

A Restraining Order prescribes limitations for the offender to meet or contact in any other way the person, who is protected by this order. Similarly, the offender is prohibited from stalking or observing the protected person.[58] A discussion regarding whether person's stalking should not be recognized as a special type of crime and, thus, should be withdrawn from the area of Protection Order effect is currently taking place in Finland.

A Restraining Order can be issued for a term – up to one year, yet, in case of significant circumstances, it is possible to prolong the term for up to two years.

2.1.2. Temporary Order

A Temporary Order is an order issued for a short period of time by immediately reacting to any kind of incident. This order comes into effect upon its issue and has a short duration term – till the case

[57] Author's note: For example, a woman is murdered after a violent husband has received an invitation to court, where a case regarding the issue of a protection order is considered. See: Rantala K. The problem of using rights as means to advocate legal reforms: the example of the domestic exclusion order. Paper presented at 9th Conference of the European Sociological Association, Lisbon, 2-5.09, 2009, p. 6.

[58] Act on Restraining Orders. Part 1 of Article 3, Entered into force 1 January, 1999. Available at: http://www.finlex.fi/fi/laki/kaannokset/1998/en19980898.pdf [08.08.2012.].

is considered in the court. Having assessed the nature of this order, it is to be concluded that this order can be classified as an emergency measure for effective and fast protection of persons, in case there is no possibility to apply to the court and to wait for a Protection Order to be issued by the court. The content of a Temporary Order might be such as to determine the prohibition for the offender from contacting the threatened person and obligation to immediately leave the shared shelter.

A Temporary Order is issued by an official, who has the right to carry out a decision on the arrest, as well as by a regional/city court.[59] The experts of Finland specified that a fixed-term order is usually determined by the respective police official, often enough – by the prosecutor's office and only in very rare cases – by the court.

Responsible official issues a Temporary Order, if there is essential and expeditious necessity to protect a person, regardless of the fact whether a case of violence is established by the police, or a threatened person has applied to the police with this request him/herself.[60] As specified by the experts of Finland, threatened persons usually apply to the police themselves and only in very rare cases the police itself issues ex officio a Temporary Restraining Order by reacting to the incident.

As established in practice, within the period from 2005 to 2006 half of Temporary Orders issued by the police officials did not end with a simple Restraining Order or an Eviction Order[61] and the cases were closed.

2.1.3. Extended Restraining Order

An Extended Restraining Order is a special form of Restraining Order and it is applied in cases, when a Restraining Order does not reach its aim, namely, simple prohibition from approaching is not effective enough. In these cases the court, which considers the case, can determine in the order that a person, who performs unlawful action, is prohibited from not only communicating or contacting in any other way with a threatened person, but also – from being in the vicinity of the dwelling, place of work or vacation house of a threatened person or in any other place, where the protected person is located.

This type of order differs from an Eviction Order, since the latter is applied in cases, when both parties reside in one dwelling, whereas, an Extended Restraining Order is applied in cases, when the parties do not share the dwelling or the offender disturbs any other person but of the same household.

An Extended Restraining Order is issued based on provisions and conditions, which refer to a simple Restraining Order.

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[59] Act on Restraining Orders. Part 1 of Article 11, Entered into force 1 January, 1999. Available at: http://www.finlex.fi/fi/laki/kaannokset/1998/en19980898.pdf 08.08.2012.]

[60] Act on Restraining Orders. Part 2 of Article 11. Entered into force 1 January 1999. Available at: http://www.finlex.fi/fi/laki/kaannokset/1998/en19980898.pdf 08.08.2012.]

[61] Roundtable Discussion on June 7, 2012 at the Ministry of Justice of Finland.

2.1.4. Eviction Order

An Eviction Order is a specific type of Protection Order and it is applied only in cases, when the offender performs the activities, which significantly threaten the life, health or freedom of persons of the same household. According to this order, the offender must leave the shared place of residence (or dwelling) irrespective of the fact whom the property rights to this dwelling belong to.

Unlike other types of Protection Order, when issuing an Eviction Order (also Temporary Eviction Order), the court both places significant importance to the assessment of offender's behaviour, including also the assessment of offender's previous criminal record or the fact of existence of any other unlawful activity, and determines high danger level of activity performed by the offender. In case the aforementioned conditions are not established, the court carries out a decision on application of a different type of protection measure.

As it has been mentioned before, such type of order was developed only in 2004 and came into effect in the beginning of 2005. It is a special type of order and its application requires extremely great attention, taking into account the fact that, firstly, its issue affects essential rights of a person, rights to property, which include the right to use own property, secondly, the offender ends up on the street, what can cause opposite consequences – the person might become even more aggressive and perform another crime against both the threatened person and other people.

The issue of an Eviction Order does not affect property rights in any way and de jure the owner of the dwelling continues to be the same.

Unlike Restraining Order or Extended Restraining Order, this order can be issued for a fixed period of time - up to three months.

2.2. Issue Procedure of Protection Order

Protection Orders are issued by a regional/city court of general jurisdiction by considering the case being composed of one judge.[62]

The competency of the court is determined according to the principle of protected person domicile, namely, the case falls under the competence of the court, on the territory of which the protected person is to be protected – be that the place of residence or place of work, or any other place of stay. As admitted by the experts of Finland, the cases, which have reached the court, are usually considered by the judge, who considers criminal cases. The law prescribes that in case a criminal

[62] Act on Restraining Orders. Article 4. Entered into force 1 January, 1999. Available at: http://www.finlex.fi/fi/laki/kaannokset/1998/en19980898.pdf [08.08.2012.]

process against the offender is initiated, a Protection Order can be issued by the court, which considers the criminal case.[63] The issue of a Protection Order can be requested by:

1) a person, who feels threatened;
2) the police;
3) the social service;
4) the prosecutor's office.

An application with request for issuing a Protection Order can be submitted both orally and in writing. In Finland, no payment for submission of an application is determined, yet the parties must cover all expenses, which can arise in relation to the Protection Order (for example, lawyer's expenses). Even though the law does not determine the form of plaintiff's request or the compulsory components of a claim, as it is specified by the experts, when submitting a claim for a Protection Order to the court or when applying to the police and/or prosecutor's office, the plaintiff must specify the following information:

- what kind of threat is caused to the person or which rights are violated;
- who is the person threatening or infringing the rights;
- how often violence or threatening takes place; if it is a protracted violation, when has it started;
- who the witnesses are or what evidence can be submitted.[64]

The Protection Order cases are immediately considered in the court, taking into account their specific nature. The court, having received the claim for a Protection Order, informs both the offender and the person, who will be protected by the order. The court is obliged to hear out both parties, but non-appearance of the offender at the hearing is not considered to be the reason not to consider the case and not to issue the order. The court, definitely, has the possibility to postpone the court hearing in case the participation of person, whom a Protection Order refers to, in the court hearing is of essential significance. As specified by the experts of Finland, the court begins to consider the claim for a Protection Order within two weeks and closes the case – within two months on the average.

The procedure of consideration of Protection Order cases radically differs from the procedure of consideration of the so-called simple cases, because in this case an objective investigation principle, which is not typical for the courts of general jurisdiction, is applied. According to the law, the judge

[63] Act on Restraining Orders. Part 2 of Article 4. Entered into force 1 January, 1999. Available at: http://www.finlex.fi/fi/laki/kaannokset/1998/en19980898.pdf [08.08.2012.]
[64] Brochure on Conditions of Issue of Protection Order Available at: http://www.om.fi/en/Etusivu/Julkaisut/Esitteet/Lahestymiskielto/Mitenlahestymiskieltoahaetaan [viewed on 16.08.2012.]

acts as an active procedure participant, as well as obtains necessary information and evidence upon his/her own initiative, if such necessity exists.

A Protection Order comes into effect upon its issue by the court and its operation is not stopped even in case an appeal is submitted.

The law prescribes that the court is obliged to inform the case participants about the issued Protection Order, particularly in cases, when the parties have not participated in the proceeding.[65]

2.3. Issue Procedure of Temporary Order

A Temporary Order can be issued both by a regional/city court and the police and prosecutor's office[66], based on the claim of a threatened person or upon their own initiative, if justified concerns regarding the life or health of a threatened person exist. As specified by the experts of Finland, a Temporary Order is usually issued by a police official and in very rare cases – by the court, because threatened persons apply to the police and inform about the threat in most of the cases. Additionally, the experts of Finland admitted that threatened persons believe that it is easier to start protection process via police mediation rather than by applying to the court themselves.

The law prescribes that the responsible official (or court) must hear out both involved parties prior to the issue of a Temporary Order. In case a person, whom the order will apply to, cannot be contacted or found, the order is issued without hearing out this person. Yet it is an exception from the general procedure.

A Temporary Order issued by a police official or prosecutor, is to be delivered to the court within three days from the day of its issue in order for the court to approve it. The court is obliged to initiate the case and to carry out an appropriate decision – on issue of an appropriate Protection Order or termination of the case – within seven days.[67]

The legislator has determined a special procedure in case the court receives a Temporary Eviction Order issued by a police official or prosecutor. In this case, the court is obliged to hold the first court hearing within one week from the day when the documents are delivered to the court.[68] If a significant reason exists, the court can determine different time of court hearing, but then the court must decide, whether the existing Temporary Eviction Order will be valid within this period.

2.4. Content of Protection Order

[65] Act on Restraining Orders. Article 9. Entered into force 1 January, 1999. Available at: http://www.finlex.fi/fi/laki/kaannokset/1998/en19980898.pdf [viewed on 08.08.2012.]
[66] Act on Restraining Orders. Part 1 of Article 11. Entered into force 1 January, 1999. Available at: http://www.finlex.fi/fi/laki/kaannokset/1998/en19980898.pdf [viewed on 08.08.2012.]
[67] Ibid. Part 1 of Article 12.
[68] Ibid., Part 1 of Article 12a.

A Protection Order consists of the following compulsory components:

- name of institution, which issues the order;
- date of carrying out the decision;
- name and surname of a submitter of the claim for issue of a Protection Order;
- details of a person, whom the Protection Order is applied to, and details of a person, who is protected by the Protection Order;
- brief description of the case;
- decision and substantiation;
- set limitations.[69]

Similarly, special conditions, if any (for example, rights to meet the children, etc.), and clause on consequences of violating the order must be specified in the order. If an Eviction Order is issued, the address of the property, which must be left by a person, must be specified in the order, as well as conditions regarding how a person can take his/her personal property have to be included. If the court considers it to be necessary, the order might include the conditions regarding the place, where a person can receive help in case he/she has no other place to live at.[70]

2.5. Conditions for Issue of Protection Order

Taking into account the special nature of a Protection Order – tools of crime prevention, in order to carry out a decision on issue of a Protection Order, there have to be justified doubts regarding the fact, whether the offender might commit crime or cause essential threat to the life, health or other freedoms of any particular person. The fact that a crime was committed in a similar situation does not have to be established prior to that, but if such a circumstance is established, it will be a sufficiently serious ground for the issue of a Protection Order.

In case a criminal case against the offender is initiated on some other issue, obtained evidence come in useful when considering the issue of a Protection Order. Accepting a Protection Order, the following factors are assessed:

1) mutual connections of involved persons;
2) factual circumstances of the case;
3) essence of invasion;

[69] Act on Restraining Orders. Part 1 of Article 8. Entered into force 1 January, 1999. Available at: http://www.finlex.fi/fi/laki/kaannokset/1998/en19980898.pdf [viewed on 08.08.2012.]
[70] Ibid. Part 3 of Article 8.

4) significance of invasion;
5) invasion repeatability fact - whether invasion is single or repeated (how often, in what way and under what conditions?);
6) possibility that the offender will repeat his/her unlawful behaviour with regard to the threatened person ever again.[71]

As specified by the experts of Finland, when preparing an Eviction Order, the following factors are to be assessed in addition to the aforementioned conditions:

1) mutual relations and history of relations of the persons involved in the dispute;

2) living conditions of victims;

3) offender's identity (previous criminal record, addictions, social status, etc.) and other conditions important to the case.[72]

The legislator has not included in the law any special conditions regarding the evidence, which would have to be submitted when requesting for a Protection Order or when the court decides on the issue of a Protection Order. As pointed out by the experts of Finland, the obligation to prove is primarily imposed on a submitter of the claim.[73] If a case is initiated upon the request of the state institutions (police, social service or prosecutor's office), all evidence, which existed in the case up to this moment, have to be attached to the case. While considering the case, the court (and police) assesses the case, taking into account the submitted evidence (explanations, submitted materials, statements of witnesses, etc.[74]), thus, establishing the fact of threat, possibility of repeated threat, essence and significance of threat. As it has been mentioned before, the court is entitled to collect the evidence itself in addition to the already obtained evidence in case the submitted evidence is insufficient.

2.6. Amount of Evidence, When Issuing Protection Order

Having assessed the norms of law, it is to be concluded that the legislator has not determined the minimal or compulsory amount of evidence, which would be necessary in order for the court or responsible official to carry out a decision on the issue of a Protection Order. Likewise, the legislator has not determined the indices, according to which it can be established that the risk of violence is sufficiently high for the necessity to apply protection measures, specifying only that a Protection Order is issued in order to prevent unlawful activity, which is directed against the life, health, freedoms or

[71] Act on Restraining Orders. Article 2a of the Law. Entered into force 1 January, 1999. Available at: http://www.finlex.fi/fi/laki/kaannokset/1998/en19980898.pdf [viewed on 08.08.2012.]
[72] Roundtable Discussion on June 6, 2012 at the Ministry of Justice of Finland
[73] Roundtable Discussion on June 6, 2012 at the Ministry of Justice of Finland
[74] Brochure on Conditions of Issue of Protection Order. Available at: http://www.om.fi/en/Etusivu/Julkaisut/Esitteet/Lahestymiskielto/Mitenlahestymiskieltoahaetaan [viewed on 20.08.2012.]

personality of any particular person. Likewise, the legislator has determined that there have to be justified doubts that the offender will continue unlawful activity against any particular persons.[75] An exception can be observed with regard to an Eviction Order; here the legislator has determined that the high danger level of activity performed by the offender and significant threat to the life, health or other freedoms of a threatened person (or several of them) have to be established.

Whether the doubts are justified or not is established on the basis of the submitted evidence and assessment of the particular situation. As pointed out by the experts of Finland, taking into account special interdisciplinary character of a Protection Order, conditions and evaluations, which are applied in case a crime is committed, and in case not that much evidence is required in the case as is in the criminal procedure, cannot be applied.[76] Doctor's statements, statements of witnesses, threatening letters, etc., are specified as typical evidence.[77]

2.7. Appeal Procedure of Protection Order

Protection Orders (except for Temporary Protection Orders) are subject to appeal in the Court of Appeal. The legislator has not determined the term, within which the appeal is to be submitted and what the amount or form of appeal is, thus, general provisions are applied in respect to the appeal of a decision in the criminal procedure – within 30 days from the day of carrying out the decision.[78]

2.8. Consequences of Violation or Non-fulfilment of Protection Order

According to the Article 17 of the law, if a person, whom a Protection Order was issued to, violates the conditions specified in the order, his/her activity can be classified as a crime and the person is punished according to the Criminal Law. The Criminal Law prescribes the punishment – imprisonment for up to one year. As seen in practice, Protection Orders are violated in approximately 30% of cases and the persons are punished with imprisonment.[79] As stated by the experts of Finland, the offender usually not only has problems with compliance with a Protection Order, but also had or has problems with compliance with the law in general, as well as this non-compliance is often related

[75] Act on Restraining Orders. Part 1 of Article 2. Entered into force 1 January, 1999. Available at: http://www.finlex.fi/fi/laki/kaannokset/1998/en19980898.pdf [viewed on 08.08.2012.]
[76] Roundtable Discussion in Helsinki, June 6, 2012
[77] Informative material on application procedure of protection measure. Available at: http://www.poliisi.fi/poliisi/home.nsf/ExternalFiles/restrainingorder_2009/$file/restrainingorder_2009.pdf, p. 3 [viewed on 20.08.2012.]
[78] Judicial system in Finland. Appeals. Available at: http://www.oikeus.fi/17305.htm [viewed on 20.08.2012.]
[79] Roundtable Discussion on June 6, 2012 at the Ministry of Justice of Finland

to other anti-social aspects – alcohol and drug addictions, unemployment, psychic illnesses, depression, etc.

2.9. Monitoring Procedure of Fulfilment of Protection Order

Compulsory monitoring measures, which might have to be taken by the state institutions in order to verify whether the person specified in a Protection Order complies with the determined limitations, are not specified in the regulatory enactments. As pointed out by the experts of Finland, the fulfilment of a Protection Order is most effectively monitored by a threatened person and in cases, when a violation has already taken place, to inform the police or to provide him/herself with evidence and apply to the court him/herself. The police do not call and do not inquire about the compliance with the a Protection Order; the police react only to the incident.[80]

2.10. Application Practice of Protection Order in Finland and Identified Problems

As specified by the experts of Finland, approximately 1500 Protection Orders[81] are issued on average each year and they constitute approximately half of the applications submitted to the court.[82] During the first two years since an Eviction Order was included into the law (2005-2006), 368 Eviction Orders were issued. In 166 cases the orders were issued as a continuation to Temporary Eviction Orders issued by the police.[83] As it has been established before, one third of Protection Orders is violated and the persons are sentenced to real imprisonment.

In the research, which was carried out by the experts of Finland on the progress of implementation of an Eviction Order, it was established that the persons, who are evicted from the shared dwelling, comply with the following description: 99% of them are men, 92% of them are of Finnish origin, average age – 43 years and represent the lowest social layer. The experts established

[80] Roundtable Discussion on June 6, 2012 at the Ministry of Justice of Finland
[81] Ibid.
[82] *Less than half of restraining order applications are granted. Available at:* http://www.helsinkitimes.fi/news/index.php/finland/finland-news/domestic/1963-ts-less-than-half-of-restraining-orderapplications-are-granted [viewed on 24.08.2012.]
[83] Rantala K., Smolej M., Leppälä J. and Jokinen A. On a slippery slope – an assessment of an eviction and barring order. Summary. Available at: http://www.optula.om.fi/Satellite?blobtable=MungoBlobs&blobcol=urldata&SSURIapptype=BlobServer&SSURIcontainer=Default&SSURIsession=false&blobkey=id&blobheadervalue1=inline;%20filename=Summary.pdf&SSURIsscontext=Satellite%20Server&blobwhere=1225117282962&blobheadername1=ContentDisposition&ssbinary=true&blobheader=application/pdf [viewed on 20.08.2012.]

that most of the offenders have alcohol addiction problems, mental health disorders and previous criminal record.[84]

Having listened to the experience of experts of Finland, the following problems were identified:

- Finland cannot issue a Protection Order, if it is the society in general that is threatened rather than a particular person.

As specified by the experts of Finland, in case a person disturbs the peace of the society or performs unlawful activities in public place/form (thus, not causing direct threat to any particular person, but rather to the society in general), a Protection Order cannot be issued in respect to this person, yet such activities are to be classified as administrative violation or criminal offence.

- The claim for issuing the order cannot be submitted by non-governmental organizations or third parties.

During the meeting with the non-governmental organization of Finland "*The Federation of Mother and Child*", its representative Sari Laaksonen pointed out that in case a threatened person does not apply to the court or police him/herself, and the police has not recorded the conflict, neither non-governmental organizations nor other family members can apply to the court with a claim for issue of a Protection Order.[85] The lack of this possibility significantly hinders effective protection of victim's rights, because often enough the victims search for help at one of the non-governmental organizations, but they are too frightened to apply to the court or police. And in cases when an under-age person is involved in the dispute, "attraction of third persons" (i.e. non-governmental organizations, relatives, neighbours, etc.) might be of particular importance.

- Eviction Order causes additional consequences – evicted person has no new place of residence.

According to the Part 3 of the Article 8 of the law, the information about the place, where an evicted person can receive help in finding a new place of residence, can be included in the court's decision on issue of an Eviction Order, yet the law does not oblige the state (or municipality) to provide evicted persons with a new place of residence. As specified by the experts of Finland, an Eviction

[84] Rantala K., Smolej M., Leppälä J. and Jokinen A. On a slippery slope – an assessment of an eviction and barring order. Summary. Available at: http://www.optula.om.fi/Satellite?blobtable=MungoBlobs&blobcol=urldata&SSURIapptype=BlobServer&SSURIcontainer=Default&SSURIsession=false&blobkey=id&blobheadervalue1=inline;%20filename=Summary.pdf&SSURIsscontext=Satellite%20Server&blobwhere=1225117282962&blobheadername1=ContentDisposition&ssbinary=true&blobheader=application/pdf [viewed on 20.08.2012.]

[85] Roundtable Discussion on June 7, 2012 at the Non-Governmental Organization "The Federation of Mother and Child"

Order can often cause the opposite effect, the offender finds him/herself in even worse social conditions and the violence increases.[86] This was one of the main arguments of the critique, when developing supplements to the law (by including an Eviction Order in the law), since the issue of this order does not solve the problem in its core, but rather eliminates its side-effects. Usually, the persons evicted from their place of residence stay with their relatives and only in very rare cases – at a hotel. The state is not obliged to remunerate any expenses, which are related to the consequences caused by an Eviction Order, thus, the aim of the order is often not achieved and the person continues to perform his/her unlawful activities, only in other premises and place.

- No sufficiently effective solutions for protection of children's rights were recorded in practice

As stated by the experts of Finland, no effective solutions for cases when the victim is a child or a child is involved in the dispute, were discovered in the regulatory enactments. It usually happens in situations, when an Eviction Order is determined and the man is evicted from his place of residence, where he resided together with the child prior to eviction. An Eviction Order does not settle the issue on child's custody or care rights, nor does it specify the right to meeting often enough. In addition, the issue regarding the expenses for child's alimentation or responsibilities to care for the child even after the offender has left the shared dwelling remains unsettled. As stated by the experts of Finland, there were cases when a Protection Order was used as a measure to unlawfully prohibit one of the parents from seeing the child, particularly if a divorce is in progress in the family. Protection and effective provision of children's rights is extremely significant factor, which is to be assessed when considering Protection Order cases.

- Protection Order does not solve the problem, if there are no effective additional measures

As specified by the experts of Finland, a Protection Order is the only measure for prevention provision, yet the aim of a Protection Order cannot be achieved without effective additional tools for combatting violence.[87] A Protection Order will be effective, only if the offender is involved in certain special programs, the aim of which is to change person's thinking and behaviour. There are several non-governmental organizations operating in Finland, which offer (on a voluntary basis) different programs for the offenders with an aim to help them change their behaviour; however, the capacity of organizations is limited and the offenders often do not want to get involved in the programs.[88] As stated

[86] Roundtable Discussion in Helsinki, June 7, 2012, at the Ministry of Justice of Finland
[87] Roundtable Discussion, June 6, 2012, Ministry of Justice of Finland
[88] For example, the organization "Lyömätön linja" works with violent persons by involving them in training programs. As specified by the representatives of the organization, special programs with the aim to help the persons responsible for the act of violence to admit their violence, to control and diminish it were developed. "Lyömätön linja" offers both

by the experts of Finland, if there is no sufficiently effective mechanism how to work with offenders, the violence does not decrease; place, form and type of threat are the only things that change.

-It is difficult to prove the fact of violation of a Protection Order

When selecting a special place for a Protection Order in the system the legislator has not determined the minimal amount of evidence. It is clear that the evidence does not have to be as significant as in criminal cases, yet often enough the persons are unable to receive such an order, because it is difficult to prove the fact of threat. Similarly, it has been proven in practice that it is difficult to prove the fact that a Protection Order is violated, because not always there are witnesses "at hand" or the fact can be proved by material means (for example, if a man, who is evicted from the place of residence, throws stones at the windows at night or threatens the family in any other way, or calls hundred times a day). Similarly, the cases, when a protected person him/herself provokes the meeting and then informs the police, have been recorded; in this case it is also difficult to decide on the fact of violation.

individual and group programs; moreover, it is important that all services provided to the persons involved in the programs are free of charge.

3. Analysis of Legal Regulation of England and Wales[89]

Organization of society's safety and prevention in Great Britain has long history and deep roots. As the society and its needs have changed over the course of time, the system of delinquency prevention has changed as well. Various factors, the main of which are state administrative division (federal form) and differences in forms of regulatory enactments, are to be taken into consideration when analysing the system of delinquency prevention in Great Britain from the point of view of Latvia. Firstly, for example, a regulatory enactment can contain both civil and criminal regulations, whereas such approach is not practiced in Latvia. Secondly, Great Britain or the United Kingdom (hereinafter – UK) consists of several administratively divided territories: England, Wales, Northern Ireland (hereinafter – N-Ireland) and Scotland. Legal acts, which regulate preventive functions, are developed while taking into account this specific character of territorial division – it means that separate parts of legal acts can refer to one of the parts of the United Kingdom rather than to the UK in general; simultaneously regulatory enactments contain unified regulations applied to the UK in general.[90] Based on the research of the existing UK judicial practice in the area of delinquency prevention, it is reasonable to consider that in most of the cases legal regulations in England and Wales tend to be similar or even identical (a), certain norms of legal acts are not applied to N-Ireland (b); mainly only general legal norms and norms-principles are applied to Scotland, namely, the biggest part of legal regulations in force in Scotland is developed and is valid only in Scotland (c) and these legal norms are not applied to the rest of the UK. Due to the aforementioned reasons, this chapter covers the system of preventive measures, which is mostly applied in England and Wales, touching upon N-Ireland in certain cases, while the system of Scotland is covered in a separate chapter.

In Great Britain, there is a wide range of operational measures, which derive from four regulatory enactments, depending on harmful activity, the prevention of which the measure is intended for (a) and depending on the offender's legal status (b). It is to be taken into account that the types of preventive operational measures and their fulfilment are differentiated – separately for adults and separately for children from the age of 10 and, in certain cases, also for young adults (of age of up to 23[91]). Based on the aforementioned, it is possible to divide all preventive tools into three major groups:

[89] In certain cases N-Ireland as well, based on the legal norms of Great Britain.

[90] For example, special territorial references, which provide the reader with an explanation regarding the part of UK, which a particular regulatory enactment is applied to, can be observed on the site of regulatory enactment publication http://www.legislation.gov.uk. Sometimes such references are included in the contents of the regulatory enactment itself, namely, in the titles of sub-chapters or at them.

[91] Depending on the particular legal regulation of a part of the UK administrative division (England, N-Ireland, Wales or Scotland), where respective measures are applied.

1) Measures, which are prescribed in the **Family Law Act** 1996[92] – "Occupation Order"[93] and "Non-Molestation Order". The aforementioned preventive measures are applied to persons, who are bond by family ties, who are relatives to each other, who share a household, or who have the rights to or legal interests for family dwelling according to the procedure set in other regulatory enactments.

2) Measures, which are prescribed in the **Protection from Harassment Act** 1997[94] – "Civil Remedy"[95] and "Protection Order"[96]. The Protection from Harassment Act simultaneously prescribes both measures, which are applied in criminal cases, and measures, which are applied in civil procedure.

3) Measures, which are prescribed in the **Crime and Disorder Act** 1998[97] – "Anti-Social Behaviour Order"[98] and "Sex Offender Order"[99]. Separate chapter of a legal act is intended for the regulation of youth justice measures, prescribing a separate "Parenting Order"[100], under which the parents are imposed additional obligations for child's upbringing, and "Child Safety Order". Anti-Social Behaviour Orders are applied in case the offender or a person, who intends to commit violation of law, has no kinship with persons, whom his/her conduct is directed against. The Crime and Disorder Act prescribes only major preventive measures - one of them, an Anti-Social Behaviour Order, is to be paid special attention to, since it comprises a wide range of preventive operational measures, the application of which is widely regulated by a different regulatory enactment, namely, the **Anti-Social Behaviour Act** 2003[101]. The particular law comprises 19 preventive operational measures in total, including measures, which are intended for certain individuals with anti-social behaviour (Anti-Social Behaviour Order on conviction; Drinking Banning Order on conviction; Anti-Social Behaviour Order on application; Anti-Social Behaviour Injunction; Drinking Banning Order on application; Individual Support Order; Intervention Order)[102] and measures, which are intended for action in case of anti-social behaviour in society (Litter Clearing notice; Street Litter Control notice; Defacement Removal notice; Designated Public Place Order; Gating Order; Dog Control Order; Dispersal Order; Direction to Leave;

[92] Family Law Act 1996. Entered into force 4 July 1996. Available at: http://www.legislation.gov.uk/ukpga/1996/27/contents [viewed on 09.08.2012.]
[93] Ibid., IV Family Homes and Domestic Violence, p. 33-41.
[94] Protection from Harassment Act 1997. Entered into force 21 March 1997 Available at: http://www.legislation.gov.uk/ukpga/1997/40/contents [viewed on 09.08.2012.].
[95] Ibid., Paragraph 3.
[96] Ibid., Paragraph 5.
[97] Crime and Disorder Act 1998. Entered into force 31 July 1995. Available at: http://www.legislation.gov.uk/ukpga/1998/37/contents [viewed on 09.08.2012.].
[98] Ibid., Part I, Prevention of crime and disorder. Chapter I. England and Wales, Paragraph 1.
[99] Ibid., Part I, Prevention of crime and disorder. Chapter I. England and Wales, Paragraph 2.
[100] Ibid., Paragraph 8.
[101] Anti-social Behaviour Act 2003. Entered into force 20 November 2003. Available at: http://www.legislation.gov.uk/ukpga/2003/38/contents [viewed on 09.08.2012.].
[102] In English: Anti-social Behaviour Order (ASBO) on conviction, Drinking Banning Order (DBO) on conviction, ASBO on application, ASB Injunction, DBO on application, Individual Support Order, Intervention Order.

Premises Closure Order; Crack House Closure Order; Noisy Premises Closure Order; Closure Order[103])[104].

Despite that the aforementioned measures are preventive operational measures of very different character, each of them is referred to one of the essential areas of human cohabitation and prevents the risk of delinquency in this particular area, namely, fulfils its prevention function.

3.1. Prevention of Domestic Delinquency

3.1.1. Occupation Order

In order to prevent delinquency in family (one household), an "**Occupation Order**", the aim of which is to settle various disputes regarding the use of dwelling space between the parties with different judicial statuses in relations to each other, is applied. These disputes/applications under the Paragraph 57[105] of the Family Law Act are settled by courts on three levels – Supreme Court, Magistrates' Court and County Court, moreover, the Lord Chancellor can transfer it to the court of any level or specifics (for example, in family cases) according to his own views regarding the specifics of the case in general by consulting the Lord Judge of the Supreme Court in advance. Any of the parties, as well as third parties, who act on behalf of the victim, can be the plaintiff in these cases under the Paragraph 60[106] of the Family Law Act. The Family Law Act prescribes several cases, when Occupation Orders of different content are applied:

a) If a person has real estate or legal interest for it[107], the court can carry out a decision, which allows the claimant to come and live at the shared dwelling space or in a particular part of it; provides the right to live at the family home; regulates the life (procedure, according to which the parties live) at the family home for one or both parties; if the defendant has the right to use the family home as owner or lawful holder, to prohibit, limit or stop these rights; if the defendant has property rights to family home and the plaintiff is the second party – to limit or stop these rights; to require from the defendant to leave the dwelling-house or part of the dwelling-house; to prohibit the defendant from being in the area, where the dwelling-house (space) is located.

[103] Licensing Act 2003. Entered into force 10 July 2003. Available: http://www.legislation.gov.uk/ukpga/2003/17/section/161 [viewed on 10.08.2012.].
[104] In English: Litter Clearing notice, Street Litter Control notice, Defacement Removal Notices, Designated Public Place Order, Gating Orders, Dog Control Orders, Dispersal Order, Direction to Leave, Premises Closure Order, Crack House Closure Order, Noisy Premises Closure Order, Closure Order.
[105] Family Law Act 1996. Entered into force 4 July 1996. Paragraph 57, Jurisdiction of courts. Available at: http://www.legislation.gov.uk/ukpga/1996/27/section/57 [viewed on 09.08.2012.].
[106] Ibid., Paragraph 60, Provision for third parties to act on behalf of victims of domestic violence.
[107] Ibid., Paragraph 33.3, Occupation orders where plaintiff has estate or interest etc. or has home rights.

b) If a person is a former spouse without existing rights to dwelling space[108] - the court can decide on the procedure, according to which this person can stay at the family home and whether this person has the right to stay at the family home. If the court decides that a person has the right to stay at the family home, it can limit the procedure of stay at this house or part of it for the defendant; to prohibit, stop or limit defendant's rights to occupy the house; to request from the defendant to leave the dwelling-house or part of it; to prohibit the defendant from being in the area, where the dwelling-house (space) is located. If the parties are no longer in legal relations of spouses, such order can be issued only in case former spouse has invested finances or other resources into the family home, and this fact can be proved by the statements of witnesses and finance documents. In this case the court might issue the order for a period of time, which is fixed and does not exceed 6 months, after the termination of this term the court can issue a new order. If any of the parties has deceased, the court does not issue a Occupation Order, yet, if any of the parties has deceased within the period of effective order, this order becomes invalid.

c) If a person is a former civil partner without existing rights to occupy the dwelling space[109], the court can also issue an Occupation Order. In order for the court to issue an Occupation Order in this case, it has to have the information that the former civil partner has the right to dwelling space, which derive from objective legal facts, namely, property rights, interest agreements, or right to stay at a particular dwelling space, which derive from other regulatory enactments. Similarly as in both aforementioned cases, the court can issue such an Occupation Order, as a result of which the plaintiff obtains the rights to stay at the dwelling space, or the plaintiff can achieve that the defendant is forced to limit his/her rights at the respective dwelling space, to leave or receive court's injunction, which prohibits him from being in the area, where the real estate is located, in this case as well.

d) If none of the parties has the right to stay at the dwelling space[110] – it is a case when one party or former spouse or another party or former spouse resides in a house, which used to be their family house during the previous marriage, but none of them has the right to stay at this house. Namely, there are no such rights, which would be secured in any types of effective agreements or would derive from other regulatory enactments. The legislator has referred the requirements of this Section to the cases when former parties had not lived in legally registered marriage. If such situation has taken place, the court can issue an Occupation Order, which allows the plaintiff to move into and stay to live at the specified

[108] Ibid., Paragraph 35, One former spouse [F14or former civil partner] with no existing right to occupy.
[109] Family Law Act 1996. Entered into force 4 July 1996. Paragraph 36. Available at: http://www.legislation.gov.uk/ukpga/1996/27/part/IV/crossheading/occupation-orders [viewed on 10.08.2012.].
[110] Family Law Act 1996. Entered into force 4 July 1996. Paragraph 37. Available at: http://www.legislation.gov.uk/ukpga/1996/27/part/IV/crossheading/occupation-orders [viewed on 10.08.2012.].

house or premises, to limit the use of the dwelling space for one or both parties, to request from the defendant to leave the dwelling-house or its part, as well as to prohibit the defendant from being in the area, where the dwelling house is located. The court can issue this order for a period of time not exceeding six months and to prolong for the next period – not exceeding six months.

e) If neither civil partner nor former civil partner has the right to occupy the dwelling space – it is a case when one civil partner or former civil partner, or other civil partners or former civil partners reside in a dwelling house or space, which they co-inhabit, yet none of them has the right to stay there, which might be confirmed by agreements or rights secured in any other regulatory enactments. In this case each of the parties can request for issuing the order against another party and require from the defendant: to allow the plaintiff to enter and live in the dwelling house or its part; to regulate living procedure in the house for both parties; to request from the defendant to leave the dwelling house or its part; to prohibit the defendant from being in the area, where the dwelling-house is located. The court can supplement this type of order with additional requirements[111], which are included after analysing the circumstances, which are related to person's, including the child, needs for the volume of dwelling space; financial resources of the parties; possible impact of court's injunction on the health, safety and welfare, particularly complying with the child's needs; the court can assess and determine necessary behaviour of the parties in relation to each other.

The court can issue an Occupation Order, when considering any of the cases related to family issues – as an additional decision. The fact that the court has issued an Occupation Order itself is not an obstacle for the person to obtain property rights to real estate. Apart from that, an Occupation Order itself does not terminate in any way defendant's obligations to care for his/her real estate or to fulfil contractual obligations, which he/she previously undertook in relation to the real estate. If any of the parties does not fulfil the imposed obligations, thus, causing risk to any of the parties, the court can impose the obligations, which are related to the maintenance of the dwelling space or house, payment of expenses, repair, lease, mortgage payments, to grant the furniture available at the dwelling-house to be possessed by the party or to impose an obligation to care for them, etc. on parties at any time, even after an Occupation Order came into force[112].

3.1.2. Non-Molestation Order

[111] Family Law Act 1996. Entered into force 4 July 1996. Paragraph 38.4. Available at: http://www.legislation.gov.uk/ukpga/1996/27/part/IV/crossheading/occupation-orders [viewed on 10.08.2012.].
[112] The court can impose obligations in cases prescribed in the Paragraphs 33, 35 and 36 of the Family Law Act, in compliance with the Paragraph 40 "Additional provisions that may be included in certain occupation orders" of the law.

The second preventive order prescribed in the Family Law Act is "**Non-Molestation Order**"[113]; and it includes one or both of these conditions: condition that prohibits the defendant from molesting in any way another person, who is related to the defendant (a); and/or condition, which prohibits the defendant from molesting the child (b). The court can determine a Non-Molestation Order, if an application on the necessity of such order has been received from a person – the plaintiff, who is related to the defendant. The court can issue this order for other family proceedings in progress as well, or without them, upon the request of third party[114]. The court can issue this order in any family proceeding in progress[115], in which the defendant is one of the parties, if the court itself considers that such order is to be issued for the benefit of any other party, or for the benefit of the respective child, even though nobody has submitted such an application, namely, upon the initiative of the court, having assessed the circumstances of a particular case. Also in case the court decides on determination of an "Occupation Order", it can assess the issue regarding the necessity of a Non-Molestation Order upon its own initiative.

The court can issue a Non-Molestation Order of different content: order, which prohibits molesting the person in any way, as well as to determine particular type of conduct, which is prohibited for the defendant in relation to another person. Such order can be valid for a definite period of time or till the issue of further order, whereas, if the order is issued within the framework of a different family proceeding, it becomes invalid in case the particular proceeding, within the framework of which it is issued, is terminated – withdrawn or rejected. If a person violates the conditions included into a "Non-Molestation Order", he/she is convicted of criminal offence and can be punished with imprisonment for the period of up to 5 years or with pecuniary punishment, or the court can apply both punishments[116]. It is prescribed that the children under 16 cannot submit the request regarding the application of an "Occupation Order" and "Non-Molestation Order" to the court, unless the court carries out the decision that the child realizes his/her action well enough.

The court can carry out a decision on the arrest of the defendant, if it has suspicions regarding that the defendant is violent against the plaintiff or the child or has threatened with violence to the plaintiff or the child, or that the plaintiff or the child are under the risk of significant harm. Possibility of arrest can be prescribed at once, if the court determines an Occupation Order or a Non-Molestation Order. In this case police officers have the right to arrest the defendant at once and without special

[113] Family Law Act 1996. Entered into force 4 July 1996. Paragraphs 42 and 42A. Available at: http://www.legislation.gov.uk/ukpga/1996/27/part/IV/crossheading/nonmolestation-orders [viewed on 10.08.2012.].
[114] Ibid., Paragraph 60.
[115] According to the Paragraphs 42.3 and 42.2 of the Family Law Act the aforementioned "family proceeding" means the proceeding, in which the court has made an emergency protection order under the Children Act 1989, which includes an exclusion requirement.
[116] Family Law Act 1996. Entered into force 4 July 1996. Paragraph 42.A. Offence of breaching non-molestation order. Available at: http://www.legislation.gov.uk/ukpga/1996/27/part/IV/crossheading/nonmolestation-orders [viewed on 10.08.2012.]

authority, if they have suspicions that the defendant violates obligations imposed by the court's injunction. When exercising determined rights, the police are obliged to deliver the arrested to the respective court institution for further acceptance within 24 hours. If such conditions have not been included into the original order, but the person, whom the order is applied to, violates the conditions nonetheless, the plaintiff can inform the court about the necessity of arrest. It is possible to appeal both Occupation Order and Non-Molestation Order according to the appeal procedure[117]: decisions of the Magistrates' Court can be appealed in the County Court, while the decisions of the County Court are subject to appeal in the Supreme Court.

3.2. Person's Protection from Harassment

In order to protect a person from harassment, the Protection from Harassment Act[118] 1997 prescribes both civil remedy[119] and **Protection Order**[120]. Regulatory enactment regulates the mechanisms of person's protection from harassment in England and Wales, as well as in Scotland – in certain separate parts of the respective norm. Two harmful activities, the definitions of which are still not formulated unambiguously – *stalking* (intimidation)[121] and *harassment*, are generally identified in the law. The fact that both harmful activities are often performed by the offender simultaneously has to be taken into account. By definition, it can be considered that stalking is a form of harassment, which has been often encountered in the society lately. Thus, for instance, a research (survey)[122], which was carried out in 2010 and 2011 in Great Britain, revealed a significant problem, namely, that 43% of men and 57% of women have suffered from harassment in the past two years (2010-2011)[123].

Stalking means long-term activity of constant nature, as a result of which the stalker constantly makes the victim feel his/her presence: by directly contacting, by indirectly communicating with friends, work colleagues, family members, by using modern communication technologies, or by interfering in victim's private life in any other way. As a result the victim starts to feel it as a limitation

[117] Family Law Act. 1996, , Article 60. Entered into force 4 July 1996. Paragraph 42.A. Offence of breaching non-molestation order. Available at: http://www.legislation.gov.uk/ukpga/1996/27/part/IV/crossheading/nonmolestation-orders [viewed on 10.08.2012.].
[118] Protection from Harassment Act 1997. Entered into force 21 March 1997 Available at: http://www.legislation.gov.uk/ukpga/1997/40/contents [viewed on 10.08.2012.].
[119] Ibid., Paragraph 3, Civil remedy.
[120] Ibid., Paragraph 5, Restraining order.
[121] Stalking – term, which is used to designate unwanted obtrusive behaviour. Available at: http://en.wikipedia.org/wiki/Stalking#England_and_Wales [viewed on 10.08.2012.].
[122] Crime in England and Wales, 2010/11, Findings from the British Crime Survey and police recorded crime (2nd Edition), Edited by: Rupert Chaplin, John Flatley and Kevin Smith. Available at: http://ej.uz/5kis [viewed on 10.08.2012.].
[123] Crime in England and Wales, 2010/11, Findings from the British Crime Survey and police recorded crime (2nd Edition), Edited by: Rupert Chaplin, John Flatley and Kevin Smith. Available at: http://ej.uz/5kis [viewed on 10.08.2012.].

of his/her freedom and he/she starts to feel that he/she has to be cautious all the time. In many cases such conduct might seem to be innocent, if each particular case of molestation is assessed separately, whereas, if it is performed repeatedly, it becomes depressing and causes harm to the victim. Due to the aforementioned reasons, the legislator has issued the framework for harmful and punishable behaviour, not specifying strict content framework, thus, leaving a possibility for the court to decide on particular cases.

The Article 1 of the Protection from Harassment Act specifies that a person cannot act in a way, which causes the impression of harassment to other persons, and that he/she knows or he/she should know that such behaviour can cause the feeling of harassment to another person.[124]

The law specifies the cases, which are not considered to be a form of harassment and are not punishable, if until then similar activities were performed with an aim to reveal criminal offence (for example, detective investigation), if a person acted in compliance with the provisions of the law (for example, private security), if it was revealed that person's conduct under particular conditions was adequate (for example, justified reason for such action existed). According to the Paragraph 3 of the Protection from Harassment Act, the victim or person, who may be the victim (in open proceedings), can submit a claim to the court according to the civil procedure in order to obtain material remuneration for incurred losses. According to this procedure, it is possible to request for remuneration of losses for any harm, which results from the preformed harassment activities. In such case the Supreme Court or the County Court grants an injunction, the aim of which is to limit the action of the accused and to stop harassment, but, if the plaintiff considers that the guilty offender has violated the conditions imposed by the court, which are included into the Protection Order, to request for the arrest of the offender.

The Paragraph 5 of the law prescribes the application of a Protection Order to persons, who have performed the activities specified in the Paragraphs 2 and 4 of the Protection from Harassment Act. A Protection Order can be applied to persons, who are sentenced to any type of punishment, including imprisonment. If a Protection Order is applied to an imprisoned person, the administration of the place of detention is informed about this fact in order for the sentenced person not to be able to influence the victims by using phone calls, correspondence and third persons. There have been cases, when the prisoner has tried to appeal the Protection Order in the court during the imprisonment in order to be able to influence witnesses or the victim, in these cases victims and witnesses were informed and, in case of necessity, were invited to the court.[125]

The purpose of a Protection Order is to prevent risks for the victim of criminal offence, due to this reason it is recommended not to mention any information, which might help in identifying the

[124] Protection from Harassment Act 1997. Entered into force 21 March 1997 Available at: http://www.legislation.gov.uk/ukpga/1997/40/contents [viewed on 10.08.2012.].
[125] Stalkings and Harassment. Available at: http://www.cps.gov.uk/legal/s_to_u/stalking_and_harassment/#a03i [viewed on 09.08.2012.].

victim, his/her place of residence or another private information, in the text of the Protection Order. It is specified that a Protection Order cannot become one of the routine documents, all of which would be made the same, since they can fulfil their function only when they settle the identified risk to the victim in a particular case.[126]

The aim of a Protection Order is not to punish the offender for the committed unlawful activity, but rather to protect the victim from fear, threats and possibilities of further violence, which is directed against the victim and his/her family members. Due to the aforementioned reason, the Paragraph 5.2 of the Protection from Harassment Act specifies that: "In order to protect the victim and other persons from further conduct, which amounts to harassment or will cause fear of violence, to prohibit the defendant from doing anything described in the order"[127]. A Protection Order is valid for the period determined by the court or till the issue of the next Protection Order. Prosecutor, the accused or any other person specified in a Protection Order can apply to the court, which issued this Protection Order, in order to amend effective order or to stop this order. If the guilty does anything that is prohibited by a Protection Order with no vindicatory reason, it is considered to be a punishable conduct. In this case the court can apply imprisonment for the offender for up to 5 years or pecuniary punishment, or both.

In most of the cases[128], a Protection Order from stalking and harassment is applied by the Magistrates' Courts, determining the punishment for up to 6 months of imprisonment or pecuniary punishment for up to 5 thousand pounds, or both. The most serious cases are considered by the Magistrates' Court and Crown Court[129], applying punishments for up to 5 years of imprisonment or pecuniary punishment for up to 5 thousand pounds, or both. As of 2009 the courts are entitled to determine a Protection Order in case a person is not found guilty and regardless of the offence, which a person is convicted of, as well.

3.3. Crime and Disorder Act

In order to protect individuals and society in general from crime and to maintain order in the society, a wide range of preventive operational measures are prescribed in the Crime and Disorder Act, as well as in the Anti-Social Behaviour Act. The Crime and Disorder Act in general is a multi-disciplinary legal act, which comprises regulation of several areas of application of essential rights simultaneously, by horizontally referring these legal regulations both to separate parts of Great Britain and general legal regulation of Great Britain, while at the same time separating legal regulations of

[126] Ibid,, in Section – Restraining orders.
[127] Protection from Harassment Act 1997. Entered into force 21 March 1997. Paragraph 5.2. Available at: http://www.legislation.gov.uk/ukpga/1997/40/section/5 [viewed on 10.08.2012.].
[128] Stalkings and Harassment. Available: http://www.gmp.police.uk/mainsite/pages/C2CB06CFD7CA0401802578A10036B299.htm [viewed on 08.08.2012.].
[129] Crown Court. Available at: http://en.wikipedia.org/wiki/Crown_Court [viewed on 08.08.2012.].

adults and under-age children.[130] Taking into account that at the moment the regulatory basis of the Republic of Latvia (hereinafter - LR) practically does not contain any multi-disciplinary[131] legal regulations, yet specialists encounter the necessity of such legal acts and regulations more and more often, as well as taking into account that LR has not developed unified designations for cooperation between institutions, brief description of the regulatory enactment in general will be presented further, whereafter more detailed attention will be given to its Part 1, which is directly referred to the regulatory norms of prevention measures.

The Crime and Disorder Act 1998[132] consists of five parts:

- Part I[133] – Crime and Disorder Prevention (this part consists of three chapters: 1) England and Wales – Crime and disorder general regulations: includes "Anti-Social Behaviour Order" and "Sex Offender Order", Crime and disorder strategies: includes areas of responsibility of the responsible institutions, Youth crime and disorder: includes "Parenting Order" and "Child Safety Order", Miscellaneous and supplemental: includes duties to carry out decisions on the consequences of crime and disorders);
- Part II[134] – Criminal Law (this part consists of three chapters: 1) Racially or religiously aggravated offences in England and Wales: defines offences on incitement of racial and religious hatred, 2) Racially aggravated offences in Scotland: defines offences on incitement of racial and religious hatred, 3) Miscellaneous)
- Part III[135] – Criminal justice system (this part consists of four chapters: Youth justice, Time limits, Functions of courts and Miscellaneous);
- Part IV[136] – Dealing with offenders (this part consists of two chapters, *firstly* – England and Wales (comprises seven sub-chapters: Sexual or violent offenders, Offenders dependent on drugs and other substances, Young offenders: reprimands and warnings, Young offenders: non-custodial orders, Young

[130] This part of the research analyses the part of legal regulation, which is applied to England and Wales, in certain cases - to N-Ireland, and regulates legal relations in the area of prevention (Part I of the Law, in English: Part I, Prevention of crime and disorder.)
[131] Multi-disciplinary is an adapted designation from regulatory enactments and political documents of Great Britain; Latvia uses the concept inter-disciplinary in the same meaning or a term inter-professional in a wider meaning. At the moment there is no unified concept for cooperation between the institutions in LR, yet forms of their cooperation, which are included in the Parts VI and VII of the LR State Administration Structure Law, are created in a manner, which regulates the cooperation either within the framework of state administration (only state administration institutions) or regulates society's participation and procedure of delegation of separate functions. In terms of the Crime and Disorder Act of Great Britain, the aforementioned LR regulation is assessed as the one determining the competences, rather than the one integrating resources, namely, it is not referred to the joint cooperation in the multi-disciplinary environment, yet appears as the one distributing separate duties instead.
[132] Crime and Disorder Act 1998. Entered into force 31 July 1995. Available at: http://www.legislation.gov.uk/ukpga/1998/37/contents [viewed on 10.08.2012.].
[133] Ibid., Part I, Prevention of crime and disorder.
[134] Ibid, Part II. Criminal law.
[135] Crime and Disorder Act 1998. Entered into force 31 July 1995. Criminal justice system. Available at: http://www.legislation.gov.uk/ukpga/1998/37/contents [viewed on 08.10.2012.].
[136] Ibid, Part IV. Dealing with offenders.

offenders: detention and training orders, Sentencing: general, Miscellaneous and supplemental), *secondly* – Scotland: Sexual or violent offenders, Offenders dependent on drugs and other substances);

- Part V[137] – Miscellaneous and Supplemental (Remands and committal, Release and recall of prisoners, Miscellaneous, Supplemental)

While observing the above described Part I of the regulatory enactment, it is possible to distinguish four preventive operational measures.

3.3.1. Anti-Social Behaviour Order

Anti-Social Behaviour Order (hereinafter – ASBO)[138]. According to the Sub-Paragraph 1 of the Chapter 1 of the Part I of the Crime and Disorder Act, an ASBO can be applied to any person, who has attained the age of 10. Any person, who suffers from such behaviour, can inform about the existence of anti-social behaviour – to the local government area, in which he/she resides, local police, Transport Police and social landlords. Since the council for a local government area (a); the chief officer of police of any police force by his/her decision (b); the chief constable of the British Transport Police Force (c); any person registered under the Paragraph 52[139] of the Housing Act 1996 as a social landlord, who provides or manages any houses or hostel in a local government area (d) can submit a claim for application of an ASBO to a particular person to the Magistrates' Court according to its commission area, if this person acts in an anti-social manner, namely: causes or can cause harassment, alarm or distress to one or more persons not of the same household as him/herself.

The aim of ASBO is to protect other persons and society from any types of anti-social behaviour. If the Magistrates' Court, while examining the application, establishes that a person, whom it is requested to apply an ASBO to, has acted in a manner, which is specified in the Paragraph 1 of the Crime and Disorder Act, it carries out a decision on application of an ASBO by imposing behaviour prohibition on the person. In order to carry out the conclusion on compliance of defendant's behaviour with conditions, described in the application of the respective institution, Magistrates' Court verifies the facts related to the incident, in order to conclude whether behaviour was adequate in respect of particular circumstances.

Prohibitions included by the court into the ASBO depend on the character of harmful or potentially harmful activity and are aimed at preventing such types of harmful behaviour of an

[137] Crime and Disorder Act 1998. Entered into force 31 July 1995. Miscellaneous and supplemental. Available at: http://www.legislation.gov.uk/ukpga/1998/37/part/V [viewed on 10.08.2012.].
[138] Crime and Disorder Act 1998. Entered into force 31 July 1995. Available at: http://www.legislation.gov.uk/ukpga/1998/37/part/V [viewed on 10.08.2012.].
[139] Housing Act 1996. Entered into force 24 July 1996. General provisions as to orders. Available at: http://www.legislation.gov.uk/ukpga/1996/52/section/52 [viewed on 09.08.2012.].

individual in society in future. An ASBO can be valid[140] for a period of: at least 2 years (a), for a period specified in the order itself (b); till the application of the next order (c). Decisions of the Magistrates' Court are subject to appeal according to the appeal procedure in the Crown Court under the Paragraph 4 of the Part I of the Crime and Disorder Act.

A person, whom an ASBO is applied to, can apply to the court, which carried out the decision on application of an ASBO to a particular person, in order to ask the court to decrease or stop the duration term of the ASBO. If a person, whom an ASBO is applied to, violates conditions specified in the order, the court can hold him/her accountible, applying imprisonment punishment for up to 5 years or pecuniary punishment, or both.

ASBO Application procedure and 19 types of it are determined by the Anti-Social Behaviour Act[141], the analysis of which is presented further in the research[142]. At the moment the practise of ASBO application in Great Britain is assessed critically, hence, in May 2012 the Ministry of Justice of Great Britain revised original ASBO concept, performing the research of the situation in cooperation with the police and local government prior to that. The fact that the number of ASBO application cases has drastically decreased since the Anti-Social Behaviour Act came into effect was mentioned as one of the reasons. In 2005 there were 4,122 cases registered, whereas in 2010 – 1,664 cases, and this tendency remained in 2011 as well[143]. Statistical analysis of Great Britain also indicates that approximately 50% of all ASBOs applied by the court are violated at least once, while 42% of applied orders are violated twice or more times. As the practise of Great Britain in youth cases (England and Wales) established in the course of research shows[144], in 43% of cases of ASBO violation young persons are imprisoned, whereas 15,5% of all ASBOs applied to youth eventually bring young people to prison, filling British prison system, which is already overloaded for 110%, with newcomers. Due to the aforementioned circumstances, in May 2011 the Ministry of Justice of Great Britain started to develop (presented to British Parliament in May 2012[145]) a political document[146], by which it is intended to change the existing ASBO system in order to make it more effective and orientated **from**

[140] Crime and Disorder Act 1998. Entered into force 31 July 1995. Part I Prevention of crime and disorder, Chapter 1. , Para 1.7. Available at: http://www.legislation.gov.uk/ukpga/1998/37/section/1 [viewed on 10.08.2012.].
[141] Anti-social Behaviour Act 2003. Entered into force 20 November 2003. Available at: http://www.legislation.gov.uk/ukpga/2003/38/contents [viewed on 09.08.2012.].
[142] Author's note: part of this report is developed only for the needs of the first project deliverable, which will be presented in September 2012, the research will continue till November 2012.
[143] 13 October 2011, Statistical Notice: Anti-Social Behaviour Order (ASBO) Statistics England and Wales 2010. Available at: http://ej.uz/r186 [viewed on 09.08.2012.].
[144] Youth Justice Board (2005) Antisocial Behaviour Orders: An assessment of current management information systems and the scale of Antisocial Behaviour Order breaches resulting in custody, London: Youth Justice Board. Available at: http://www.justice.gov.uk/downloads/youth-justice/prevention/anti-socialbehaviour/AntiSocialBehaviourOrdersfullreport.pdf [viewed on 11.08.2012.].
[145] Summary: Putting Victims First: More Effective Responses to Anti-Social Behaviour White Paper. Available at: http://moderngov.sthelens.gov.uk/mgConvert2PDF.aspx?ID=12575&txtonly=1 [viewed on 11.08.2012.].
[146] More effective responses to antisocial behaviour, May 2011, Available at: http://criminaljusticealliance.org/CJAmoreeffectiveresponsesASB.pdf [viewed on 11.08.2012.].

offenders' punishment and prohibition application to provision of support to the victims of anti-social behaviour[147] **and re-socialization of offenders. New conceptual solution is based on implementation of inter-institutional cooperation model and unified informative database** for a more effective application of preventive operational measures.

3.3.2. Sex Offender Order

Paragraph 2.1 of the Part I of the Crime and Disorder Act prescribes that a chief officer of police is entitled to request from the Magistrates' Court to issue a **Sex Offender Order** (hereinafter – SOO)[148] in case the chief officer of police is aware of that a person, who was previously sentenced for sex offence or a person, who has acted in such a way as to give reasonable cause to the police to believe that a SOO is necessary to protect the residents from potential serious harm from him, is in or is intending to come to his police area. Chief officer of police submits the claim to the Magistrates' Court in the form of motivated application, specifying the reasons why a SOO should be applied. In its application, the police specify all circumstances of the case, including limitations, which would be necessary to be imposed by the court in a particular case, in order to prevent existing or potential harm. The court can carry out a decision on application of a SOO for a period of time of at least 5 years or till the next order is issued.

While the SOO is valid, the person, whom it is applied to, is not subject to the conditions of the Part I of the Sex Offenders Act, unless he/she was previously subject to notification claim[149] in compliance with this law. Both the chief officer of police and a person, whom a SOO is applied to, can apply to the Magistrates' Court, which issued the order, with an application for the change of its conditions or to request for not issuing the next SOO. It is impossible to terminate a Sex Offender Order before five years have passed, unless agreement of both parties (police and person, whom a SOO is applied to) is achieved. If during the SOO the Magistrates' Court issues a new Sex Offender Order with new conditions, the previous order and conditions included into it become invalid. If a person, whom a SOO is applied to, has violated the conditions included into the order, he/she is called to criminal liability and is punished with imprisonment not exceeding 5 years or with pecuniary punishment, or both. Based on the aforementioned reasons, a short-term order can be applied to a person for a fixed period of time, whilst the criminal case is at the stage of investigation or trial, till the moment, when the judgment on this case comes into effect. In this case the court can issue a Temporary

[147] Author's note: part of this report is developed only for the needs of the first project deliverable, which will be presented in September 2012, the research will continue till November 2012.
[148] Crime and Disorder Act 1998, Part I Prevention of crime and disorder, Chapter 1, Para 2.1, Sex offender orders. Available at: http://www.legislation.gov.uk/ukpga/1998/37/section/2 [viewed on 11.08.2012.].
[149] Sex Offenders Act 1997, 1 Sex offenders subject to notification requirements. Available at: http://www.legislation.gov.uk/ukpga/1997/51/section/1 [viewed on 11.08.2012.].

Order[150], which prohibits the defendant from performing activities, which are described in the order, if the court considers that it is useful to issue such an order. A SOO issued as a temporary order is valid for a period of time specified in this order or (if still valid) for a period of time specified in the main case (case under trial). SOOs, which are issued in Scotland and N-Ireland, are valid in England and Wales as well and, if a person violates such an order in England and Wales, this violation is punished in compliance with legal norms, which are included into the Crime and Disorder Act and refer to Scotland (Para 20), while with regard to N-Ireland – in compliance with the Criminal Justice (Northern Ireland) Order 2008. Decisions of the Magistrates' Court on application of both ASBO and SOO are subject to appeal according to the appeal procedure in the Crown Court under Paragraph 4 of the Crime and Disorder Act.

3.3.3. Parenting Order

Paragraph 8.1 of the Part I of the Crime and Disorder Act prescribes that a **Parenting Order** (hereinafter – PO)[151] can be applied in any cases, in which any kind of issues regarding the child are examined, namely, in cases when a Child Safety Order is issued in respect of a child (a), an Anti-Social Behaviour Order (ASBO) or Sex Offender Order (SOO) is issued in respect of a child (b); a child or young person is convicted of a criminal offence (c); a person is convicted of an offence under Education Act for failure to comply with school attendance or failure to secure regular attendance at school of registered pupils)[152].

These preventive operational measures can be applied to children's parents or persons, who replace them – guardians, or persons, who are convicted of violating Paragraphs 443 and 444 of the Education Act 1996. The court can apply a PO only in case the Secretary of State confirms that the aforementioned order will be implemented in commission area of the respective court, namely, that the parents of a child or young person reside or will reside in this area and declaration of the place of residence has not been withdrawn. A Parenting Order can be issued for a period of time for up to 12 months, within the framework of which the parents or persons, who replace them, are obliged to participate in consultations or trainings prescribed by the PO responsible official not more than once a week during 3 months.

A SOO is applied to the parents with an intention of preventing, if a Child Safety Order, Anti-Social Behaviour Order or Sex Offender Order is applied to their child, the children repeatedly commit criminal offences or regularly do not attend the school. The court can determine any requirements into

[150] Sex Offenders Act 1997, 2A Interim orders: sex offenders. Available: http://www.legislation.gov.uk/ukpga/1997/51/section/1 [viewed on 11.08.2012.].
[151] Ibid., 8 Parenting order.
[152] Education Act 1996, School attendance: offences and education supervision orders, Para 443 and 444. Available at: http://www.legislation.gov.uk/ukpga/1996/56/contents [viewed on 12.08.2012.].

a PO for the parents or persons, who replace them, if it is necessary to prevent risks in child's behaviour in future. When issuing the order, the court specifies a person responsible for the fulfilment of the order; it can be a probation service official, social service specialist or local government social service person and education specialist, who is appointed under Paragraph 532[153] of the Education Act 1996. Appeal claims on PO application can be submitted to the Supreme Court in case the order is issued for the benefit of a child under Paragraph 1(a) of the Sub-Chapter 8 of the Crime and Disorder Act; but, if the order is issued on that an ASBO or SOO is to be applied to the child of these parents, it can be appealed in the Crown Court.

3.3.4. Child Safety Order

Paragraph 11 of the Part I of the Crime and Disorder Act prescribes that a **Child Safety Order** (hereinafter – CSO)[154] refers to children under 10. As a result of such an order, a child is placed under the supervision of a specially appointed official for a period specified in the order or a court requires a child to comply with the specified requirements.

The Magistrates' Court applies these conditions according to civil procedure in special Family procedure and is entitled to impose an obligation on the child for a period not exceeding 3 months, but if there are exceptional circumstances, it can be imposed for a period not exceeding 12 months. In order to be able to apply a CSO to a child, the following circumstances have to exist – if the child has committed acts, which, if he/she had been aged 10 or over, would have constituted an offence (a); if a CSO is necessary for the purpose of preventing the commission by the child of such acts as would have constituted an offence, if he/she had been aged 10 or over (b); if the child has violated a curfew[155] notice (c); if the child has acted in a manner that disturbed public order or has acted intrusively, or has left an impression on persons, who are not his/her family members, that he/she could carry out such behaviour (d). By applying a CSO, the court decides on the best solution for the child, including, in order to ensure that the child receives appropriate care, supervision and support and is controlled during the CSO, and in order not to allow repetition of such behaviour, which caused issue of the Child Safety Order by the court. Local government social service worker or specialist of the Youth Offending Team[156] can be persons, who can be appointed by the court as responsible persons in respect of the child. Before the Magistrates' Court carries out a decision on application of a CSO to the child, it is obliged to perform the survey and assessment of the family, as well as to explain to the parents the consequences of this decision. The court has to discuss with the parents or persons, who substitute them,

[153] Education Act 1996, Appointment of chief education officer. Available at: http://www.legislation.gov.uk/ukpga/1996/56/section/532 [viewed on 12.08.2012.].
[154] Crime and Disorder Act 1998, 11 Child safety orders. Available at: http://www.legislation.gov.uk/ukpga/1998/37/section/11 [viewed on 13.08.2012.].
[155] Curfew notice - obligation to stay at home during a period specified by an official.
[156] Youth offending teams. Available at: http://www.justice.gov.uk/contacts/yjb/yots [viewed on 13.08.2012.].

which conditions are to be included into a CSO, what can be the consequences of fulfilment of these conditions, that the parents are entitled to submit a claim to the court for reconsideration of the CSO[157]. Only very practical requirements, which cannot conflict religious beliefs of the parents and child's responsibility to attend school in any way, are to be included in a Child Safety Order. If a CSO is already valid, the court can at any time exclude or change any of the requirements. Appeal claim on the decision of the Magistrates' Court, when applying a CSO, can be submitted to the Supreme Court.

3.4. Anti-Social Behaviour Act[158] and Its Reform

Anti-Social Behaviour Act of Great Britain derives from and is closely connected to the Crime and Disorder Act[159], where the latter is a general law and determines the concept of anti-social behaviour and the responsible institutions, as well as divides legal regulations of this field within the territorial framework of Great Britain[160]. The Anti-Social Behaviour Act determines the types of Anti-Social Behaviour Orders and the procedure of their application.

In Great Britain, the concept "anti-social behaviour" was defined in the late 90ies in order to include into the widest meaning different types of disturbing behaviour and disorders in society, as well as part of criminal offences of lower dangerousness[161], which are not related to complex specifics or high dangerousness and harm to society's or individual's interests, but which are encountered in people's everyday life and cohabitation in their direct form and more often. Thus, for example, several forms of anti-social behaviour can be distinguished: loud behaviour, which is disturbing the neighbours, including loud parties[162] (a); aimless stay of unattended young people on the streets (b); leaving of wastes and littering of environment (c); acts of vandalism, graffiti and other types of deliberate damage of property or vehicles (d); distribution and use of drugs (e); being drunk and acting fightingly in public places (f); abandonment or burning of cars (g). The aforementioned issues were often enough not included in the range of prior concerns of police and other state institutions; hence, there was a lack of

[157] Crime and Disorder Act 1998, 12 Child safety orders: supplemental. Available at: http://www.legislation.gov.uk/ukpga/1998/37/section/12 [viewed on 13.08.2012.]
[158] Anti-Social Behaviour Act 2003. Entered into force November 20, 2003. Available at: http://www.legislation.gov.uk/ukpga/2003/38/contents [viewed on 07.11.2012.]
[159] Crime and Disorder Act 1998. Entered into force 31 July 1995. Available at: http://www.legislation.gov.uk/ukpga/1998/37/contents [viewed on 07.11.2012.]
[160] Author's note: for example, separate legal regulations, which refer to England, Wales, Scotland and Northern Ireland, are distinguished.
[161] Author's note: similarly in Latvia a range of administrative violations specified in the Latvian Administrative Violations Code would befit here. Here it is necessary to take into account the fact that legal system of Great Britain lacks a concept of Administrative Violation in the meaning, by which it is understood in legal system of Latvia - certain illegal activities, which are not criminally punished, but for which a penalty is prescribed.
[162] From English – "loud parties".

effective activity. The Crime and Disorder Act, which was accepted in 1998[163], **provided the following definition of anti-social behaviour: "Person's act in a manner, which can cause or is causing harassment, alarm or distress to other people not of the same household as him/herself."** In its terms, this legal definition prescribes a platform for a new civil legal measure in order for the possibility to react to the aforementioned situations, providing the court with the possibility to apply limitations and conditions to a person in order to prevent anti-social behaviour of a particular person in future, to exist.

The main thing – such procedure prescribes alternatives to criminal procedure in situations, when it is impossible to obtain sufficient evidence that the activities, which are criminally punishable, have taken place, for example, the victim is afraid of giving witness against his/her neighbour. Civil procedure in these cases allows solving the problem by assessing the impact of harmful activity on the victim in its general, rather than traditionally – by applying punishment to the guilty. This aspect is particularly significant in cases of regular repetition of harmful activity, when a person (or persons) is caused harm: when examining each case separately, it is not great, but, when assessing what is caused to the victim (or victims) by this activity in general, it significantly affects the quality of life of the victims in everyday life.

Originally, a unified system, which had to be implemented across the whole territory of Great Britain, with separate discrete solutions in Scotland and Northern Ireland, was developed for the management of anti-social behaviour; definite and strictly regulated **19 types of Anti-Social Behaviour Orders** were implemented: **For persons** – Anti-Social Behaviour Order on conviction; Drinking Banning Order on conviction; Anti-Social Behaviour Order on application; Anti-Social Behaviour Injunction; Drinking Banning Order on application; Individual Support Order; Intervention Order[164] and orders, which are intended for action in case of anti-social behaviour **in society** – Litter Clearing notice; Street Litter Control notice; Defacement Removal notice; Designated Public Place Order; Gating Order; Dog Control Order; Dispersal Order; Direction to Leave; Premises Closure Order; Crack House Closure Order; Noisy Premises Closure Order; Closure Order[165]. After the Anti-Social Behaviour Act came into effect in 2003, an ASBO was used often enough and the statistics delighted. Nevertheless, application of the new initiative in practise faced a number of difficulties – on the one hand, an ASBO was mostly aimed at prohibitions and influence, supervision and control of the behaviour of a person, who committed these violations, on the other hand, it was less aimed at whether these behaviour orders correspond to the needs of the victims; cases, when people, who had suffered

[163] Crime and Disorder Act 1998. Entered into force 31 July 1995. Available at: http://www.legislation.gov.uk/ukpga/1998/37/contents [viewed on 07.11.2012.]
[164] In English: Anti-social Behaviour Order (ASBO) on conviction, Drinking Banning Order (DBO) on conviction, ASBO on application, ASB Injunction, DBO on application, Individual Support Order, Intervention Order.
[165] Licensing Act 2003. Entered into force 10 July 2003. Available at: http://www.legislation.gov.uk/ukpga/2003/17/section/161 [viewed on 10.08.2012.].

from anti-social behaviour, were not listened to and anti-social activities actually continued, even though an ASBO was applied, took place rather often.

On October 18, 2012 the Ministry of Justice of Great Britain published data[166] on application of an ASBO in England and Wales. Statistical report included data for the period from April 1, 1999 to December 31, 2011 and provided brief analysis of this data. 21,749 ASBOs were applied in total within this period (01.04.1999-31.12.2011). From 2003 to 2005 the application of an ASBO was increasing, whereas, as of 2006 rapid decrease of ASBO application was observed. Thus, for instance, most of ASBOs were applied in 2005 (2800 cases), whereas less than a thousand (800 cases) of ASBOs was applied in 2011. The general tendency shows that most of ASBOs are applied on conviction of persons of criminal offence, while on application from the police, local government or other institutions specified in the law – half less. ASBOs, which are issued for a period of up to 2 years, with a condition that they remain valid till their special cancellation in the court, constitute the greatest part. These ASBOs, which are issued as of June 1, 2000, are issued to men in 85.9% of cases, namely – in 18,585 cases for men's anti-social behaviour and in 3,060 cases – for similar acts of women. It is pointed out that 40% of all ASBOs were issued by a Magistrates' or County Court, while the biggest ASBO submitters (92.3%) were police specialists or municipal officials. On average 3-12% of ASBOs, issued by the court, are violated. Even though the total level of ASBO application decreased and the number of violations increased, as of 2006 the number of violation cases of ASBOs issued by the court continued to steadily decrease. Based on the aforementioned statistical data, it is possible to conclude that there is a connection between the duration of an ASBO and its violation: the longer ASBOs are valid, the more often they are violated. The number of ASBOs, which are violated within a year, is related to the number of ASBOs, which are valid this particular year, many of the ASBOs violated in particular year were issued during previous years. Each violated ASBO is violated already 4.7 times on average. The highest number of violations of ASBO conditions (during the year of their issue) was 29.3% of order issued that year, while most often ASBO conditions were violated within the period from 2000 to 2002 (35.8%), in 2010 30.6% and in 2011 30.1%.

In order for this measure to be successful, not only each institution separately has to understand its role in its implementation and methodology, but they all together have to distinguish unified cooperation framework. It is essential for the residents to recognize social behaviour; moreover, they have to be well-informed about the assistance possibilities available to the police.

Police's full understanding of this preventive operational measure and its true wish to get involved are the factors, which plays a crucial role in the application of an ASBO. In autumn 2010

[166] 18 October 2012, Statistical Notice: Anti-Social Behaviour Order (ASBO) Statistics England and Wales 2011. Available at: http://www.statistics.gov.uk/hub/index.html [viewed on 20.10.2012.].

a notice "Anti-Social Behaviour: Stop the Rot"[167], which analyses the practice of 43 police departments of England and Wales working with Anti-Social Behaviour Orders, was published in Great Britain. It was concluded that, even though the work with anti-social behaviour issues is of great amount, the number of applied Anti-Social Behaviour Orders continues to decrease (a); police specialists often do not consider these violations as "real" criminal offences, on the basis of record of which the work of the police is assessed (b). In the notice it is specified that less than a half of surveyed specialists from 43 police departments were able to say, in which part of their commission area most of anti-social behaviour cases take place. Specialists of Great Britain have concluded that successful anti-social behaviour management has a lot of in common with decentralized approach, than determination of strict borders of action from the above (a); there is no doubt that it is necessary to adhere to one legal regulation and common methodology framework, yet anti-social behaviour methodology in each local government area has to comply with the local needs (b); only the most serious anti-social behaviour cases are to be assessed by the court, while regulating the rest on a local level (c)[168].

On June 21, 2012 the same type of evaluation[169] of the police work in respect to prevention of anti-social behaviour was repeated, since a number of improvements were performed in the organization of police work during the accounting period. The main question was asked to persons, who had suffered from the anti-social behaviour of other people, rather than the registered anti-social behaviour cases and number of applied ASBOs were simply counted. The notice stated that in 2010/2011 approximately 3.2 million anti-social behaviour cases were registered in total in England and Wales. If the aim of the research carried out in 2010 was to establish, how well the police understood the problems related to anti-social behaviour in their commission area, in 2012 the aim was to find out the opinion of 9,300 victims on their satisfaction with police actions in case of anti-social behaviour establishment. The survey established that, by changing priority from reactive action (punishment and prohibition application, etc.) to pro-active action (assistance of the victims and application of positive obligations to the guilty, etc.), the police has achieved that the satisfaction of the victims of anti-social activities (87%) with the police has increased significantly, showing the satisfaction of even 97% of residents in one police department. Apart from that, the survey established that on average 55% of victims in the country are satisfied with the police actions, eliminating anti-social behaviour and providing help to the victims. Even if, as specified in the notice, these indices are

[167] "Anti-Social behaviour: Stop the rot", Sir Denis O`Connor, Her Majesty`s Chief Inspector of Constabulary, 2010. Available at: http://www.hmic.gov.uk/media/stop-the-rot-20100923.pdf [viewed on 03.11.2012.]

[168] See Scheme No.7, the scheme illustrates new elements of ASBO system within the framework of joint activity. The aforementioned figure has no hierarchical effect; practical workers have to apply the most suitable approach to each individual case on the spot in the local government area.

[169] A step in the right direction: the policing of anti-social behaviour, HMIC, 2012. Available at: http://www.hmic.gov.uk/media/a-step-in-the-right-direction-the-policing-of-anti-social-behaviour.pdf [viewed on 05.11.2012.].

assessed as comparatively high in comparison to the ones included into the notice of 2010, it is necessary to search for answers to the questions, why the remaining 45% of victims are not satisfied with the help provided to them. The aforementioned vividly illustrates how important the opinions of the receivers of this service and victims and regular determination of these opinions for the successful implementation of an ASBO are. Namely, **if anti-social behaviour causes fear, alarm or unsafety, it cannot be assessed by displaying the number of applied ASBOs as a performance index, it has to be measured by the existence or non-existence of safety feeling among people instead** – it also indicates at successes and failures of the system operation best of all, it serves as a foundation for the improvement of work efficiency.

As can be seen from the aforementioned, planned ASBO reform in Great Britain is not related to the decrease of the number of ASBOs from 19 to six, yet it is mostly a reconsideration of attitude, philosophy, principles and aims toproduce the answer as to what kind of ASBO system has to exist in order to respond to the safety needs of the society and to be able to provide necessary support to each individual, who suffers from anti-social actions of other persons. On August 20, 2012 the government of Great Britain issued a document[170], which included government's proposal, which was developed after the analysis of the document "More effective responses to anti-social behaviour – a consultation[171]" published on February 7, 2011 and presented for the public discussion and proposals attached to it. As a result a concept for the improvement and more effective application of ASBO measures "Give priority to the victim: more effective responses to anti-social behaviour[172]" was developed. As a result of implementation of the aforementioned concept the number of ASBOs decreased from 19 to six, substituting a number of previous court orders with two new tools: **Criminal Behaviour Order (CBO)**, which can be applied by convicting a person of criminal offence, and **Crime Prevention Order (CPO)**, applying it in other cases. These new measures differ from the previous ones by that they are aimed at imposition of positive obligation, rather than prohibition. The second essential difference is that the consequences of violating only one Anti-Social Behaviour Order (CBO) will result in the form of criminal punishment, while CPO violation will be punished as a contempt of the court (non-compliance with the court's decision), and it will not be a punishable action specified in criminal law norms, hence, a person will not be considered to be punished.

Across the whole history of Anti-Social Behaviour Orders, an **issue regarding determination of civil and criminal legal borders** always has caused a lot of discussion. A number of specialists

[170] Anti-Social Behaviour – The Government`s Proposals, 20 August 2012. Available at: www.parliament.uk/briefingpapers/SN06344.pdf [viewed on: 20.10.2012].
[171] More effective responses to antisocial behaviour – a consultation. Available at: http://www.homeoffice.gov.uk/publications/consultations/cons-2010-antisocial-behaviour/ [viewed on: 20.10.2012].
[172] Antisocial behaviour white paper, 22 May 2012. Available at: http://www.officialdocuments.gov.uk/document/cm83/8367/8367.pdf [viewed on: 20.10.2012].

expressed an opinion[173] that an ASBO actually destroys the border between civil and criminal liability, prescribing that criminal liability is imposed for the violation of court's decision issued according to the civil procedure[174]. Yet, from the other point of view the rights of one individual cannot be set up over safety interests of the rest of the society members. Due to this reason an agreement was reached on that the criminal liability (and the fact that a person has criminal record) for ASBO violation is imposed only when a Criminal Behaviour Order along with the punishment for committed criminal offence is applied to a person by the court, and that non-fulfilment of conditions of this court's judgment itself is criminally punished. In cases the court has applied a Crime Prevention Order and its conditions have been violated, this violation is not criminally punishable (a person has no criminal record), it is punishable as a contempt of the court. In Great Britain, contempt of the court can be punished according to the civil procedure by imprisonment for up to 2 years or by unlimited amount of pecuniary punishment, this procedure is prescribed by the law "On Contempt of Court"[175].

Based on the aforementioned it is possible to conclude[176] that, even regardless of the number of differences between legal systems of Latvia and Great Britain (England and Wales), systems of preventive measures are very similar in terms of aims, principles and even methods. Moreover, in Latvia the POM system is yet only being developed, thus, it is worth observing different elements of this system separately, particularly taking into account that they have already been applied in practise for more than 10 years.

After the reform performed in Great Britain, the system of preventive operational measures will consist of 6 ASBOs[177], two of which will be applied by the court, while the rest – by other institutions operating in the area of public safety (Police, local government, youth service, social landlords, Neighbour Safety Platform):

- **Criminal Behaviour Order** (CBO) **is applied** in case a person is convicted of criminal offence. It can be any type of criminal offence, not only anti-social behaviour. A CBP can be applied alongside with criminal punishment to persons, who have attained the age of criminal liability – they are older than 10. Application of a CBO is not an alternative sanction to criminal punishment. A CBO is applied in case the court has a ground to consider that in future a person might act in a manner, which will most definitely involve the rights of other people – this behaviour will be obtrusive and disturbing and will cause the feeling of distress to persons not of the same household as him/herself. As a result of on-

[173] Anti-Social Behaviour – The Government`s Proposals, page 9, 20 August 2012. Available at: www.parliament.uk/briefing-papers/SN06344.pdf [viewed on: 20.10.2012].
[174] Home Affairs Committee, Anti-social Behaviour, 22 March 2005,HC 80 2004-05, p 65-66 and p 74. Available at: http://www.publications.parliament.uk/pa/cm200405/cmselect/cmhaff/80/80.pdf [viewed on: 20.10.2012].
[175] Contempt of Court Act 1981. Entered into force July 27, 1981. Available at: http://www.legislation.gov.uk/ukpga/1981/49 [viewed on 05.11.2012.].
[176] See Scheme No.8 in appendices.
[177] See Schemes No 7 and No.8 in appendices.

going CBO reform the court will be able to impose not only prohibitions, but also positive obligations on criminal offender. When applying conditions and prohibitions, the court has to take into account personal qualities and reasons of previous illegal activity of the person on trial, according to which sensible, proportional, virtually executable, practical and clearly understandable positive obligations and prohibitions are to be applied. **Application** for issue of a CBO to the court **might be submitted by a prosecutor (a)** within the framework of already initiated criminal proceeding. Taking into account offender's personal qualities, the prosecutor has to identify applicable positive proposals and prohibitions to a person, as well as he has to verify whether it is possible to fulfil these conditions at the offender's place of residence. The prosecutor does not have to prove to the court that all other measures trying to influence the behaviour of this person are already exhausted or that the mentioned court's order is the only way to solve the problem. If a CBO is requested for a person under 16, if necessary, responsible institution (for example - local government, youth service, police) has to be appealed to prepare a notice on family conditions of a young person. Information prepared in such a way can be used in order for the court to issue a "Child Safety Order" concurrently to a CBO and to display the support necessary for the parents (and, possibly, other family members) in child's upbringing in it. If **the court (b)** itself comes to a confidence that a CBO is necessary for a particular person, it can issue a CBO upon its own initiative. The only thing that a court must check is whether positive obligations and prohibitions imposed by the court can be fulfilled on the territory, where the offender resides. **Violation of** CBO **conditions** is a criminally punished offence, for which the deprivation of freedom for up to 5 years is prescribed.

- **Crime Prevention Order** (CPO) is a court's order **issued** according to the civil procedure, the breach of which has civil consequences - punishment for contempt of the court by not fulfilling the CPO issued by the court. The fact that a person *undoubtedly* has acted illegally does not have to be the ground for **application** of a CPO, it is enough with the opinion that a person, *possibly*, might cause harm. In order to apply a CPO, no witnesses, evidence and statements against anyone (for instance, neighbours) are needed - harm caused by one particular activity does not have to be proven; instead it has to be verified whether the harm is most likely caused or might be caused in nearest time while certain activities or behaviour of a particular person continues in a certain way. In this case, the court can attest that the statements of professional witnesses are sufficient - opinions of local government specialists, opinion of youth service, etc. A CPO can be applied to persons from the age of 10, yet the cases of persons of the age of 10-17 will most likely be considered and decided by a specialized Youth Court[178]. An **application** for issue of a CPO to the court **can be submitted** by the police, local

[178] Author's note: taking into account that ASBO reform is still taking place in Great Britain, final decisions on jurisdiction of youth cases have not been carried out yet. Debates regarding which court instances (County or

government and social landlords. If a person, on whom an application is submitted to the court, has not attained the age of 18, it is necessary to consult youth service prior to submitting the application. If a CPO is applied to a person under 16, respective submitter prepares a notice on family conditions of the young person. This notice is later used in order for the court to issue a "Child Safety Order" issued alongside with the CPO applied to a young person. A notice on family conditions is prepared in order to be able to ensure individualized support in the upbringing of the child for the parents of a young person. CPO **conditions** depend on the problems of particular person's behaviour and can include both positive obligations and prohibitions, which have to be proportional to the harm of anti-social behaviour, real, practical, clearly formulated and executable. Prohibitions have to fulfil preventive function rather than punishing one, while obligations imposed on a person have to be aimed at positive action. Thus, for instance, if any person acted loudly in any particular place, he/she has to be prohibited from being in this place and has to be determined to attend anger-control programs, or, if a dog owner does not take care of and look after his/her dog on a regular basis, he/she has to be imposed with an obligation to take a walk with his/her dog, using a leash, and not to walk with his/her dog in places of people gathering and/or to determine to attend courses for dog owners together with their dogs. The fact of CPO violation should not result in punishment for a person under the norms of criminal law. Even though a new bill on regulation of ASBO application has not been fully developed in Great Britain yet, there is an opinion[179] that sanction for CPO violation has to be of civil type, yet in cases of serious violations it does not exclude short-term imprisonment. County or Youth Court might apply the following to persons under 18: supervision in society, requirement to perform certain activities, determination of curfew and claim for imprisonment.

- **Society Protection Order** (Society Protection Order for public places, Society Protection Order for premises closure). This type of ASBO correlates with the types of violations specified in the Latvian Administrative Violations Code, yet the essential difference is that ASBOs are not a type of punishment, their aim is to stop and prevent anti-social behaviour in future, rather than punish the offender for particular activities. A range of activities comprised by this type of ASBO is of reactive type. For instance, noisy premise closure or closure of premises, where offences are always taking place and alcohol is consumed, if graffiti is painted and litter is left in inappropriate places. **These orders** have two so-called severity/significance **degrees**, each of which can be applied by a different range of officials. Thus, for example, – **first degree order can be requested** by a local government, officials of association of social landlords. Obligations to clean off the graffiti (if offender created any), to collect litter (if any), to stop loud and disturbing behaviour can be included into this type of order;

Magistrates' Court) or which type of court (specialized Youth Court) will apply CPOs to persons of the age of 10-17 are taking place.

[179] More effective responses to antisocial behaviour - a consultation, page 18. Available at: http://www.homeoffice.gov.uk/publications/consultations/cons-2010-antisocial-behaviour/ [viewed on: 23.10.2012].

second degree order can be requested by the police or responsible officials of local government and it can include the following conditions – to impose limitations for the use of premises, to impose obligation to look after one's pets. If persons, whom the following limitations are imposed on, do not agree with these limitations, they have the possibility to appeal them in the court. In case of violation of this order, it is assumed[180] that a criminal punishment in the form of pecuniary punishment or imprisonment for up to 6 months is applied.

- **Obedience Order** (or Direction Order) is applied in cases, when persons are acting contrary to the interests of public order or there is a ground to consider that he/she might act in such a way in nearest time. An Obedience Order can be issued only by the police. Legal acts[181] currently effective in Great Britain (England and Wales) already allow the police to require from the groups of persons to leave places, where acts of anti-social behaviour often take place (a); to take home any person, who is under 16 and is in the street not being accompanied by an adult during the period from 21:00 to 6:00 (b); to require the person over 16 to leave a particular area or place and not to return there within 48 hours, if the stay of this particular person might be related to the alcohol use or anti-social behaviour (c); to confiscate alcohol from persons in deliberately determined places (d). If the police, in any of these ways, require the person to leave the place, where he/she is, it is not considered to be a violation, but rather the non-obedience to such police orders is considered to be a violation. Yet in this case criminal sanctions are not allowed to be applied. It is to be taken into account that such type of behaviour is typical for young people and minors, therefore, the reaction has to be both clear and careful simultaneously in order not to influence person's further life. Thus, for instance[182], it is possible to develop such a system of sanctions, which prescribes reactions applied to minors for the following types of violations: in case of violation of an Obedience Order minors of the age of 10 to 17 can be applied with the so-called curfew (obligation to stay at home during particular time of day), can participate in certain types of activities or can be supervised by a specialist. Only in very complex cases, when a considerable harm was caused by this action, persons aged from 14 to 17 will be punished with imprisonment for a period of time for up to 3 months. A number of specialists[183] in Great Britain consider that application of imprisonment to minors is not an appropriate reaction of the state, no

[180] More effective responses to antisocial behaviour - a consultation, page 21. Available at: http://www.homeoffice.gov.uk/publications/consultations/cons-2010-antisocial-behaviour/ [viewed on: 23.10.2012.].
[181] Anti-Social Behaviour Act 2003. Entered into force November 20, 2003. Available at: http://www.legislation.gov.uk/ukpga/2003/38/contents [viewed on 07.11.2012.], Violent Crime Reduction Act 2006. Entered into force October 20, 2006. Available at: http://www.legislation.gov.uk/ukpga/2006/38/contents [viewed on 07.11.2012.]
[182] Anti-Social Behaviour – The Government`s Proposals, 20 August 2012. Available at: www.parliament.uk/briefingpapers/SN06344.pdf [viewed on: 20.10.2012].
[183] Home Office, *Putting Victims First: More effective responses to anti-social behaviour*, Cm 8367, 22 May 2012, p.48.

matter what type of ASBO is violated – only civil decisions or the possibility to apply other, more severe ASBO is allowed.

The system of ASBOs in force in Great Britain prescribes that only two types of ASBO – Criminal Behaviour Order and Crime Prevention Order – are applied by the court. At the sametime there are possible ASBOs of different content, which are applied by the police, different local government institutions and officials, as well as such prevention measures and methods, that are applied for the early intervention performance, which are called Informal tools and Out-of-Court disposals, since their list is incomplete. Informal tools and Out-of-Court disposals are preventive operational measures, which are possible to be applied to low-harm incidents or in cases of anti-social behaviour, which are registered for a person for the first time. One of the aims of the on-going reform in Great Britain is to develop these tools in a way as for the prevention specialists to be able to apply them in cases, which are recognized as anti-social behaviour, yet the elimination of which requires simple early intervention related to low-dangerousness violations or violations committed by minors.

Informal tools are, for example, **Desirable (Acceptable) Behaviour Agreements**, which are often applied in case of less harmful anti-social behaviour, including – to minors, young adults and elder people[184]. Acceptable Behaviour Agreements are concluded in writing between a person and respective institution, but, if such an agreement is concluded due to the necessity to influence child's anti-social behaviour, it is signed by child's parents or persons, who substitute them. In Great Britain, such agreements can be concluded between a person and social landlord, house manager's office, school, local police. It is an agreement of a very elastic form, which can comprise all conditions in order to prevent anti-social behaviour of a respective person. This preventive measure is particularly effective in cases, when the signs of anti-social behaviour are established for the child - an agreement might determine not only desired model of child's behaviour, but also obligations to child's parents or persons, who substitute them, in order to provide necessary support. This tool actually provides the possibility of tripartite agreement, which is an ideal method of influencing the behaviour by directly performing early intervention in social behaviour of the children and young persons. People, who conclude such agreements, have to voluntarily agree with the agreement conditions, which might comprise commitment not to disturb other people, not to cause alarm or distress to other people, not to cause fear to other people by one's behaviour or to negatively influence others in any other way. Based on practice of England and Wales[185], such agreements are mostly valid for a period of up to 6 months, yet in case of necessity the agreement can be prolonged upon mutual agreement of the parties. If such

[184] Acceptable Behaviour Contracts (ABC's). Available at: http://www.antisocialbehaviour.org.uk/abc/index.php [viewed on 30.10.2012.].
[185] Acceptable Behaviour Contracts (ABC's). Available at: http://www.antisocialbehaviour.org.uk/abc/index.php [viewed on 30.10.2012.].

an agreement is not fulfilled or its conditions are violated and the anti-social behaviour continues, the Magistrates' Court is entitled to apply a different preventive operational measure – Anti-Social Behaviour Order[186] – to such a person. Agreement conditions vary depending on the needs of the person, whose behaviour has led the involved parties to the necessity to conclude such an agreement. Agreement conditions might also include participation in different events of Restorative Justice, involving the society into conflict settlement and at the same time providing support to persons, who have suffered from anti-social behaviour.

Caution, Conditional caution and Penalty notices are **Out-of-Court disposals**, which are applied by the police in Great Britain (England and Wales). There are two types of Cautions, simple and conditional, and they are applied to persons, who are at least 18 years old, while other special Out-of-Court disposals – Reprimand and Warning – are applied to minors[187]. At first a Reprimand is applied to a minor, but, if the expression of anti-social behaviour continues – Warning. Types of Caution are regulated by the Criminal Justice Act[188], while the application procedure of Penalty notices is regulated by the Criminal Justice and Police Act[189]. Having analysed that Out-Of-Court disposals are of great significance for the prevention of anti-social behaviour, several solutions, which might allow improving them, have been suggested on the general background of ASBO reform[190]. For adults it is proposed to implement not only the obligation to pay pecuniary punishment, but also the obligation to attend respective educational courses for improvement of their behaviour. There is a possibility that such approach might replace a number of cases of pecuniary punishment application and it might provide the police with the freedom of action in performance of preventive actions. In respect to minors, it is proposed[191] to reconsider the system of Out-of-Court disposals in general, since the currently existing system, when Out-of-court disposals are applied to minors automatically, mostly leads a minor to the court in order to get them imprisoned afterwards. It is emphasized that Out-of-Court disposals, which are applied **to minors, are to be quickly applicable to the restorative sanctions**, which are impossible to avoid, **by assigning a significant role in provision of these sanctions to the parents of young persons, thus, ensuring that the parents undertake greater responsibility for the behaviour of their child in the society**.

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[186] Author's note: after the reform, Anti-Social Behaviour Order will become a Criminal Behaviour Order or Crime Prevention Order.
[187] Ask the Police. Available at: https://www.askthe.police.uk/content/Q562.htm [viewed on 30.10.2012.].
[188] Criminal Justice Act 2003. Entered into force November 20, 2003. Available at: http://www.legislation.gov.uk/ukpga/2003/44/section/22 [viewed on 30.10.2012.].
[189] Criminal Justice and Police Act 2001. Entered into force May 11, 2001. Available at: http://www.legislation.gov.uk/ukpga/2001/16/contents [viewed on 15.10.2012.].
[190] Breaking the cycle: effective punishment, rehabilitation and sentencing of offenders. Available at: http://www.justice.gov.uk/consultations/consultation-040311 [viewed on 15.10.2012.].
[191] More effective responses to antisocial behaviour - a consultation, page 24. Available at: http://www.homeoffice.gov.uk/publications/consultations/cons-2010-antisocial-behaviour/ [viewed on: 01.11.2012].

Taking into account that the expressions of anti-social behaviour are of very diverse character, functions for their prevention fall under the competence of different institutions – local governments, police, school, health care, social and other establishments or institutions. Due to the aforementioned reason, situations, when persons, who have suffered from anti-social behaviour, are sent from one institution to another, and as a result the victims do not receive necessary assistance[192] and continue to suffer anti-social behaviour of other persons instead, occur rather often. The aforementioned ensures the foundation for conclusion that **inter-institutional cooperation**, settling the issues regarding anti-social behaviour cases, is actually the main problem to be solved. A methodology for consideration of claims (applications, calls), which is called "The Community Trigger"[193], is implemented in Great Britain, but according to the examples of practice developed in Latvia, it is a form of Inter-institutional cooperation or one of possible models. The aforementioned allows to conclude that practically anti-social behaviour management both within the state and local government is impossible without the mechanism of Inter-institutional cooperation. Information resources[194] analysed in the research have certified that, regardless of the form (method) of Inter-institutional cooperation, it has to be created in an individualized manner, namely in a way as to comply with the specific needs and current events of respective local government area. It means that the framework of Inter-institutional cooperation on the state level can be determined by a method (meeting, system of call/claim consideration or other) and principles (in order for the tool to serve its aim), which it is based on, while the fact that the system will run in detail is to be allowed to be determined on the local level[195] – which officials and institutions will be involved, how great the number of these officials will be, what the distribution of responsibilities will be.

Based on the aforementioned, it is possible to conclude that **the system of anti-social behaviour management** includes the following tools:

- types of ASBO – system for adults and minors (a);
- Informal tools, including the ones for early intervention and Out-of-Court disposals (b);

[192] Ibid., page 24.
[193] The "Community Trigger": Government's proposals on Anti-social Behaviour, 29 May 2012. Available at: http://www.parliament.uk/briefing-papers/SN06343 [viewed on: 05.11.2012].
[194] Anti-Social Behaviour – The Government`s Proposals, 20 August 2012, page 15. Available at: www.parliament.uk/briefing-papers/SN06344.pdf [viewed on: 05.11.2012].
[195] More effective responses to antisocial behaviour – a consultation, page 25. Available at: http://www.homeoffice.gov.uk/publications/consultations/cons-2010-antisocial-behaviour/ [viewed on: 01.11.2012].

- mechanism of Inter-institutional cooperation, which consists of organizing methods (c), forms of work organization on the local level (d), and system of risk prevention and management for the victims and of anti-social behaviour and people responsible for it[196] (e).

[196] Putting Victims first – more effective responses to anti-social behaviour, May 2012, page 14. Available at: http://www.official-documents.gov.uk/document/cm83/8367/8367.pdf [viewed on: 03.11.2012].

4. Legal Regulation in Scotland

Legal regulation in Scotland, which concerns preventive operational measures, is described in this chapter by analysing such laws as Anti-Social Behaviour Act[197], Protection from Harassment Act 1997[198] and Domestic Abuse (Scotland) Act 2011[199], Protection from Abuse (Scotland) Act 2001[200] related thereto, while paying attention to other regulatory enactments directly related to particular issues as well.

4.1. Anti-Social Behaviour etc. (Scotland) Act

In relation to preventive operational measures in Scotland, firstly, it is necessary to pay attention to the Anti-Social Behaviour etc. (Scotland) Act 2004[201]. Anti-Social Behaviour Orders (hereinafter – ASBO) are preventive orders, the main aim of which is to protect particular victims from particular anti-social behaviour, as well as to protect a wider society from the anti-social behaviour, which, probably, will be performed in future.

Even though the ASBOs, which refer to Scotland, were specified in the Crime and Disorder Act 1998[202], the Anti-Social Behaviour etc. (Scotland) Act 2004 introduced certain changes in the existing regulation.

According to the Anti-Social Behaviour etc. (Scotland) Act, a person is involved in the anti-social behaviour, if (a) he/she acts in a manner (including talking), which causes or will most likely cause the feeling of alarm or distress or (b) executes such a behaviour model, which causes or will most likely cause the feeling of alarm or distress to at least one person not of the same household as him/herself. In order to discuss "behaviour model", at least two cases of similar behaviour must be established, whereas the definition "will most likely cause" means that not only a victim of anti-social behaviour, but also some other person can witness that particular behaviour was indeed anti-social.[203]

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[197] Antisocial Behaviour etc. (Scotland) Act 2004. Passed 17 June 2004. Entered into force 26 July 2004. Available at: http://www.legislation.gov.uk/asp/2004/8/contents/2004-07-26 [viewed on 10.08.2012.].
[198] Protection from Harassment Act 1997. Entered into force 21 March 1997 Available at: http://www.legislation.gov.uk/ukpga/1997/40/contents [viewed on 10.08.2012.].
[199] Domestic Abuse (Scotland) Act 2011. Passed 16 March 2011. Entered into force 20 April 2011. Available at: http://www.legislation.gov.uk/asp/2011/13/contents [viewed on 11.08.2012.].
[200] Protection from Abuse (Scotland) Act 2001. Passed 4 October 2001. Entered into force 6 November 2001 Available at: http://www.legislation.gov.uk/asp/2001/14?view=plain [viewed on 10.08.2012.].
[201] Antisocial Behaviour etc. (Scotland) Act 2004. Passed 17 June 2004. Entered into force 26 July 2004. Available at: http://www.legislation.gov.uk/asp/2004/8/contents/2004-07-26 [viewed on 10.08.2012.].
[202] Crime and Disorder Act 1998. Entered into force 31 July 1995. Available at: http://www.legislation.gov.uk/ukpga/1998/37/contents [viewed on 10.08.2012.].
[203] Guide to the Antisocial Behaviour etc. (Scotland) Act 2004. Available at: http://www.scotland.gov.uk/Publications/2004/10/20146/45685 [viewed on 12.08.2012.].

Subsection 2 of the Section 4 of the law specifies that an ASBO can be applied to persons, who (a) have attained the age of 12, (b) turned against any particular person by behaving anti-socially and (c) an ASBO is necessary to protect a particular person from further anti-social behaviour.

Application for issue of an ASBO is to be submitted to the judge of the Sheriff Court, in the commission area of which the person acted anti-socially. Violation or non-fulfilment of an ASBO, if done without a reasonable ground, is considered to be a criminal offence. The consequences for the violation or non-fulfilment of an ASBO can prescribe imprisonment for up to 5 years or pecuniary punishment, or both. If an act, by which an ASBO is violated, is classified as a separate criminal offence, which the guilty person is convicted of, no separate punishment is prescribed for the violation of an ASBO, simultaneously the court takes into account the fact that an ASBO was also applied to a person, who committed a criminal offence, within a particular period of time. If the police have a reasonable ground to believe that a person violates or have violated an ASBO, the arrest can be performed without a warrant.

For example, graffiti painting, vandalism, damaging of private or public property, use of intimidating talk, use of intimidating body language, excessive noisiness, use of alcohol or drugs in public places, distribution of drugs in public places, littering and illegal waste removal, fireworks in late nights hours, etc. are mentioned as typical cases of anti-social behaviour[204].

The Anti-Social Behaviour etc. (Scotland) Act inter alia specifies such preventive operational measures as dispersion of groups, closure of premises, response to piece disturbance, anti-social impact on the environment, as well as other violations on the part of landlords.

In order to carry out a decision on application of an ASBO to children and young persons (under 16), the sheriff has to consider the advices of the Children's hearing.

On April 15, 1971 the Children's hearings system in Scotland took over from the courts most of the responsibility in issues related to children and young persons under 16 (in certain cases – up to 18). It concerns the children and young persons, who have committed a criminal offence or who are in need of care and protection[205].

If an ASBO or a temporary ASBO is applied to children and young persons (under 16) under the Section 12 of the Part 2 of the Anti-Social Behaviour etc. (Scotland) Act, particular case can be handed over to the Children's hearing. In this case in addition to an ASBO, an operational measure – Supervision Requirement determined within the framework of the Children's hearing – can be applied to the child. Supervision Requirements are reconsidered each year until the child attains the age of 18. The Children's hearing might include different provisions and local authority is responsible for these

[204] What is an Anti-Social Behaviour Order? Available at: http://www.lawandparents.co.uk/what-is-anti-social-behaviourorder-asbo.html [viewed on 26.10.2012.].
[205] The Foundation of the Children's Hearings System. Available at: http://www.chscotland.gov.uk/background.asp (viewed on 12.10.2012.).

provisions to be complied with. Part 12[206] of the Anti-Social Behaviour etc. (Scotland) Act specifies a possibility for the Children's hearing to decide on child's electronic supervision – its aim is to ensure that the child stays at a definite place or does not attend places, the attendance of which is prohibited. The Children's hearing might impose duties on local authorities in order to achieve the change in child's behaviour; similarly, the law prescribes a response to non-fulfilment of duties – if a local authority does not perform child's supervision or does not ensure appropriate education for the child expelled from school[207]. It is essential that an intensive support and a set of different measures are ensured alongside with electronic supervision in order to create pre-conditions for changes of child's behaviour.

Since in Scotland the Child's hearing decides on most of the issues, which involve children and young persons under 16, a more detailed description of this particular system is provided further.

Legal ground for a child or a young person to be referred to the Children's hearing is specified in subsection 2 of the Section 52[208] of the Children (Scotland) Act, namely, regulation refers to the children, who (a) are beyond the control of the parents; (b) are exposed to moral danger; (c) a child is or has been a victim of criminal offence, including also – the victim of physical or sexual abuse; (d) there is a high probability that a child has suffered from serious harm to health or development due to insufficient care; (e) a child is using alcohol, solvents or drugs; (f) a child has committed a criminal offence; (g) a child has failed to attend school regularly without reasonable excuse; (h) an ASBO might be applied to a child and the Sheriff Court requests to transfer the case to the Children's hearing.

Children under 16 can be referred to the court only if they have committed serious criminal offences – murder, assault, which caused danger to the life of other person, or certain road accidents, as a result of which they might be prohibited from driving a car. In the aforementioned cases the prosecutor has to assess whether the judicature is in the interests of the society. If the case of a child or a young person is considered in the court, it can, while in some cases the court is obliged to, request for advices of the Children's hearing in order to decide on the most appropriate type of punishment. Having received an application, the court can decide on the transfer of the case to the Children's hearing for the final decision.[209]

Before the case ends up at the Children's hearing, the information about each case is submitted to the Reporter. The Reporter is an official, whom the information related to children and young persons is submitted primarily by the police and social service, yet it can also be done by the medical and

[206] Explanatory notes of Anti-Social Behaviour etc. (Scotland) Act 2004. Available at: http://www.legislation.gov.uk/asp/2004/8/notes/division/3/12 [viewed on 20.10.2012.].
[207] Ibid.
[208] Children (Scotland) Act 1995. Entered into force 19 July 1995. Available at: http://www.legislation.gov.uk/ukpga/1995/36 [viewed on 20.10.2012.].
[209] The Foundation of the Children's Hearings System. Available at: http://www.chscotland.gov.uk/background.asp (viewed on 20.10.2012.).

educational institutions, as well as by any member of the society and a child or a young person him/herself. The Reporter performs initial investigation in order to decide what kind of action will benefit the child the most and can: (a) determine that no further action is needed; (b) transfer the case to the local authority in order for it to provide advices, instructions and assistance to the child - it is based on the principles of voluntarism and informal cooperation and usually includes the support from the social service; (c) organize the Children's hearing, considering that it is necessary to apply an operational measure – supervision of a child or a young person[210].

Representatives of the Children's panel participate in the Children's hearing – there are approximately 2500 members of this group in Scotland. The Children's panel comprises representatives from the society, the work of these people is not paid – they are carefully selected and specially trained volunteers. Each local government has its Children's panel, its representatives by turns participate in the Children's hearings – three experts in each hearing, which decide on whether an operational measure is to be applied to the child – supervision[211].

Children's hearing can examine the cases only if a child or a young person and parents or other persons responsible for the child confirm that the reasons, which are specified by the Reporter and due to which the case was transferred for consideration, are justified. If the reasons were not recognized as justified ones or a child is incapable to understand these reasons due to his/her age or development, the case is transferred for consideration to the Sheriff Court. If the sheriff states that the reasons are justified, the Reporter is entitled to organize a new Children's hearing.

The circumstances, when it is necessary to apply temporary/emergency measures, might be established; therefore, the sheriff is entitled to issue a Child Safety Order, if it is considered that a child is threatened by the immediate danger. Such an order is usually considered by the Children's hearing on the second day after the order is issued. The Children's hearing can decide on the necessity to issue warrants – it happens in cases, when a child does not appear for the Children's hearing, as well as in case if it is necessary to find a child and to take him/her to a place of safety. Place of Safety Warrant can be issued in the aforementioned cases. This warrant is valid for 22 days, but the Children's hearing can prolong it for additional 22 days (in general the warrant cannot be valid for more than 66 days – if prolongation is needed, it is necessary to apply to the Sheriff Court).

If Supervision Requirements are applied to a child or a young person, he/she is still mostly staying at home, while being supervised by a social worker.

It is essential that the decisions carried out by the Children's hearing are not punishing ones, the hearing cannot, for instance, apply pecuniary punishment neither to a child, nor to the parents.

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[210] Ibid.

[211] The Foundation of the Children's Hearings System. Available at: http://www.chscotland.gov.uk/background.asp (viewed on 20.10.2012.).

Decisions carried out by the Children's hearing are subject to appeal under the Section 51 of the Children (Scotland) Act – it can be done within 21 days after the issue of the decision by applying to the Sheriff Court. The appeal is usually considered within 28 days from its submission. The decision of the Sheriff Court is also subject to appeal in the next court instance[212].

A Parenting Order specified in the Anti-Social Behaviour (Scotland) Act is intended to settle the issues with the parents, who deliberately or as a result of irresponsibility do not want to deal with or do not deal with their children. The issue of this order can be requested by the local authority of the Reporter. The issue of such an order can be requested in case an ASBO is already issued to a child[213].

A Parenting Order is issued in case a child is observed to be acting anti-socially and the order might help preclude the child from such behaviour or a child is already committing criminal activities and the issue of an order to the parents might prevent further committal of criminal activities. If such an order is issued, the parents are to fulfil the requirements within a period of up to one year and they receive consultations and instructions within a period of up to three months. Similarly to the violation of an ASBO, the violation of a Parenting Order has criminal-legal consequences.

Scotland has taken another step closer to that, in case of anti-social behaviour, the main emphasis would be made on prevention, rather than punishing approach. It has been achieved by developing the Anti-Social Behaviour Framework "Promoting Positive Outcomes"[214] in March 2009, specifying prevention, integration, involvement and communication as the main pillars of the Anti-Social Behaviour Framework. The main aims of the anti-social behaviour policy in Scotland are:

- prevention, as well as early and effective intervention, is determined as a foundation for all approaches, which are developed in order to prevent anti-social behaviour.
- the causes of anti-social behaviour, for example, drinking, use of addictive substances and moderate well-being, are being solved, rather than only combatting the symptoms.
- positive behaviour is being promoted and more people are being involved, which can be considered to be a model and advisers, whereas bad behaviour is punished in an appropriate, proportional and timely manner.
- opportunities and chances to be successful are ensured, thus decreasing the probability of getting involved into anti-social behaviour.
- closer cooperation is taking place on the local level in order to exercise the interests of individuals and society groups.

[212] Children (Scotland) Act 1995. Entered into force 19 July 1995. Available at: http://www.legislation.gov.uk/ukpga/1995/36 [viewed on 20.10.2012.].
[213] Explanatory notes of Antisocial Behaviour etc. (Scotland) Act 2004. Available at: http://www.legislation.gov.uk/asp/2004/8/notes/division/3/2/10 [viewed on 20.10.2012.].
[214] Antisocial Behaviour Framework. Available at: http://www.scotland.gov.uk/Topics/Justice/publicsafety/asb/ASBframework [viewed on 15.08.2012.].

By paying attention particularly to the prevention of anti-social behaviour, the specialists emphasize that it is essential not only to punish the person responsible for violence, but also to ensure a set of necessary support measures to this person[215]. It is specified that the support measures cannot replace the application of sanctions determined in the law in cases, when it is necessary, yet the punishment ensures only short-term solutions for the society and victims - in order to ensure sustainable decrease of anti-social behaviour, both sanctions and support provision are to be applied. In Scotland, several different support programs[216] are implemented to meet this purpose, for instance, for families, who are constantly involved into anti-social behaviour (*The Breaking the Cycle Project*[217]) or for young persons, who are involved into anti-social behaviour as a result of alcohol use (*Operation Floorwalk*[218]). Likewise, a number of projects, which are aimed at improvement of the quality of life of a particular region and involvement of the society in decision-making and collaboration, while at the same time setting society's safety as a main aim of the implemented activities. The results of the projects clearly indicate that the prevention might be implemented in the following way as well – by allowing the people to feel pertaining to their place of residence, promoting the possibilities to influence the decision-making process and thus directly decreasing the number of anti-social behaviour cases[219].

4.2. Acceptable Behaviour Contract

Acceptable Behaviour Contract (hereinafter – Contract) is a type of early interference, which is used in order for the person, who is involved into unacceptable or anti-social behaviour, to understand the negative nature of his/her behaviour and its impact on other people. The aim of this contract is to achieve the interruption of particular undesirable behaviour.

The Contract can also be concluded with the parents, who do not prevent the anti-social behaviour of their child; likewise, it can be applied in cases, when the children and young persons fail to attend school and face behaviour problems at school.

The Contract is concluded in writing and voluntarily – one of the parties is an offender (or in case of a minor – also the parents or persons, who replace the parents), while the other party – one or several

[215] Promoting Positive Outcomes: Working together to prevent antisocial behaviour. Available at: http://www.scotland.gov.uk/Resource/Doc/288794/0088353.pdf [viewed on 24.08.2012.].
[216] Ibid.
[217] The Breaking the Cycle Project - as a result of this particular project it has been established that, having received the support, the number of anti-social behaviour cases decreased in 94% of involved families , the risk of eviction from the place of residence decreased in 81% of them and the risk of breaking of the family decreased in 50% of cases. In total this project saved approximately GBP 100,000 a year per each family for the state. See http://www.scotland.gov.uk/Resource/Doc/288794/0088353.pdf.
[218] Promoting Positive Outcomes: Working together to prevent anti-social behaviour, page 9. Available at: http://www.scotland.gov.uk/Resource/Doc/288794/0088353.pdf [viewed on 24.08.2012.].
[219] Community Wellbeing Champions Initiative. Available at: http://www.scotland.gov.uk/Resource/Doc/254432/0119733.pdf [viewed on 24.08.2012.].

local institutions, which are responsible for prevention of particular action. Police, education or social work departments might be mentioned as one of the examples. Even though the Contract is not concluded based on the norms of any particular law (Contract forms or particular formulas are not used for its writing[220]) and it is based on the principle of voluntarism, it is a good preventive measure in cases, when the families know – violation or refusal to conclude the Contract without the reasonable excuse might become a basis for legal, as well as criminal consequences, for instance, Anti-Social Behaviour Order or Parenting Order.

The Contract is mostly used when working with children and young persons under 16; however, this measure can be effectively used for a person of any age[221]. In relation to the children and young persons, an Acceptable Behaviour Contract can be concluded without previously applying to the Reporter, this official is to be informed only on the already concluded contract. The Contract comprises accurately specified types of anti-social behaviour, which a person was previously involved into, as well as the behaviour, which a person agrees to preclude from. One of the pre-conditions of successful contract is person's involvement in the development of contents and provisions of the contract – it helps to understand the impact of his/her behaviour on the others, as well as makes undertake the responsibility for his/her actions.

By concluding an Acceptable Behaviour Contract, attention is paid to the causes, which lead a particular person to anti-social behaviour. Based on the conclusions made, the institutions and establishments, which are already involved in solving of the problems, are studied and it is decided on the establishments and institutions, the involvement of which might help in solving the established causes of the problems and help a person in complying with the provisions of the contract.

An Acceptable Behaviour Contract is mostly used to prevent such cases of anti-social behaviour as: (a) assault on neighbours and passers-by; (b) verbal insults; (c) causing of damage to property and vandalism; (d) disturbing noisiness; (e) graffiti painting; (f) spending time in a big group, which is acting in a threatening manner; (g) racial assault on other people; (h) cases, when minors smoke and use alcohol; (i) misuse of various substances; (j) driving a car; (k) begging; (l) prostitution; (m) purchase of prostitution services on the street.[222]

In Scotland, the aforementioned preventive operational measure is applied in various situations, the most appropriate Contract provisions are applied in accordance with a particular situation. It is comparatively often determined, for example, to stop the type of anti-social behaviour, which lays the

[220] Acceptable Behaviour Contracts. Available at: http://scotland.shelter.org.uk/get_advice/advice_topics/neighbourhood_issues/antisocial_behaviour/other_solutions_to_antisocial_behaviour/acceptable_behaviour_contracts [viewed on 26.10.2012]

[221] 'Sticks and Carrots' Guidance on: Acceptable Behaviour Contracts. Available at: http://www.scotland.gov.uk/Resource/Doc/925/0086362.pdf [viewed on 12.10.2012.].

[222] 'Sticks and Carrots' Guidance on: Acceptable Behaviour Contracts. Available at: http://www.scotland.gov.uk/Resource/Doc/925/0086362.pdf [viewed on 26.10.2012.].

foundation of the Contract conclusion, to attend school regularly and to receive help in order to combat addictions (alcohol, drugs, etc.)[223], likewise, it can be agreed on that the offender is regularly tested for drugs, school attendance is checked and checks on compliance with curfew are performed.[224]

One of the essential components of the Contract is determination of the consequences of violating the Contract – in practice, for instance, oral and written warnings and interview, within the framework of which Contract provisions are repeatedly discussed, are used; in case of violation of the Contract performed by the children or young persons it is possible to apply to the Reporter, likewise, it is possible to issue an Anti-Social Behaviour Order, to involve a person into intensive support programs, as well as measures, which are related to the limitation or interruption of lease rights, are typical for Scotland.[225]

4.3. Protection from Harassment Act and Power to Arrest without Warrant

The aim of the Protection from Harassment Act 1997[226] is to protect individuals from harassment, respectively determining a prohibition for other persons from implementing such behaviour model, which causes harassment of other person. In order to speak of harassment, it is necessary to establish either the intention to harass a person or the circumstances, which might be interpreted as harassment by any sensible person. A designation "behaviour model" is specified in this law as well - it means causing alarm or distress to another person in at least two cases of particular behaviour; moreover, talking is also included into the notion "behaviour".

If, based on person's claim according to the civil procedure, a fact of harassment is established, under the subsection 5 of the Section 8 the court is entitled to determine the indemnification of losses for the victim, as well as to apply an Interdict or an Interim Interdict and issue a Non-Harassment Order.

An Interdict may include, for instance, non-approaching to the victim's house or place of work, non-approaching to the school of victim's children, prohibition from removing the furniture or other belongings from the place of residence, prohibition from threatening, assaulting physically or verbally, making abusive phone calls, doing anything to frighten, alarm or distress the victim or his/her children.[227]

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[223] Ibid.
[224] Acceptable Behaviour Contracts (ABCs). Available at: http://www.lawandparents.co.uk/abcs-acceptable-behaviourcontract.html [viewed on 26.10.2012.].
[225] 'Sticks and Carrots' Guidance on: Acceptable Behaviour Contracts. Available at: http://www.scotland.gov.uk/Resource/Doc/925/0086362.pdf [viewed on 26.10.2012.].
[226] Protection from Harassment Act 1997. Entered into force 21 March 1997 Available at: http://www.legislation.gov.uk/ukpga/1997/40/contents [viewed on 10.08.2012.].
[227] Interdicts for domestic abuse. Available at: http://scotland.shelter.org.uk/get_advice/advice_topics/families_and_households/domestic_abuse/taking_legal_action/interdicts_for_domestic_abuse [viewed on 14.08.2012.].

Part (b) of the subsection 5 of the Section 8 specifies an application of an Interim Interdict as well – the court can apply it immediately after the receipt of the application based only on the information specified in the application. Since these protection mechanisms are implemented according to the civil-legal procedure, it is necessary to prove that it is more believable that the harassment is taking place – proving "beyond all reasonable doubts" is not a compulsory pre-condition in order to apply an Interim Interdict.

Imprisonment for up to six months or pecuniary punishment, or both are the consequences of violating an Interim Interdict.

According to the Protection from Abuse (Scotland) Act 2001[228], both Interdict and Interim Interdict can include additional power to arrest a person, who violates the aforementioned preventive operational measures, without a warrant. In order for the victim to receive such additional guarantees for their safety, it is necessary to separately request the court, which decides on the issue of application of an Interdict or an Interim Interdict. The power to arrest a person can be determined for a period of up to three years, specifying certain date, when these rights terminate. The victim can request the court to prolong the term for the rights to arrest without a warrant, if a person, whom this measure is planned to be used against, is heard out and this measure is necessary to protect the victim from the risk of abuse.

It is the police, who performs the imprisonment of Interdict or Interim Interdict violator, wherewith the police inform about the granting of arrest rights, prolongation or recall of their term and changes in relation to an Interdict or an Interim Interdict – if its conditions are changed or it is cancelled – as soon as possible. According to the subsection 1 of the Section 4 of the law, the conclusion on the necessity of imprisonment is substantiated by a check in two steps – if a police officer has a reasonable ground to believe that a person violates an Interdict, as well as if he believes – there is a risk of abuse or further abuse in case a person is not arrested.[229] Namely, it is not enough with the fact that Interdict violation has been recorded; additionally, assaulting situation, which a person is to be protected from, has to be established.[230]

Within the framework of a particular law the notion "abuse" is explained rather widely – it comprises violence, molestation, threatening behaviour or any other behaviour, which causes or most likely might cause physical or mental injuries, fear, alarm or stress, moreover, it refers to talking and being at a particular place or in particular area as well.[231]

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[228] Protection from Abuse (Scotland) Act 2001. Passed 4 October 2001. Available at: http://www.legislation.gov.uk/asp/2001/14?view=plain [viewed on 10.08.2012.].
[229] Protection from Abuse (Scotland) Act 2001. Passed 4 October 2001. Entered into force 6 November 2001 Available at: http://www.legislation.gov.uk/asp/2001/14/section/4 [viewed on 10.08.2012.].
[230] Explanatory notes to the Protection from Abuse (Scotland) Act 2001. Available at: http://www.legislation.gov.uk/asp/2001/14/notes/division/3 [viewed on 11.08.2012.].
[231] Protection from Abuse (Scotland) Act 2001. Passed 4 October 2001. Entered into force 6 November 2001 Available at: http://www.legislation.gov.uk/asp/2001/14/section/4 [viewed on 10.08.2012.].

The aforementioned Non-Harassment Order[232] mostly limits the rights of a person, whom this preventive operational measure is applied to; therefore, it is more difficult to achieve the issue of such an order. Legislation of Scotland prescribes both civil and criminal Non-Harassment Order.

A Non-Harassment Order issued according to the civil procedure[233] prescribes withdrawal from particular type of action for a definite period of time (including unlimited period of time). It is essential that an action, which a person wants to protect him/herself from, does not have to be illegal or abusive – it is enough with the fact that particular action causes fear or sensation of danger to a particular person, who requests to issue such an order. For example, an order might include a prohibition from calling, repeatedly sending messages, sending letters or stalking. Criminal liability with possible imprisonment for a period of up to five years or pecuniary punishment, or both is imposed for violation of a Non-Harassment Order.[234]

A Non-Harassment Order is included into the Section 234 of the Criminal Procedure (Scotland) Act 1995[235]. Subsection 1 of the Section 234 prescribes that a prosecutor can apply for the issue of a particular order in case a person is convicted of criminal offence, which includes harassment. It is possible to apply the order for an indeterminate period of time, while imprisonment for up to five years or pecuniary punishment, or both are the punishment for its violations. The prosecutor or a person, whom the order is issued against, can apply for its cancellation or amendment to the same court, which issued this order.

As of 2010 Threatening or abusive behaviour and Harassment were classified as criminally punishable in Scotland – new regulation was included into the Criminal Justice and Licensing (Scotland) Act 2010[236]. This particular fact is worth mentioning due to the fact that with the help of new regulation in Scotland a new system how to address harassment and abuse of other people was developed – the aforementioned Interdict, Interim Interdict or Non-Harassment Order can be used as the first reaction, but, if specified preventive operational measures do not ensure the desirable result, it is possible to hold a person criminally liable.

4.4. Domestic Abuse (Scotland) Act and Eviction Order

[232] Protection from Harassment Act 1997. Entered into force 21 March 1997 Available at: http://www.legislation.gov.uk/ukpga/1997/40/contents [viewed on 10.08.2012.].
[233] Protection from Abuse (Scotland) Act 2001. Passed 4 October 2001. Entered into force 6 November 2001 Available at: http://www.legislation.gov.uk/asp/2001/14/section/4 [viewed on 10.08.2012.].
[234] Non-harassment orders. Available at: http://scotland.shelter.org.uk/get_advice/advice_topics/complaints_and_court_action/discrimination_and_harassment/non-harassment_orders [viewed on 24.08.2012.].
[235] Criminal Procedure (Scotland) Act 1995. Entered into force 8 November 1995. Available at: http://www.legislation.gov.uk/ukpga/1995/46/contents [viewed on 10.08.2012.].
[236] Criminal Justice and Licensing (Scotland) Act 2010. Passed 30 June 2010. Entered into force 6 August 2010. Available at: http://www.legislation.gov.uk/asp/2010/13/part/2/crossheading/threatening-or-abusive-behaviour [viewed on 20.08.2012.].

Statistical data shows that in 2009-2010 in Scotland the police recorded 51,926 cases, which are defined as domestic abuse, in total in Scotland there are 1,000 domestic abuse cases per 100,000 residents.[237]

Understanding the significance of this particular problem, in 2011 the previously discussed part of the Protection from Abuse (Scotland) Act was improved by prescribing a new preventive operational measure – Civil Protection Order, which is requested by the victims, who have suffered from domestic abuse, implementing new regulation into a separate law, Domestic Abuse (Scotland) Act 2011[238]. This law also specifies that each individual has the right to be protected from harassment and, respectively, a person cannot be involved in activities, which lead to person's harassment, namely, considering the activities, which can be defined as domestic abuse.[239]

The differences, which are to be emphasized when comparing to regulation included in the Protection from Abuse (Scotland) Act, are – the victim is not obliged to prove that a particular "behaviour model" has taken place – one case of such action is enough, moreover, "behaviour" encompasses both talking and presence in a particular place or area. In order to determine that a case under consideration is a case of domestic abuse, circle of persons, whom protection mechanism can be applied against, namely, plaintiff's spouse, partner, civil partner (if persons are living together, as if they are spouses or partners) or person, whom the plaintiff has intimate relations with (including relations between a boy and a girl, as well people of same sex), is set as a criterion. New regulation does not refer to other types of family relations or relations with friends, neighbours or colleagues.[240]

Non-compliance with the prohibition is a criminal offence, for which imprisonment for a period of up to five years or pecuniary punishment, or both can be imposed.

An Exclusion Order from the place of residence, which is prescribed in the Matrimonial Homes (Family Protection) Act 1998[241], might be used as an additional protection mechanism. This Exclusion Order can be requested in case partners are married, have registered their partnership or are living together as if being married or having registered their partnership, moreover, both of them have the right to be at the particular place of residence.

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[237] Evaluation of Protection from Abuse (Scotland) Act 2001, available at: http://www.scotland.gov.uk/Publications/2003/11/18560/29451 [viewed on 24.08.2012.].

[238] Domestic Abuse (Scotland) Act 2011. Passed 16 March 2011. Entered into force 20 April 2011. Available at: http://www.legislation.gov.uk/asp/2011/13/contents [viewed on 11.08.2012.].

[239] Explanatory notes of the Domestic Abuse (Scotland) Act 2011. Available at: http://www.legislation.gov.uk/asp/2011/13/notes/division/2 [viewed on 11.08.2012.].

[240] Explanatory notes of the Domestic Abuse (Scotland) Act 2011. Available at: http://www.legislation.gov.uk/asp/2011/13/notes/division/2 [viewed on 11.08.2012.].

[241] Matrimonial Homes (Family Protection) (Scotland) Act 198. Entered into force 30 October 1981. Available at: http://www.legislation.gov.uk/ukpga/1981/59/section/4 [viewed on 19.08.2012.].

In order to receive an Exclusion Order, a person has to apply to the Sheriff Court or to the Court of Session – in both cases the case will be heard according to the civil procedure. It is possible to receive this order, if a partner has done or has threatened to do something that can cause physical or mental harm to another party or the children, and this action can be proven (for example, by a police report, a letter from the doctor, statements of friends, family or neighbours). Similarly, it is assessed whether harmful action of the partner will most likely repeat again – whether a particular negative behaviour model has formed. The necessity of an Exclusion Order for a person, who requested for it, to be protected is a criterion; moreover, the application of this order has to be fair and justified (children's interests, as well as mutual attitude and relations are assessed prior to the request for an order).

By applying an Exclusion Order, the court can determine the prohibition for a partner, whom the order is applied against, from coming to or being in particular places in the vicinity of the house.[242]

[242] Exclusion orders. Available at: http://scotland.shelter.org.uk/get_advice/advice_topics/families_and_households/domestic_abuse/taking_legal_action/exclusion_orders [viewed on 19.08.2012.].

5. Legal Regulation in Bulgaria

Even though no separate regulation in relation to preventive operational measures has been developed in Bulgaria, measures of preventive nature are included both in the field of criminal law and civil law, as well as administrative law. Preventive operational measures beyond criminal procedure, which are prescribed in the Protection Against Domestic Violence Act, are worth emphasizing.

Protection Against Domestic Violence Act[243] came into effect on April 1, 2005 and by it Bulgaria confirmed the significance of addressing domestic violence on the national level, as well as it certified that violence in family and relations is not a private issue – it concerns the interests of the society on the whole.[244] Implementation of the law is considered to be a crucial step in prevention and preclusion of violence against women; at the same time domestic violence is still a wide-spread problem in Bulgaria. Data summarized in 2006 shows that every forth woman in Bulgaria suffers from domestic violence.[245]

According to the Protection from Domestic Violence Act, physical, mental or sexual violence, as well as any attempt of such violence directed against a person, whom another person is related to or was related to by family ties, kinship, as well as living or being in the same house, is defined as domestic violence.[246]

This particular law prescribes protection for persons, who have suffered from violence performed by: (a) spouse or former spouse, (b) person, with whom the victim is living or was living together, (c) person, whom the victim shares a child with, (d) parents, (e) posterity, (f) sister or brother, (d) relative, (j) guardian or foster parents.

The following protection measures are prescribed and a Protection Order can prescribe the application of one or more measures: (a) prohibition for the defendant (person, who was violent) from being violent in the family, (b) defendant's eviction from the shared place of stay for a period of time determined by the court, (c) prohibition for the defendant from being in the vicinity of the place of residence, place of work or in places, where the victim has social contacts and resting places – with the provisions, conditions and for a period of time as long as determined by the court, (d) to temporarily

[243] Protection Against Domestic Violence Act. Entered into force 1 April 2005. Available at: http://sgdatabase.unwomen.org/uploads/Protection%20Against%20Domestic%20Violence%20Act%202005.pdf [viewed on 13.08.2012.].
[244] The UN Secretary-General's database on violence against women. Available at: http://sgdatabase.unwomen.org/searchDetail.action?measureId=7568&baseHREF=country&baseHREFId=276 [viewed on 14.08.2012.].
[245] Realising Rights – Case studies on state responses to violence against women and children in Europe. Available at: http://www.tilburguniversity.edu/research/institutes-and-research-groups/intervict/apRRS.pdf [viewed on 26.10.20.12].
[246] Protection Against Domestic Violence Act. Entered into force 1 April 2005. Available at: http://sgdatabase.unwomen.org/uploads/Protection%20Against%20Domestic%20Violence%20Act%202005.pdf (viewed on 13.08.2012.).

change the place of residence for the child and his/her parents, who is the victim of violence or is not responsible for the violence, with provisions, conditions and for a period of time as long as determined by the court, ensuring that it does not contradict child's best interests, (e) to impose an obligation on the defendant to participate in specially developed programs, (f) recommendation for the victim to participate in recovery programs[247]. (a) - (d) protection measures can be applied for a period of time from one month to one year. By applying any of the specified protection measures, the defendant is to pay pecuniary punishment in the amount of LVL 71 to LVL 356.

Cases related to domestic violence are considered by the Regional Court, the competence is determined according to the place of residence of the victim.

It is essential that the application of a Protection Order can be requested by both the victim and – the head of the Social Assistance Directorate and brother or sister, or any other direct relative, regardless of the kinship degree (the latter refers only to the cases when emergency court's protection is requested). The issue of a Protection Order can be requested within a month after violence has taken place. An application or a request is to be considered within a month from the day, when the violence has taken place. In case a Protection Order is not issued or it is cancelled, the expenses are to be covered by the submitter of the request or application.

Records, reports or other acts issued by the Social Assistance Directorate, doctors or psychologists, which consulted the victim; documents issued by legal persons, who provide social services and are registered in the Social Assistance Agency, as well as the statement of the victim him/herself about the suffered violence constitute the evidence base for a particular case.

Judgment on application of a Protection Order is subject to appeal within seven days in the court of the next instance – District Court.[248] The judgment of the District Court is not subject to appeal.

In case a Protection Order is violated, the police arrest the offender and inform the prosecutor's office. As of 2009 Section 296 of the Criminal Code of Bulgaria prescribes the responsibility for such violations – deprivation of freedom for a period of up to three years or pecuniary punishment in the amount of up to LVL 1,778.[249]

Changes in the legal regulation, which have taken place in Bulgaria after the law came into effect, prescribe a wider protection of the victim, as well as state funding for several services necessary for the persons, who have suffered from domestic violence. Despite the positive changes, various deficiencies

[247] Protection Against Domestic Violence Act. Entered into force 1 April 2005. Available at: http://sgdatabase.unwomen.org/uploads/Protection%20Against%20Domestic%20Violence%20Act%202005.pdf (viewed on 13.08.2012.).
[248] Protection Against Domestic Violence Act. Entered into force 1 April 2005. Available at: http://sgdatabase.unwomen.org/uploads/Protection%20Against%20Domestic%20Violence%20Act%202005.pdf (viewed on 13.08.2012.).
[249] Protection Against Domestic Violence Act. Available at: http://sgdatabase.unwomen.org/uploads/Protection%20Against%20Domestic%20Violence%20Act%202005.pdf (viewed on 13.08.2012.).

have been established in the law and policy planning documents, for example, the police and the court have no harmonized understanding of application of the law, there is a lack of state-level prevention strategies and programs (including, the lack of specialist training programs), the victim is not ensured with sufficient possibilities to receive support and assistance, as well as children's protection institutions are incapable of applying the law in cases when domestic violence affects children's safety. Likewise, the fact that domestic violence is not determined as a criminal offence in the Criminal Code of Bulgaria – in order to initiate the criminal procedure for domestic violence cases, a person has to submit a claim regarding causing of minor or moderate body injuries, namely, criminal procedure ex officio is impossible – is also evaluated negatively.[250]

[250] Realising Rights – Case studies on state responses to violence against women and children in Europe. Available at: http://www.tilburguniversity.edu/research/institutes-and-research-groups/intervict/apRRS.pdf [viewed on 26.10.20.12].

6. Guidelines for Implementation of Preventive Operational Measures in Latvia

6.1. Legal Environment of Application of Preventive Operational Measures

Based on the experience of foreign countries, there is a ground to consider that, when developing the system of preventive measures in Latvia, it is necessary to take into consideration four factors, which can form effective environment of preventive operational measures (hereinafter – POM) by mutually correlating.

Firstly, the type of preventive operational measure will depend on the type of threat to interests, which we want to prevent by this measure, namely – the object, which the threat is directed against. When examining the POM systems of Estonia, Finland, England and Wales, as well as Scotland and Bulgaria, it can be concluded that the threat is directed either against lawful interest and rights of a certain individual – **against a person** (a), or against common **interests of the society** (b). Thus, for instance, legal regulation[251] of Great Britain (England and Wales) prescribes different protection measures for physical persons (when the interests of physical persons are involved) and for public places (when common interests of the society are involved). By attributing these types of legal regulation to the legal system of Latvia, it can be concluded that, for example, in Great Britain the POMs applied to public place in the interests of the society relate to a number of legal regulations, which are included in the Latvian Administrative Violations Code (Noisy Premises Closure Order; Dispersal Order, etc.) and other special legal acts, even in the regulations binding for local governments (Litter Collection Order; Graffiti Removal Order; Dog Control Order, etc.). Nevertheless, these regulations have crucial difference – in Great Britain and Wales POMs, which are directed to prevention of threat to society's interests, impose obligations on legal or physical persons to perform certain activities or to preclude from certain activities, whereas the LAVC prescribes punishment for such types of action.

Secondly, the type and content of a preventive operational measure will depend on the person, who threatens the interests of a certain individual or the society in general – **a child** (a minor[252]) or **an adult**. It is to be taken into account that in most of the cases, when an obligation is determined for a child within the framework of a POM, simultaneously, a POM is determined for the parents – by determining the obligations to support their child when fulfilling the imposed POM or by regulating child's safety conditions, which are binding for the parents. Likewise, the consequences for non-

[251] Anti-social Behaviour – The Government's Proposals, page 8. Available at: http://www.parliament.uk/briefingpapers/SN06343 [viewed on 27.10.2012.].
[252] Author's note: person, who has not attained the age of 18.

fulfilment of a POM vary for persons of different age, additionally dividing children into several age groups – from 10 to 14 years, from 15 to 18 years.

Thirdly, the type of social environment, in which the threat to lawful interests is taking place – or the threat is from the persons of the **same household** (including family), or from **a person, who is unknown to the victim** and whom the victim does not know personally or whom the victim has never shared a household with.

Fourthly, application of POMs depends on the legal status of the creator of the threat to lawful interests – he is already involved in the criminal procedure and he has a definite **status in the criminal proceeding** (the suspect, the accused, person on trial, convict) or a person is under the **general civil status**. On this score, the POM systems of Estonia, Finland, England and Wales, as well as Scotland and Bulgaria are evaluated as different ones – thus, for instance, in Scotland and Estonia a POM is a measure of civil type, by violating which criminal consequences might take place, whereas in Scotland, England and Wales this regulation is different – a POM can be applied to persons, in relation to whose behaviour a criminal proceeding was initiated – it means, that a POM will be also valid during the deprivation of freedom and it is possible that it will be valid even after the fulfilment of criminal punishment. In addition to the aforementioned, it is necessary to note that in Great Britain a POM (Protection Order) can be applied in case the creator of threat is not found guilty for committing criminal offence and regardless of the offence, which the person was convicted of. In Estonia, the victim can request for determining a Protection Order for a period of up to three years after the trial as well.[253]

It can be concluded that a **POM is in fact a measure of multi-disciplinary nature** depending on all aforementioned signs, since in essence it is possible to develop such a POM system, which will be only of civil type (with criminal consequences prescribed in cases of violation - Estonia), or universal POMs, which can be applied to persons of all possible legal statuses with equal criminal consequences, as it is in England and Wales, or Scotland. POM regulation in legal norms can be organized differently – there is a possibility to organize it within the framework of one regulatory enactment by including all necessary legal regulations in it, by regulating only certain procedures in other regulatory enactments (a), the second possibility for the development of regulatory base - within the framework of "roof law" by including main aims and principles, types and institutional competence of POM in it, while regulating application procedure of legal norms in separate legal regulation fields by separate, already existing legal acts of the field (b). It is important for the preventive measures to have a unified common framework.

[253] Code of Criminal Procedure, Article 310.1 (1).Passed 12 February 2003. Entered into force 1 July 2004. Available at: http://www.legaltext.ee/en [viewed on 27.10.2012.].

6.2. What Has To Be Definitely Taken into Account in the Process of the POM System Development in Latvia

Preventive operational measures and the procedure of their application have to be clear not only for the state and local government institutions, but also to the society in general and to each person in particular. It is to be taken into account that implementation of prevention is nearly impossible without the society's support. Preventive operational measures are to be defined as a form of performance of individual preventive work in the general state prevention system, specifying the aims and tasks of application of these tools. Taking into account that the prevention is actually not defined as a set of general and individual methods, particular attention is to be paid to the development of the system. The state is to ensure not only punishment and supervision functions, but also it is to act pro-actively in order to prevent the committal of criminal offence, as a result of which certain individuals or the safety interests of the society in general might suffer, by implementing early interference (or intervention). Thus, **the POM system as a set of mutually related and purposeful actions is considered to be a method of early intervention, where each preventive measure separately is evaluated as a prevention measure for the achievement of any particular aim**. Highly-organized and planned prevention system is typical for the model of provision of rights protection used in the developed countries, where the protection of fundamental rights of each individual is a paramount task. "The state has to be capable of responding to the threat to fundamental rights, not waiting for someone of the society members to become a victim of a criminal offence"[254]. When developing a prevention system as a set of methodically organized actions, firstly, attention is to be paid to the safety of a person, whose fundamental rights are already involved – the victim. "(..) not every involvement of fundamental rights will be regulated as a criminal offence of an administrative violation. Wherewith there will be certain violations of fundamental rights, which will not conform to the judicial liability system"[255]. However, it does not mean that the violations of human fundamental rights, which are not punishable under the prohibitions of administrative or criminal regulatory enactments, will be harmless. Therefore, "A person can be punished only for the offence, which reached a certain degree of harm"[256], while in case a person causes obvious risks to the safety feeling of other persons by his/her behaviour, POMs are applied to the person in order to prevent harm and harmful consequences in future.

[254] Miezane E. (Miezāne E.) On Implementation of Preventive Operational Measures in Legal System of Latvia (Par preventīvu piespiedu līdzekļu ieviešanu Latvijas tiesību sistēmā). Jurista vārds, September 20, 2011, No. 38.
[255] Ibid.
[256] Miezane E. (Miezāne E.) On Implementation of Preventive Operational Measures in Legal System of Latvia (Par preventīvu piespiedu līdzekļu ieviešanu Latvijas tiesību sistēmā). Jurista vārds, September 20, 2011, No. 38.

Preventive operational measures of the European countries vary significantly, yet, they mostly do not differ in their types. Thus, for instance, the Law of Obligations Act[257] of Estonia prescribes a prohibition from approaching any particular person, regulated stay at a shared place of residence or communication limitations, Family Law Act[258] prescribed an obligation for the spouses to temporarily live separately, etc. When developing the POM system, it is essential to understand that preventive measures are not "small punishments", which are possible to be fully recorded, ranked and then applied. Preventive operational measures are actually the mechanism of early interference, responses to particular cases, which cause threats to the rights and freedoms of other persons, and they can vary significantly in their type and content. Due to the aforementioned reason, **listing of preventive operational measures in the law does not have to be exhaustive**, thus, leaving a possibility for the applicators of POMs to act in a manner as to be able to response to the safety needs of a particular victim, simultaneously stopping the harmful action and achieving that the harm is not caused.

POMs can exist in several forms (a) and in regulatory enactments of different legal disciplines (b). **When developing the POM system in Latvia, it is necessary to make a choice, whether preventive measures will refer only to particular private persons (both the person who has done the harm and the victim) or they will be used for the provision of common safety interests of the society** (the creator of harm may be both a physical and legal person, and the victims can be both any particular person and a group of persons, or common interests of public order). Thus, for instance, in Estonia a POM is defined as an individual protection measure both in the Civil Procedure and Criminal Procedure. Namely, POMs are applied with an aim to protect any particular physical person and they cannot be applied for the provision of common interests of the society. On the contrary, in England and Wales[259] POMs can be applied even if threats to public order or other common interests of the society are caused. Thus, for instance, in Great Britain there are following POMs for the protection of common interests of the society – Litter Clearing notice (in Latvia it would be an administrative punishment); Street Litter Control notice (in Latvia it would be an administrative punishment); Public Access Order (provides the society with an access to the objects of public use – mainly roads, but also lakes, sea, etc.); Dog Control Order; Noisy Premises Closure Order; Wrecks Clearing Order, etc. Even though such type of POM system does not exist neither in Estonia, nor in Finland, it is reasonably to consider that the imposition of a positive and controllable obligation to act in the common interests of the society, rather than the imposition of punishment within the framework of LAVC, would be a more effective way as to require both private persons and legal persons to act in the interests of the society. This type of

[257] Law of Obligations Act, Article 1055. Passed 26 September 2001. Entered into force 1 July 2002. Available at: http://www.legaltext.ee/en [viewed on 27.10.2012.].
[258] Family Law Act Act, Article 23. Passed 18 November 2009. Entered into force 1 July 2010. Available at: http://www.legaltext.ee/en [viewed on 25.10.2012.].
[259] Anti-social Behaviour – The Government's Proposals, page 8. Available at: http://www.parliament.uk/briefingpapers/SN06343 [viewed on 27.10.2012.].

POMs would allow requiring the performance of particular activities necessary for the society from a person or persons – cleaning their own house, taking care of dogs, removal of illegal fencing, - rather than just punishing. Implementation of such procedure would require reconsidering separate norms of the Latvian Administrative Violations Code.

It is highly significant to assess the **duration of operation of the applied POM**, as well as to prescribe a procedure, by which **the content of a POM can be amended** and when the operation of a POM is no longer needed, and by which **it is cancelled**. The duration of operation of a POM depends on the type of harmful activity, due to which a POM is applied; on the characterizing qualities of a person, whom a POM is applied to (personal behaviour risks). Based on the studied experience of European countries, it can be concluded that in general a preventive operational measure is effective, if it is valid not longer than three years. Namely, if person's behaviour during this maximum period of time has not changed, other measures influencing this person are to be applied, but a POM has not fulfilled its function. Apart from that, if the necessities cannot be clearly determined, it is to be refrained from the long-term application of a POM, leaving a possibility to prolong or stop the operation of a POM after a certain period. Moreover, it is necessary to ensure a possibility for a person, whom a POM is applied to, to express motivated request to reconsider the content of POM conditions or its operation term, or to request for cancelling of the preventive operational measure. Similar rights are to be granted to a person (or persons), whom a POM was applied due to incurred or potential harm (the victim). Likewise, in this case the victim is to explain the reason of his/her application – what the reasons, why this person considers that a risk of possible incurred harm disappeared, are. In any case the decision maker – the court or an Inter-institutional Group – is to be entitled to determine the period of POM operation, which would be proportionate to the needs of the victim.

One of the main aspects is to ensure a possibility that **certain POMs (prohibition from approaching or communicating) can be valid, if a person, who causes harm threats, is convicted of criminal offence or is in the custody**. It is important even in case this person is punished with the deprivation of freedom and is at a place of detention or in the custody[260]. There might be situations, when a person tries to contact not only the victim, witnesses or other persons, who are witnessing or have witnessed in the criminal procedure, but also minors and persons, the threatening of which can influence the aforementioned persons after the conviction, during the deprivation of freedom, with the help of other persons, correspondence or phone calls, by sending SMS[261] or contacting in any other way. Such communication is mostly related to the aim to intimidate the aforementioned persons or to intimidate one's acquaintances, or completely unknown people. These threats are harmful and

[260] Author's remark: Special procedural protection prescribed in the Section 17 of the Code of Criminal Procedure cannot be applied in all cases.

[261] Author's remark: It is a known fact that mobile communication devices are illegally brought and used in the places of detention of Latvia, despite the prohibitions set in regulatory enactments.

dangerous, even if they can not personally executed by the person expressing the threat - a person, who received threats, can be influenced by the convict's acquaintances at large. In addition to the aforementioned, it is necessary to add that the procedural protection[262] is ensured in case if grave or especially grave criminal offence is committed, yet, it is obvious that particular harmful activities can be also performed by persons, who committed criminal violations or less grave crimes. Due to this reason, **POMs are to be applied, despite that the creator of harmful threats (person) has the status of the suspected, the accused or the convict under the CL and CPL**.

In order for the POMs to achieve their aims and to provide the effect of preventive safety included in its content, it is essential to ensure adequate liability for violation of POM conditions or its non-fulfilment in general. It is to be said, that in European countries the norms of the Criminal Law prescribe a punishment for violation or non-fulfilment of POM conditions, yet the types and amount of punishment vary from country to country. Thus, for instance, types of punishment most often applied in Great Britain are the deprivation of freedom for up to 5 years, pecuniary punishment, or both; in Estonia – applied sanction varies depending on whether POM violation caused harm to the life, health or property of a person, as well as depending on whether a Protection Order is violated repeatedly – in these cases the court applies pecuniary punishment or property confiscation, or imprisonment for up to one year. Whereas, if a person has not fulfilled the police order on preventive operational measures, the person can be punished with pecuniary punishment of up to 200 fine units or arrest according to the norms of the Criminal Law. Issue of sanctions regarding non-fulfilment of a POM is a very sensitive and carefully considerable issue, since exaggeratedly severe punishments for violation of these conditions would quickly criminalize large groups of people. The experience of Great Britain shows[263] that by applying a POM in practice, there are quite many violations, and due to severe punishments prescribed by the British legal acts, almost every second POM violator was imprisoned for POM violations, thus, increasing the number of imprisoned persons in Great Britain in a short period of time. It is necessary to consider the implementation of sanctions for POM violation, which would allow the application of the deprivation of freedom as the last possibility or would prescribe it only in cases, when a person has committed criminal offence during the application of POM. Moreover, the deprivation of freedom is to be short – the term of the deprivation of freedom cannot exceed one year. Based on the aforementioned, **liability for POM violations in the following amount and form – short-term deprivation of freedom (up to one year), community service (up to 240 hours) and pecuniary punishment (up to the amount of 10 minimal monthly salaries) – is to be ensured in the Criminal Law**.

[262] Procedural protection is regulated by the legal norms included in the Section 17 of the Penal Code.
[263] Statistical Notice: Anti-Social Behaviour Order (ASBO) Statistics England and Wales 2010. Available at: http://www.homeoffice.gov.uk/publications/science-research-statistics/researchstatistics/crime-research/asbo-stats-england-wales-2010/asbo10snr?view=Binary [viewed on 27.10.2012.].

One of the aspects, which are to be paid special attention to, is the **standard** or sufficient amount **of evidence**, when deciding on application of a POM. The experience of Estonia shows that often enough there are cases[264], when persons are unable to provide sufficient amount of evidence in order for the court to be able to apply POM Protection Order. On the one hand, it is obvious that in Estonia this evidence limit is too high, while, on the other hand, courts[265] have no clear understanding of what amount of evidence is actually considered to be sufficient. Due to the aforementioned, a number of people[266], understanding that they will be unable to provide necessary evidence, do not apply to the court with a request for application of a POM. It is understandable that in these cases the court will be able to assess only the written evidence, which certifies that the rights of a particular person have been involved or might be involved. Yet, in this case the court is to ensure a possibility to request the information itself – the court can request the information both from the police or the prosecutor's office and from the Inter-institutional Group, as well as from a person, for the protection of which a POM is issued, and other establishments and institutions, if necessary. **The evidence, which is to be at the court's disposal in order to carry out a decision on a POM, is to be sufficient in order for the court to gain assurance whether person's rights have been involved (a) or there is a real threat/real possibility, that such involvement might take place (b)**. In this case the court should assess existing evidence for the benefit of possibly threatened person, namely – to apply a POM for a shorter period of time or to select a more appropriate type of POM, instead of rejecting the application of requested POM. This approach would the most appropriate for the preventive character and aim of POM, since the application of an approach that all doubts are interpreted for the benefit of a person, due to the action of whom any other person requires protection, would not suit for application of a POM, since a POM is not a punishment.

In their terms, preventive measures are legal tools, which provide the possibility to stop dangerous and/or illegal action before it reaches the critical border and becomes a criminal offence. The success of POMs depends on the flexibility of the application mechanism of these measures (a) and the mechanism of POM fulfilment (b), which comprises POM control methods (b2) and support activities for prevention of harmful behaviour (b3), rather than on how they are defined in the law (or – in which laws they are defined). Thus, for instance, the experts of Finland[267] have repeatedly emphasized that, when developing a legal base for POM regulation, it is important to ensure the mechanisms of POM fulfilment control, as well as to involve parties (the victim, potential victim and person responsible for harm or a person potentially responsible for harm) in respective support activities with sufficient intensity in order to change behaviour models of these people, excluding the

[264] Author's remark: More on this issue can be found in the chapter on the experience of Estonia.
[265] Roundtable Discussion on 17 May 2012 at the State Prosecutor's Office of the Republic of Estonia.
[266] Roundtable Discussion on 18 May 2012 at the Tallinn Crisis Centre for Women.
[267] Roundtable Discussion on June 6, 2012 at the Ministry of Justice of Finland.

necessity of POMs in future. Due to the aforementioned reasons, **a possibility on application of POMs in cases, when a punishment is imposed on a person under the Latvian Administrative Violations Code, is to be considered**.

When developing a POM system and defining the types of POMs, **it is necessary to be able to balance between three equally important conditions – types of POMs, simplicity of POMs and content of POMs**, where 1) types of preventive operational measures are to be in a form and amount as to be able to response to the necessity of safety and to prevent possible harm to certain individuals and the society in general; 2) the system of preventive operational measures should not be made complicated, namely, such as to define numerous types of preventive operational measures with radically different and complex legal regulations; 3) each defined preventive measure is to have clearly formulated main components (application, fulfilment/control, support activities), and these components are to be executable and feasible. Based on the experience of European countries studied in the research, it can be concluded that the best way to ensure effective resource management and achievement of POM aims is to define approximately five initial types of POMs, ensuring that the court has a possibility to create individual POMs. These individual POMs would be comprised of measures applied by the court to the causer of possible harm with an aim to prevent the occurrence of harm. Types of anti-social behaviour can be highly diverse; it will be impossible to model all possible harmful consequences and situations even in case of development of the most successful legal norms, therefore, a possibility to model individual reaction is to be ensured. Thus, for instance, in Great Britain in 2003 an exhaustive, as considered by the British, and voluminous POM system was developed; however, having evaluated the practice of almost ten years, the specialists of Great Britain came to a conclusion that the POM system was too weighty and scattered - there are too many different types of POMs (a); it is difficult to control, as a result almost half of the POM conditions are violated, and a criminal punishment is applied to people (b); many types of POMs have no adequate application system and the weakness of inter-institutional cooperation can be observed (c); a number of POMs lack appropriate support activities and, hence, are ineffective (d); the whole POM system is directed only against potential or existing harm bringer, neglecting the victims and not providing the victims with any support activities (e). The experts of Finland, having analysed the application of POMs, concluded that in their system short-term POMs applied by the police, when immediately responding to threats, have achieved the best results. Thus, possible threat to the potential victim was prevented in due time, and often enough the case was not considered in the court[268]. Based on the aforementioned, it can be concluded that in addition to the already mentioned division of POMs, **all POMs can be divided into**

[268] Author's note: this is the so-called fixed-term Protection Order issued by the police official, often enough by the prosecutor's office, and only in rare cases by the court. More on this type of Protection Order – in chapter on the POM system of Finland.

measures, which are applied according to the simple procedure (decision is carried out by the court), and measures, which are applied immediately for a short period of time (decisions are carried out by the police and/or the prosecutor's office).

6.3. Possible POM system in Latvia

In order for the POM system to be successful, it is highly important to understand the place of these preventive measures in the prevention system of Latvia (see Scheme No.5). In fact, in Latvia prevention is performed both within the framework of general prevention measures (basically, these measures take the form of the work with groups of persons – adults, pupils, representatives of certain professions, society in general. This work is organized in a form of informative campaign - it is the information in mass media, lectures, etc.) and in the form of individual prevention (here methods of individual work with persons, whom a set of preventive measures developed particularly for these people is oriented to, are concentrated. This work is performed by the State and Municipal Police – individual work with persons of risk groups; Social Service of local governments - individual work with risk families and children; educational institutions – individual work with students in order to involve them in the successful education process; Orphan's Courts – carrying out decisions within their competence, etc.) Taking into account the fact that preventive operational measures will be applied to persons, whose action has caused or might cause harm to the lawful interests and rights of other people, on an individual basis, **a POM will be a tool of implementation of individual prevention**.

In the Republic of Latvia prevention measures currently have no unified legal framework, even though the measures of different preventive type with different preventive tools included in various legal norms exist and are applied in practice (see Scheme No.4). The lack of unified understanding and framework of prevention system creates a situation, when preventive measures are developed anew, rather than deliberately developed within a system – it happens rather chaotically by including preventive measures in more and more of the new or already existing legal acts. This has led to a situation, in which, on the one hand, there is a need for new prevention measures, while, on the other hand, there is no place, where to put them; whereas, the lack of general framework of prevention leads to that, when developing prevention measures, they are not recognized as preventive measures.

When analysing legal mechanisms, which are already included in legal norms, and mechanisms, which are still at the project stage as by the moment of creation of this research, it can be concluded that at the moment there is (soon will be) the following scattered system of preventive measures in Latvia:

1) Preventive operational measures (POMs), the experience of development and implementation of which has been analysed in the present research. POM regulation can be included in one of two legal

acts - “Law on Prevention” (in this case it is possible to align the scattered prevention regulation into a system) or “Law on Preventive Operational Measures” (in this case there will be a separate legal regulation in addition to other similar ones). Development of the POM system is not only a step conditioned by the legal and objective necessity, but also a possibility to organize the preventive system in Latvia as a unified set and to define it according to the principles determined in the international regulatory enactments.

2) Temporary protection measures of personal rights (hereinafter – TPMPR) and the procedure of their application will be soon included[269] in the legal norms of the Criminal Procedure Law, supplementing it with a new Section 19 “Provision of Temporary Protection of Personal Rights”. Information obtained during the research ensures the ground for conclusion that TPMPR included in the bill, according to the practice of the European countries, are actually preventive operational measures, which in case of Latvia are determined separately and regulated separately from the rest (POM-developed) of the prevention system, selecting the fact that TPMPR derive from the claims for the annulment or dissolution of marriage, requests due to personal involvement, claims for recovery of alimony, claims for division of the shared dwelling of the parties, in which they share a household, or determination of procedure for using the dwelling, in which the parties share a household, and cases, which derive from custody and access rights regulated by the Section on Family Law of the Civil Law, as one of the reasons. Based on the aforementioned, it can be considered that such approach to system development might cause complications during the process of application of these legal norms both to the State Police and the court.

3) Special procedural protection measures and procedural operational and safety measures are the measures of preventive type, which are regulated by the Sections 13 and 17 within the framework of the Criminal Procedure Law. Inclusion of the aforementioned norms in the Criminal Procedure Law (hereinafter – CPL) is objectively conditioned by the fact that these preventive measures serve a specific aim – undisturbed implementation of criminal procedure and determination of truth in a particular case. Upon termination of the criminal procedure, the operation of these measures terminates as well.

4) Preventive measures in educational institutions are a completely new initiative of legal regulation, which has not been yet approved by the Cabinet of Ministers at the moment of creation of this research. The regulation is not included in a legal act with legal effect, even though it involves the fundamental rights of minors to significant limitation of education. To be fair, it is to be said that only one particular preventive measure is being discussed for the time being – Temporary exclusion of a

[269] Bill Amendments in Civil Procedure Law. Available at: www.mk.gov.lv/doc/2005/TMlik_090112_GrCPL.27.docx [viewed on 26.10.2012.].

student from school[270]. Exclusion of a student from school is a POM, which has to be carefully examined within the context of perennial experience of other countries (for example, Great Britain) in application of POMs in the environment of educational institutions, where the exclusion of a pupil from school is one of the most severe POMs applied after previous POMs, which are oriented towards inclusion of a student into school environment and education system, have proved to be unsuccessful. It is necessary to take into account a highly significant aspect that, by applying any POMs to minors, another POM is always applied to the parents in order to ensure that the child receives support from his/her parents for the improvement of his/her situation. Additionally, support persons are appointed from the school or Education administration institution of the respective local government in order to ensure support to the parents and the child for the period of time while a POM – exclusion from school – is valid.

5) Educational operational measures for the children fulfil dual function – they allow to response to the violations of the children under 14 (age, when administrative and criminal liability is imposed), as well as ensure a possibility for the court to carry out decisions on that the children aged from 14 to 18 are not to be punished according to the procedure set in the Criminal Law, excluding consequences of that the fact of criminal record will significantly undermine child's biography in future. The law on educational operational measures for the children comprises both preventive aims – 1) development and securing of orientation towards the values corresponding to the society's interests in the child; 2) child's orientation towards preclusion from illegal activities; 3) reintegration of the child with social behaviour deviations into the society; and preventive measures[271]. When revising this regulatory enactment, it can be concluded that, when implementing preventive measures for the children within the framework of the POM system, part of tools prescribed in this regulatory enactment will appear to be obsolete and unnecessary – they will be implemented more effectively via the POM system. Therefore, after the operation of POMs starts, a part of educational operational measures will be replaced by new POMs for the child, while the rest of the regulations included in this law might be included in a new law, which would regulate the liability of minors[272], passing out the regulation of this responsibility from LAVC and CL.

Taking into account the aforementioned, there are two types of preventive measures according to the effective legal norms of Latvia - Special procedural protection measures and procedural operational and safety measures included in the CPL, as well as educational operational measures for the children regulated in the law "On Educational Operational Measures for Children", whereas three separate

[270] Cabinet of Ministers Regulations No.1338 of November 24, 2009 "Procedure to Ensure Safety of Students in Educational Institutions and Activities Organized by Them". Latvijas Vēstnesis, 27.11.2009., No. 187.
[271] Law "On Application of Educational Operational Measures to Children", Article 6. Available at: http://www.likumi.lv/doc.php?id=68489 [viewed on 27.10.2012.].
[272] Children-friendly legal environment in Latvia: prevention of criminal offences in focus, I.Kronberga, Z. Zarmatens *(Ž.Zarmatēns)*, Riga, 2012, 101 p. Available at: http://www.providus.lv/public/27732.html [viewed on 27.10.2012].

systems of preventive measures – POMs, TPMPRs and preventive measures in educational institutions – are currently at different stages of development. **While continuing the creation process of legal norms in the area of prevention, it is necessary to carry out decisions on unified legal regulation of POMs, TPMPRs and Preventive measures in educational institutions, while at the same time auditing legal norms of the law "On Educational Operational Measures for Children" and LAVC, with an aim to create the prevention system based on unified principles in our country.**

6.4. POM Types Possible in Latvia and Separate Aspects of Their Application Procedure

When developing a POM system in Latvia, the first decision will undoubtedly concern whether to develop only the POMs, which are intended for the protection of an individual from harmful action or threats of such action, or to develop the POMs, which are oriented towards the protection of common interests of the society, concurrently to the former. As it has been mentioned before, the POM system of Great Britain consists of two parts, two types of POMs: 1) POMs for protection of lawful interests of persons from harm or harm threats and 2) POMs for protection of lawful interests of the society in public places[273]. In Finland and Estonia POMs cannot be issued, if it is the society in general and not a particular person that is threatened[274]. In case it is decided that a POM in Latvia can be applied even when common lawful interests of the society in public places are involved, it will be related to reconsideration of voluminous norms of LAVC, since in Latvia, just as in Finland and Estonia, norms of Latvian Administrative Violations Code are applied in cases, when common lawful interests of the society are threatened and the threat takes place in public places. However, this aspect does not exclude the possibility that in Latvia POMs can be applied concurrently to administrative punishments, thus, enhancing preventive competence of administrative punishment, if administratively punishable activities cause harm or harm threats to particular physical persons. Due to the aforementioned reason, further recommendations and conclusions will concern only the cases, in which threats of causing harm exist or harm to the lawful interests of particular physical persons has been caused.

It is understandable that the issue regarding types of POMs is worth long discussion, yet, it is necessary to understand that listing of POMs cannot be too wide, as well as complete – exhaustive. In Latvia it is necessary to introduce POMs for both adults and minors. Separate POMs could be applied both to a child and adults, yet, the children are to be applied with different types of POMs, which correspond to child's age and needs, taking into account the fact that, by applying a POM to a child, another support POM is to be applied to the parents.

[273] Anti-social Behaviour – The Government's Proposals, page 8. Available at: http://www.parliament.uk/briefingpapers/SN06343 [viewed on 27.10.2012.].
[274] Author's note: More information – in chapter on the POM system of Finland.

6.4.1. Children and Their Parents

According to the facts established in the research, a **POM for children** (and parents) can be applied from the moment, when the child starts attending school, approximately at the age of 7 or 8 (England and Wales), yet a differentiated approach in relation to the children under 10 and the children over 10 up to maturity is maintained. Thus, for instance, POMs for children under 10 can be applied by the Orphan's Court (Inter-institutional Group), performing the assessment of family risks and needs in cooperation with the specialists of the Social Service of the local government in advance, whereas for the children over 11 (to 14) POMs can be applied by the Orphan's Court upon the initiative of the Inter-institutional Group (hereinafter – IG) and Social Service or other institution included in the IG. POM for children could be applied for a period of up to 3 months, while in exceptional cases – for a period not exceeding 12 months. These POMs could be applied in cases, when 1) a child has performed activities, which are administratively or criminally punishable, in case a child has attained the age of 14 (age, when liability is imposed); 2) if child's actual behaviour causes reasons to believe that the child might cause harm to him/herself or other persons in case such behaviour model continues; 3) if a child avoids attending educational institutions or acts in a manner as to cause disturbance to surrounding people (for example, at school – child's family members do not fall under the term "surrounding people"), or violations of public order have taken place. If such POM is introduced in Latvia, during its fulfilment period the child and his/her parents are to be provided with support person from school or local government, whose responsibility would be to ensure that the child and his/her parents receive the support, which would allow preventing the reasons, due to which a POM is applied, during the period set in a POM. There is a similar POM in Great Britain – Child Safety Order[275]. This type of POM can comprise a number of conditions, which are determined in the Article 6 of the law "On Educational Operational Measures for Children", as well as conditions prescribed by the Part 3 of the Article 10^1 of this law. However, in order for the POM for the child to succeed, it is necessary to determine a behaviour model for the parents concurrently to it. It would be necessary to refrain from negative prohibitions in this POM and to concentrate child's attention on positive obligations instead. Thus, for instance, to impose on the child the obligation to stay at home after 18:00 together with the parents (or other adults), rather than to prohibit for him/her from staying in public places at this time; to determine people, whom the child is allowed to communicate with, rather than to prohibit from meeting certain persons. It is important to impose on child the obligations, which he/she is able to fulfil personally, whereas, when imposing obligations, which no child can fulfil alone, to distribute responsibility area between the parents and the child. It is possible, that the aforementioned "POM for children" could be named as "**Child Safety Order**".

[275] Author's note: more on Child Safety Order can be read in chapter on England and Wales.

A **POM for parents** (and children) is necessary (is determined) due to several important reasons – in order to require the parents to get involved in upbringing and taking care of their child by determining to them certain activities to be performed (a) and in order to provide the child with the full support of the parents in cases, when a POM is applied to a child him/herself, including also – if a child does not attend school or is temporarily excluded from it (b), or a child is administratively punished (c), or an educational operational measure is applied to a child[276] (d); or a child over 14 is convicted of criminal offence (e). POMs for parents are determined for a period of up to 12 months, during which the parents are obliged to fulfil individual conditions included in the POM, as well as to participate in parents' training courses at their place of residence at least once a week or as regularly as determined in a POM. Parents' training courses or lectures can be organized in both respective Educational institution (if a POM for parents is applied due to the necessity to ensure child's inclusion into education process or to organize child's everyday life during a period, while the child is excluded from school for violations of internal order of educational institution) and in local government (if the reason of POM application is different – including, if a child is administratively punished). It would be necessary to consider how to provide support (knowledge and skills, rather than money allowances) to the parents, whose children are convicted of criminal offences – both in cases, when a punishment, which is to be fulfilled in the society, or supervision is determined for a child, and in cases, when a child is placed in Social Correction Educational Institution for minors[277]. POMs for parents are not punishments for parents, but rather a type of method how to mobilize parents or persons, who substitute them, for acting in the interests of the child in cases, when risk situations[278] or behaviour risks[279] have taken place in child's life. It is possible, that the aforementioned "POM for parents" could be named as "**Parenting Order**".

6.4.2. Fast Reaction Methods

Fast reaction POMs might be necessary in cases, when immediate intervention is needed to stop the action of any person, which is already causing harm to the interests of other person or all signs certify that such real harm can be caused any time soon. During the research it was concluded that such methods exist both in Finland and Great Britain. Fast reaction POMs are determined either for a period

[276] Author's note: in this case it is to be understood that the child is applied with any of the measures prescribed in the regulatory enactment of the respective Youth Justice.
[277] Paragraph 8 of the Part 1 of the Article 6 and Section VI of the Law "On Application of Educational Operational Measures to Children" Available at: http://www.likumi.lv/doc.php?id=68489 [viewed on 27.10.2012.].
[278] Author's note: **risk situation** is occurrence of any circumstance, which are not a part of child's everyday life and which **the child is incapable of solving alone**. Risk situation can be: divorce of parents, POM application to a child, including exclusion from school, child's punishment with administrative punishment or punishment prescribed by the PC, placement of a minor in Social Correction Educational Institution or place of detention.
[279] Author's note: **behaviour risks** are related to the type of child's behaviour - disturbing behaviour at Educational institution, in public places, use of addictive substances, computer addiction, lack of social skills, etc. These are the situations, which **the child is able to solve him/herself**.

of up to 3 months or up to the moment, when the court applies a different POM, which will solve the problem during a longer period of time. Fast reaction methods are mostly implemented by two institutions - if information on the necessity of such reaction is received by the police or prosecutor's office. Concurrently to that, a possibility for the court to initiate the application of fast reaction POMs itself is to be ensured. As stated in the research, most of the information on the necessity of fast reaction is received by the police. **Fast reaction POM is applied in two cases - if it is necessary to determine a prohibition from contacting and approaching (a); if a person, who causes threats, is to be required to immediately leave the dwelling or other premises (b).** In this case it is highly important to understand the role of the Inter-institutional Group (IG).

In fact, the information on the necessity to apply emergency POMs can be received not only by the already mentioned court, police or prosecutor's office. The aforementioned information can be received by, for example: any institution included in the IG – State Probation Service can receive it from its clients, Social Service from risk families and psychologists, Orphan's Court within the framework of any considered case, Non-governmental organizations operating in the area of support provision for the victims or children, specialists of the Children and Youth Centre, Educational institutions (including pre-school educational institutions or schools), Family doctors, etc. Due to the aforementioned reason, it is necessary to determine the procedure, by which these institutions transfer the information to the police, in order for the police to be able to assess whether it is necessary to apply emergency POMs, based on the information of respective institutions. If the situation is dangerous for the safety of any person, decision on application of emergency POMs, which was not carried out in due time, might have highly harmful consequences, which are related to possible harms to the health and life of persons. Therefore, in these cases there will be situations, when a decision on POMs is to be carried out within a couple of hours, and there is no possibility to wait until the next meeting of the Inter-institutional Group and to carry out the decision there. During the research it was established that the afore discussed aspect is of great importance, since often enough the victims search for help exactly at a non-governmental organization or at the psychologist, or doctor recommended by friends or acquaintances, while being afraid to apply to the police themselves without any help from others in order to write an application about the on-going events in their lives with an aim to achieve the interference of the police or other rights-protecting institutions[280].

Therefore, when developing Latvian legal regulation in the area of POMs, it is necessary to ensure that the police can receive the information on the necessity of POMs from the threatened or possibly threatened person him/herself (a) or from any other state or local government institution, or non-governmental organization (b). In case these institutions or organizations possess information, which provides reasonable ground to consider that a decision on application of emergency POMs is to

[280] More information on the necessity of such action – in chapter on the experience of Estonia and Finland.

be carried out, they inform the state police about the situation by stating the reasons of their report and providing arguments, why emergency POMs are necessary. The police, having received the information on the necessity of emergency POMs from an institution or organization, verify this information (documents or gain assurance regarding situation on site) and carries out one of the following decisions the same day, but not later than within 2 working days – 1) to apply emergency POMs, determining appropriate emergency POMs to the potential or existing harm bringer and requiring him/her to leave the dwelling or a place, where he/she stays at and causes threats or harm, for a certain period of time; determines not to approach any particular person for a certain period of time. After the police have carried out this decision, police application to the court on the necessity to apply any of the so-called simple POMs is prepared. Emergency POMs are valid till the moment set in a POM by the police or till the moment, when the court carries out a decision on application of a POM. In order to be able to act in the interests of a threatened person and to ensure the safety of this person, the term set in a POM by the police is to coincide with the moment, when the court applies or cancels a POM. Situation when a threatened person him/herself requests the court to cancel a POM applied by the police and requests the court not to apply a POM can be considered to be an exception. Yet, such cases are to be carefully assessed, while taking into account that there is a possibility that the causer of harm or a person, who is causing threats to the safety of any particular person, might have intimidated the protected person. Emergency POM comes into effect immediately after the police have carried out a decision on its application and it is not subject to appeal. The potential or existing causer of harm, as well as the protected person can further apply to the court, to which the police have submitted materials on carrying out of further decision; 2) having established that the given situation does not correspond to the circumstances of application of emergency POMs, the police do not apply POMs and submits the report of an institution or an organization on the necessity of POMs for a particular person to the Inter-institutional Group (IG). The Inter-institutional Group, inviting a report-submitting organization or institution (if they are not included in the IG), or, if necessary, hearing out potential protected person and potential or existing causer of harm, carries out a decision on that whether – a) the IG can apply POMs, the application of which falls under the competence of the IG, to the potential or existing causer of harm; or b) the IG prepares motivated application to the court on the necessity to apply POMs according to the simple procedure set in the law; or c) the IG carries out a decision that the application of POMs is not necessary in a particular case. In this case the information received by the IG is informative and can be entered into the prevention information system as information, which can help in tracing the evolution of persons' behaviour in future.

Application of emergency POMs – **prohibition from contacting and approaching** – means that an obligation to preclude from contacting a particular person (the victim) in any possible way of communication, including – meeting physically, contacting by using technical means (telephone, fax,

internet, social networks, letters, etc.), – is imposed on the potential or existing causer of harm. When determining a prohibition for a person from approaching, the person is imposed with an obligation to keep him/herself away from a person at a distance, which would make it impossible to communicate verbally, by using facial expressions or by using signs. If the police have a reasonable ground to believe that it is necessary to determine particular distance in meters, when applying emergency POMs, the police are entitled to determine such conditions.

If it is required for a person, who is causing threats, to immediately **leave the dwelling or other premises** – it means that a person is obliged to leave the shared dwelling (if a person is living together with the victim or at his/her place of residence) or other premises, for example, working premises of shared business, individual workshop, etc. This part of conditions should not be understood too narrowly. There can also be situations, when a person is imposed with a prohibition from being not only in place, where a person resides, but also in places, where he/she is staying regularly enough – various interest clubs, artists' workshops, youth or day centres organized by the local government, etc. It is necessary to take into account the fact that leaving of the dwelling might be determined for persons, who have no family legal relations (they are not a married couple) or this person is a relative – brother, sister, cousin, father or mother, or any other violent acquaintance. It is to be taken into account that a POM – to leave the dwelling or other premises – is not intended to solve long-drawn and unsettled problems between people – it provides only a definite period of time in safety in order to settle this issue. This POM will not involve legal relations of the property or obligations, which derive from liability rights (for example, lease agreements), in any way; likewise, they will not settle the issues of mortgage liabilities or the issue regarding who is to take care of a child. In order to settle these issues, other legal norms, which are prescribed in the Civil Law, Civil Procedure Law, Commercial Law and other legal acts, are applied. If a person is temporarily evicted (a POM is applied) from the dwelling, because he/she is causing threats to the safety of others, he/she continues to be the owner of the house or apartment; obligations, which are related to the alimentation of his/her family members, covering of utility bills, etc., are retained for him/her. If a person, whom an agreement on lease of dwelling premises is concluded with, has become a POM subject and is not allowed to be at or return to this house for a certain period of time, his/her obligation to pay lease payment to the landlord, as well as utility bills, are retained. The same applies to cases, which are referred to other premises – a person maintains his/her obligations deriving from liability rights, which he/she has undertaken before the application of a POM.

Thus, when developing the POM system in Latvia, at least two types of emergency POMs would be necessary – prohibition from contacting and approaching and obligation to leave the dwelling or other premises. There is no doubt that during the process of law creation (developing "Prevention Law" or Law "On Application of POMs") it is necessary to consider the names of these POMs as well – they

should not be long and complicated, the names are to be short and informative. Therefore, it would, probably, be expedient to name these emergency POMs as "Eviction Order" and "Fast Protection Order" or in any other comprehensible way.

6.4.3. POM Applicable according to General Procedure

Preventive operational measures *per se* significantly differ from the administrative punishments[281], since their aim is not to punish – to record the violation of legal norms, to prove the guilt and to apply sanctions prescribed in the law, the aim of preventive operational measures is to prevent potential or existing harm. One of the main features is the ability of POMs to influence the potential and existing causer of harm during the extended period of time, thus solving the situations, when harm threats or harm is caused with certain regularity and repeatedly. Due to the aforementioned reason, there is a reasonable ground to believe that, when implementing POMs into the legal system of Latvia, it would be necessary to assess the possibility to apply them concurrently to the administrative punishments in certain cases, when a person is punished according to the norms of the LAVC in order to eliminate the reasons of anti-social behaviour. Namely – the fact that a person has been administratively punished does not exclude the possibility of applying a POM to this person. POM application is not considered to be a double punishment, since a POM is not a punishment, but rather a preventive measure of behaviour control in order to prevent law violations.

According to the aforementioned, the POM system of Latvia should definitely include person's "**Behaviour Control Order**"[282]. A Behaviour Control Order (hereinafter – BCO) could be applied to persons, who have attained the age of 14[283]. In case a BCO is applied to minors, a binding "POM for parents" would be applied to their parents or persons, who substitute them. A BCO can be applied to any particular person, if this person is causing or might cause stress and feeling of unsafety to other people, or the type of behaviour of this person is obtrusive. It is important to take into account the fact that a BCO is applied in cases, when the aforementioned stress situations and other situations are caused by one family member to another member of the same family. Harmful activities, which are to be prevented by this BCO, will be related to a certain regularity of repetition, while the obligations determined in the framework of a BCO are directly related to the type of harmful activity. The aim of a BCO is to prevent harmful activity of a person in future.

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[281] Administrative punishments - determined by the Latvian Administrative Violations Code. See Latvian Administrative Violations Code. Available at: http://www.likumi.lv/doc.php?id=89648 [viewed on 26.10.2012.].

[282] Author's note: In Great Britain there is a similar tool "Anti-Social Behaviour Order" and it is prescribed by two regulatory enactments "Crime and Disorder Act" and "Anti-Social Behaviour Act".

[283] Author's note: A BCO is applied from the age of 14, in cases when "POM for children" is applied from the age of 7 to 13 (including 13). Thus, we have come to the System of preventive operational measures for children, in which there are two types of POMs, which can be applied directly to children, who have satellite "POM for parents" for provision of support to a child.

A Behaviour Control Order is applied by the regional (city) court upon the initiative of the Inter-institutional Group, yet, there can also can be a divided model – when a BCO for shorter periods of time is applied by the Inter-institutional Group, while the orders for longer periods of time - by the court. Information on the necessity to apply a POM to any particular person can be received from any institution or organization included in the IG. In order to assess the necessity to initiate the application of a BCO by the court, the Inter-institutional Group: assesses the information received (a), if additional information is necessary to gain assurance regarding the existing or possible harm of the analysed activities, the IG can hear out the opinion of the potential or existing causer of harm (b) or the opinion of the victim (c), or to invite persons with special knowledge or information on particular events (d). There also can be situations in the Inter-institutional Group, when it receives information on potentially harmful or harmful behaviour of any particular person, and during the meeting of the IG particular situation is to be analysed and an appropriate type of POM is to be selected. A BCO can be applied for a period of 6 months to 3 years.

In general, a Behaviour Control Order can be applied by using two approaches: 1) The IG can decide on the application of a BCO for 6 months to 1 year by carrying out a collective decision via voting (a), the Orphan's Court can also decide on the application of a BCO for the very same term (b), supplementing the functions of the Orphan's Court; 2) The regional (city) court decides on the application of a BCO for 1 year to 3 years upon the initiative of the IG. If a decision on the application of a BCO for 6 months to 1 year is carried out by the IG, this decision is subject to appeal in the regional (city) court according to the place of operation of the IG, which has carried out the decision; if a BCO is applied by the Orphan's Court, its decision is subject to appeal in the regional (city) court according to the place of operation of the Orphan's Court, which has carried out the decision. The fulfilment of a BCO is initiated, regardless of the fact that the potential or existing causer of harm or the victim has appealed the application of a BCO. Such distribution of competences provides the possibility to counterbalance the load of the regional (city) court with decisions on the application of a POM. If the IG submits a proposal on the application of a BCO to the court, IG's application has to specify necessary obligations, which would be imposed on a person, whom a BCO is applied to, and a possible institution, which is responsible for the fulfilment of a BCO. If a decision on the application of a BCO is carried out by the court, the IG in cooperation with the victim ensures the evidence necessary for the court to carry out a decision.

If a major, whom a BCO is applied to by the IG for 6 months to 1 year, or a minor has violated the conditions specified in it, the period of BCO operation can be prolonged and/or existing conditions can be changed for a more severe ones. If a BCO has been violated by a minor, the fulfilment of a "POM for parents" is assessed concurrently. In this case a decision on the application of a BCO is carried out by the IG after the assessment of a BCO for a minor and a "POM for parents".

If a major has violated the conditions of a BCO, which has been applied by the court, he/she is held liable according to the procedure set in the Criminal Law, by applying to him/her a pecuniary punishment, community service or short-term deprivation of freedom for a period of up to 1 year. Particular attention is to be paid to that the possibility not to criminalize immediately by this liability, prescribing sanctions for these cases in a special Prevention Law (or in Law on Application of POMs), is to be considered. If a minor has violated the conditions of a BCO, which has been applied by the court, he/she is held liable together with the parents or persons, who substitute them. In this case it is necessary to assess whether the parents have done everything possible in order to a Behaviour Control Order applied by the court to be fulfilled. *If it is established that the parents have not provided a child with the necessary support, the parents are to be held administratively liable, by determining a pecuniary punishment to them. If the fulfilment of a BCO has been impossible due to child's behaviour, a minor is to be imposed with educational operational measures – community service or placement in social correction educational institution.* The afore described model has been constructed based on the reactive possibilities, which are ensured by the regulatory enactments in force, and it is to be concluded that in this case a possibility to determine effective sanction to parents practically does not exist, unless a decision to "criminalize" the liability is carried out. Determination of liability for the parents or persons, who substitute them, by applying the norms of the Criminal Law would be inadequate or even harmful. In case of non-fulfilment of these norms the liability for adults should be equivalent to the liability, which is imposed on a child – namely, if a child is imposed with community service, the parents or persons, who substitute them, should also have the possibility to be imposed with a community service. The most effective solution would be if a child and his/her parents would be granted a possibility approved by the court to work together, performing one job and reporting about it to the court or the IG after its completion, for non-fulfilment of the court's decision. Due to the aforementioned reasons, there is a reasonable ground to believe that it would be necessary to consider the possibilities for the court to apply special civil (non-criminal) sanctions for the non-fulfilment of a POM in cases of POM violation – these sanctions could be prescribed in the "Prevention Law" or in the Law "On Application of POMs". Crucial benefit – the violation of POM conditions not always would be related to the criminal consequences (yet, sometimes it will be related), even though, based on this regulation in a special prevention law, the court could determine both pecuniary punishment and community service, as well as to impose a POM on a non-observer of additional conditions, which could indeed influence the behaviour models of this person. **The consequences for the violation of a Behaviour Control Order (BCO) should not be criminalized**[284] neither for majors, nor for minors. At the same time, the Latvian Administrative Violations Code does not prescribe any effective

[284] Author's note: Sanctions for BCO violation are to be prescribed in a special "Prevention Law", rather than in the norms of the CL. More on the necessity to pay attention to these aspects – in chapter on Great Britain.

mechanisms, which could be applied in a form of sanctions for the non-fulfilment or inappropriate fulfilment of this type of POM.

Such POM as a "**Protection Order**" should be definitely granted a crucial role in the POM system of Latvia (see Scheme No.6). Such type of POM as "Fast Protection Order" (prohibition from contacting and approaching), which is applied as a fast reaction POM, has already been analysed within the framework of the present research. If a Fast Protection Order is ensured within the framework of the system, there definitely has to be a Protection Order, which is applied by the court after it has received the information on the application of an Emergency POM from the police and a request to consider the issue on the application of a Protection Order to a particular person. The content of a Protection Order of the European countries is similar, yet not identical. A Protection Order comprises variable conditions, which are applied by the court in accordance to the established risks, due to which a Protection Order is requested. The court decides on a Protection Order in case it is necessary to protect the victim from harassment (as well as different types of molestation), in case the court is to determine a prohibition from contacting the victim or approaching him/her, a Protection Order can also contain an Eviction Order from the shared place of residence or other premises, in case it is necessary to protect a person from the aforementioned harm. It is necessary to pay attention to the fact that the causers of potential or existing harm are mostly evicted from the shared place of residence, while an Eviction Order is regulated[285] by the norms of family law[286] and refers to one of the persons sharing a household. However, there is a possibility to include this option into a Protection Order, applying this obligation if in a particular case the potential and existing harm threats exist between persons, who will not have family legal relations (they will not be husband and wife), or this person will be a relative - brother, sister, cousin, father or mother, or any other violent acquaintance, who resides at the dwelling. One of the problems, which have been identified when applying an Eviction Order in Finland, is that the evicted persons mostly reside with their relatives. It is a rare case when they reside at a hotel or other premises, which are not an apartment or a dwelling house – often enough these premises are co-used with persons, due to the safety of which the potential or existing causer of harm was evicted from the dwelling space. The cases, when one person is to be protected from another, who is not a relative of the victim, but rather a work colleague or a professional partner, with whom the victim is using shared premises for work, have also been established; therefore, an "Eviction Order" or rather a possibility to require a person (or persons) to leave a certain place or premises[287] for a period specified in the court's

[285] Author's note: See chapter on Finland.
[286] Bill Amendments in Civil Procedure Law. Available at: www.mk.gov.lv/doc/2005/TMlik_090112_GrCPL.27.docx [viewed on 26.10.2012.].
[287] Author's note: see chapter on Great Britain for such POMs as Dispersal Order or Intervention Order or visit these sites: Intervention Orders. Available at: http://www.legalaid.vic.gov.au/interventionorders.htm [viewed on 25.10.2012.] Dispersal Orders. Available at: http://www.wlct.org/young-people/linconline/dispersal-orders.htm [viewed on 25.10.2012.].

decision should not be interpreted too narrowly. It is necessary to pay attention to the factor that the type of a legal act, within the framework of which person's eviction is regulated, often determines the circle of evicted persons by using the concept "family". Thus, for instance, in Great Britain there is no Emergency Eviction Order, yet it is compensated with a wide scope of application of an Occupation Order included into the Family Law Act – setting a wider circle of people than it is traditionally understood by the concept "family" as a subject of regulation of legal relations of this legal act, while including a wide circle of people, providing an answer to the question – which persons could live together in one dwelling and which persons could have complicated mutual relations - relations, which could be necessary to be regulated by the court's decision.[288]

Hence, a Protection Order is applied when the fact of threat, probability of repetition of threat, the nature of threat and the form of its expression are established. In European countries different types of threats are granted different significance – thus, for instance, there are two essential differences between England, Wales and Scotland in Great Britain. Namely, while according to the legal norms of Scotland[289] harassment is classified solely as a criminal offence, which can be punished with imprisonment for a period of up to 15 years, whereas in England and Wales[290] a Protection Order can also be applied for such activity, but if it has caused serious consequences, imprisonment for up to 6 months, pecuniary punishment, or both can be applied.

Different amount of evidence necessary for justification of the application of a Protection Order is allowed in the European countries. The legislator mostly does not set minimal or compulsory conditions in order to determine protection measures necessary for any particular person. Namely – decision on whether a Protection Order is to be applied to a person is in the competence of the court. The court decides on the application of a Protection Order in those cases, when it is necessary to prevent unlawful activities, which are directed towards causing harm to the life or health of any particular person, including also in situation, when there is a reasonable ground to believe that there is a real probability that these threats will be exercised. If a decision on person's eviction from the dwelling or other premises is carried out, it is necessary to establish high probability of such circumstances or the same dangerousness degree and major threat to the life, health or other freedoms of the protected person (or persons). Yet, it is essential not to overrate the amount of evidence necessary in a particular case, since it is necessary to take into account the following factor – this case does not concern the application of criminal punishment, therefore, it is inappropriate to request a whole range of statements,

[288] Occupation Order. Available at: http://www.rcsolicitors.co.uk/chiltern-family-law/violence/guides-3/occupation-of-thehome.htm [viewed on 27.10.2012.].
[289] Criminal Justice and Licensing (Scotland) Act 2010, Article 1 of Section 39. Passed 30 June 2010. Entered into force 6 August 2010. Available at: http://www.legislation.gov.uk/asp/2010/13/part/2/crossheading/threatening-or-abusivebehaviour [viewed on 20.08.2012.].
[290] Protection from Harassment Act 1997. Entered into force 21 March 1997 Available at: http://www.legislation.gov.uk/ukpga/1997/40/contents [viewed on 09.08.2012.].

to perform numerous inspections of witness statements or to require possible protected person to show letters containing threats and other written evidence to the court as compulsory. **The aim of a Protection Order is not to punish the offender for the committed unlawful activity, but rather to protect the victim from fear, threats and possible violence or repetition of such threats.**

A Protection Order is to be subject to appeal in the court of the highest instance, namely, if a decision on the application of a Protection Order is carried out by the regional (city) court, it is subject to appeal in the respective district court, and the decision of this court is final. In most of the studied European countries the issue of a Protection Order is subject to appeal within 10 – 30 days from the day of its issue. A Protection Order comes into effect upon its issue. The court invites to get acquainted with this order in the premises of the court or introduces it by sending a copy of the decision by mail to both the person, whom obligations in a Protection Order are imposed on, and the victim.

The victim him/herself can control the violation of a Protection Order best of all – the victim is to inform the police on every case, when the conditions included into the order are violated. Due to the aforementioned reason, the content of the court's decision and the behaviour model expected from the victim are to be thoroughly explained to the victim – the victim is to understand, what kind of situations might take place during the fulfilment of a Protection Order, and he/she is to know, how to act in these situations, where and whom to apply to. If a loss is caused to a person (the victim) by an action, which was expressed in the form of obtrusive activity or harassment, this person is to be provided with the possibility to apply to the court in order to receive the compensation of losses for incurred harm.

Legal norms of all European countries studied in the present research prescribe criminal liability for the violation of a Protection Order issued by the court. Pecuniary punishment, community service or short-term deprivation of freedom for a period of up to 1 year can be a form of adequate punishment. It is to be taken into account that a Protection Order can be applied as an additional protection measure for victims or witnesses, or other persons, if a criminal proceeding was initiated against the person (the guilty party), he/she is convicted in the form and according to the procedure set in the Criminal Law and Criminal Procedure Law. It can be particularly important in case the guilty person is imposed with a punishment without the isolation from the society, yet, it is no less important in case a person is punished with deprivation of freedom, since he/she might try to influence the victim or other persons even from the place of detention. It is understandable that, when applying a Protection Order, a previously described justification is to exist. Due to this reason, it would be necessary to consider whether the court is to ensure the possibility to initiate the application of a Protection Order itself in case the victim or witnesses suffer from fear or threats of possible harassment after the verdict of guilty. Thus, for instance, in Great Britain the court can determine a Protection Order in case a person (person on trial) is not found guilty and regardless of the offence, for which the person was judged, as well.

6.5. Inter-Institutional Group and Implementation Procedure of Preventive Operational Measures

Separation of the institute of preventive operational measures (POMs) from the types of judicial liability is undoubtedly one of the challenges. In order to understand the role of an Inter-institutional tool in the system of application of preventive operational measures, it is necessary to determine the place of POMs in the context of liability types encountered in the legal system of Latvia – civil, administrative and criminal. If we assume that unlawful and harmful involvement of the rights and interests of certain individuals is expressed via the behaviour, which is directed against the cohabitation interests of the society, it can be concluded that **the aim of the POM system is to eliminate or to decrease to the extent possible the harmful impact of the already on-going or highly possible anti-social[291] behaviour**. Influence measures included in the POM system are of civil type, even though they derive beyond traditional understanding of the concept of "civil liability". Namely – in case of a POM, a person is not held liable in order to impose sanctions on him/her, but rather a decision of the respective competence establishment or institution prescribes this person the desirable behaviour model in the society or the necessity of behaviour model in relation to certain persons. If, due to the behaviour of a person, losses are caused to another person, they are to be compensated according to the civil procedure. The preventive character is determined by the fact that in case of a POM, not only a person is to compensate the incurred losses or harm, but also he/she is to act in a manner as not to cause harm repeatedly. A POM is not a type of sanction, which could be compared or referred to administrative or criminal liability. The system of preventive operational measures is a set of purposefully organized methods of anti-social behaviour management, rather than a new system of sanctions.

A POM is applied, if a prevention case has taken place. Prevention case occurs if person's behaviour harms lawful interests of other persons, yet this harm is not significant enough for the consequences prescribed in the Criminal Law (or Latvian Administrative Violations Code) to take place (a) or a harm is of regular type, but each activity separately does not ensure the degree of harm for the criminal liability to be imposed (b). However, the application of preventive measures might occur concurrently, both convicting according to the CL norms (for example, preclusion from any contacts with certain persons during the fulfilment of the punishment) and holding administratively liable (for example, parents for inappropriate fulfilment of child's custody rights or persons for using spirits). In this case the issue is not about the double punishment, but rather about state's certain

[291] Anti-social behaviour - behaviour, which is directed against the rights and lawful interests of a certain individual and thus indirectly affects society's safety in general.

reaction to a particular prevention case, within the framework of which a person is prescribed with desirable behaviour model in future in order to protect the society and certain persons from possible harmful consequences, probability or existence of which the state institution (or other institution) is aware of.

Taking into account the aforementioned, it is to be concluded that the POM system (types) itself is only one mechanism out of many in the general system of anti-social behaviour management. The aim is not to introduce only POMs, but rather to introduce a system, which is organized in a way as to be able to identify prevention cases and to respond to them in two ways – by providing support to the potential or existing victim (a) and by preventing the occurrence or repetition of the law violation (b).

Prevention management system consists of:

1) POMs for adults and minors (types of preventive measures, which correspond to the possible needs of both groups);
2) Informal influence methods/tools (for example, agreement on desirable behaviour prior to POM application; Restorative justice methods – conciliation with the victim or settlement of the conflict in the form of conference; behaviour influence programs; psychologist's consultations; circles of victim support; group therapy methods; forms[292] of collaboration of children and parents, etc.);
3) Mechanism of Inter-institutional cooperation (cooperation method; form of work organization; system of risk determination and management for victims and persons, who might cause or have caused harm).

Prevention management system is created in order to be able to establish a Prevention Case, as well as to obtain information on the violence risk (a), to assess the risks and to determine the needs for persons involved in the prevention case (b), to carry out decisions, decreasing risks and supplementing safety needs, using Informal influence methods or POMs according to the needs (c)[293]. Therefore, in order to construct a prevention management system, within the framework of which it would be possible to establish prevention cases, to assess them and to carry out decisions, prevention implementation tools and method, which can be used in the form of Inter-institutional work, are necessary. Taking into account the fact that the prevention is not included in the function of any institution and that it is of inter-institutional type, when developing it, **it is necessary to determine the forms of cooperation between institutions, rather than to distribute these functions** between these institutions. Namely, it is necessary to focus on the procedure, according to which different institutions and their specialists perform prevention work together, rather than for what and from which institution

[292] Children`s Participation and Ethical Guidelines for Involving Children. Available at: http://www.ovcsupport.net/s/index.php?c=44 [viewed on 10.11.2012.].
[293] See Scheme No.9 in appendices.

or specialist to require the responsibility. In this case there is a possibility to avoid the initially programmed failure and successive transfer of responsibility to each other and to focus on the qualitative fulfilment of joint work and achievement of the goal instead. The choice of the form of cooperation between the institutions in the state depends on several factors – number of involved institutions, aim of activity and tasks deriving thereto, as well as intensity of joint work and the size of the territory, within which the prevention is organized. Thus, there is a possibility to select such forms of cooperation, which a) are not related to active face-to-face communication between institution specialists as a basic form of cooperation (information on violence risks is received/summarized in telephonic or electronic form and is submitted for further fulfilment to the respective institution or several institutions[294]); this procedure is mostly applied in countries with large population, or b) are related to regular face-to-face communication, joint conferences, mutual interchange of information and collective decision-making (Inter-institutional Group – IG). This form can be applied in small countries with small population, including Latvia, where people are able to contact physically, not spending too much time. Yet the development of such model, for example, does not exclude the necessity of implementation of unified information turnover system.

Inter-institutional cooperation developed in a form of constant working group is not a novelty in Latvia – this model has been approbated in three local governments of Latvia for 1.5 years in order to verify whether this method works in the area of prevention[295] of children's offences. The poll[296] of specialists carried out during the research has stated that the individual work of early prevention in districts is already mostly based on social services of local governments, particularly the work with children (minors) and families. Due to the aforementioned reason, the IG is to be organized based on the district principle by assigning the main role in this issue to local governments, which organize the IG of the respective district around them. It is to be taken into account that the Inter-institutional Group will actually be preoccupied both with issues concerning minors and their families and prevention cases, which will take place as a result of adults' harmful behaviour. Due to the aforementioned reason, it would be necessary to decide within the framework of each local government whether prevention cases of minors and families will be handled by a separate IG or one IG with basic composition will be created, but depending on the established prevention case it will have the possibility to attract necessary specialists, who are not included in the IG base, in certain situations and to consider prevention cases within a wider circle. When making this choice, it is necessary to take into account the fact that every

[294] The "Community Trigger": Government proposals on Anti-social Behaviour, 29 May 2012. Available at: http://www.parliament.uk/briefing-papers/SN06343 [viewed on: 05.11.2012].
[295] I.Kronberga, Z.Zarmantens: "Children-Friendly Legal Environment in Latvia: Prevention of Criminal Offences in Focus", p. 51-54. Available at: http://www.providus.lv/upload_file/Projekti/Kriminalitesibas/Berniem_draudziga_tiesiska_vide_LV_1.pdf [viewed on: 01.11.2012].
[296] Ibid., p. 52-53.

specialist included in the IG is delegated from an institution, wherewith he/she will be an information supplier on possible prevention cases. Regardless of the chosen IG model, necessary circle of specialists for the settlement of prevention cases is to be determined in advance. As the practice[297] established in the local governments shows, possible composition of the IG for the prevention cases of children and families should include representatives of the local government Social Service, representatives of educational institutions (school and pre-school educational institutions), representatives of Children and Youth Centres, representative of the Orphan's Court, specialist of children's rights, representatives of the State Probation Service, representative of the Prosecutor's Office, representatives of the regional (city) court, family doctors, representatives of the State and Municipal Police, specialists of Non-governmental organizations. A bit different situation will take place, if the question is asked differently. For example, which persons should definitely be included in the IG in order to be able to consider a particular prevention case on harmful behaviour of one child? Consideration of a prevention case is to be both exhaustive and such as to involve all persons, who possess the information on prevention case or who could provide support to potential or existing causer of harm or a person, who has suffered from this harm. Therefore, it will be impossible to assess a prevention case without the presence of child's parents and family members, presence of Social Service, specialist of children's rights, specialist of educational institution (school or pre-school), police, family doctor and representative of the Orphan's Court. It is interesting that, if a prevention case on a potentially possible or existing harmful action of a major person is considered, the composition of this IG does not change much - representatives of educational institution can be substituted by the employer of a major person; parents can be substituted by a civil partner in certain cases; family doctor-paediatrician can be substituted by a family doctor, psychiatrist or narcologist, etc. Due to the aforementioned reason, it is possible to determine the optimal **core of the IG for prevention cases** – SPS specialist, representative of the regional (city) court, specialist of the Social Service, doctor, representatives of the State and Municipal Police and NGO.

Yet there are three other essential issues – **frequency of IG meetings, delegation of IG members and legal regulation of IG activity**. Frequency of meetings is an issue, which should not be conditioned by legal acts, by strictly limiting it. As practice shows[298], the frequency of IG meetings depends on the frequency of establishment of prevention cases and the necessity to response to them, yet, from another point of view, such approach opens the possibility for the non-motivated IG members

[297] I.Kronberga, Z.Zarmantens: "Children-Friendly Legal Environment in Latvia: Prevention of Criminal Offences in Focus", p.52. Available at: http://www.providus.lv/upload_file/Projekti/Kriminalitesibas/Berniem_draudziga_tiesiska_vide_LV_1.pdf [viewed on: 01.11.2012].

[298] I.Kronberga, Z.Zarmantens: "Children-Friendly Legal Environment in Latvia: Prevention of Criminal Offences in Focus", p.60. Available at: http://www.providus.lv/upload_file/Projekti/Kriminalitesibas/Berniem_draudziga_tiesiska_vide_LV_1.pdf [viewed on: 01.11.2012].

not to inform the IG about a prevention case established in their professional activity, leaving it without a reaction. Study of the dynamics of prevention and POM application in a respective district, based on which necessary frequency of meetings could be predicted, could be one of the solutions, however, this issue is, undoubtedly, disputable. Delegation of IG members is to be granted particular thoroughness in order for the specialists and officials included in it to be motivated to work in the area of prevention, rather than to formally participate in the work of the IG. When creating the IG, it would be necessary to devote certain time and thoroughness to training of delegated IG permanent members on priorities of the area of prevention, on the forms of work within the framework of the IG and communication with potential or existing offender and victim. IG members have to fully understand the Prevention management system both within the state in general and within a respective district, they have to know the POM system and possibilities, which are provided by it, when performing their direct professional duties, not only working in the IG. Legal regulation of the Inter-institutional Group is to be created in a way as to individualize separate forms of work on site in districts, adjusting these forms to the priorities and possibilities of the respective place. It particularly concerns Informal influence methods/tools, which could be applied by the IG in prevention cases of low risk by involving not only the potential or existing causer of harm, but also the victims and a wider society in their implementation. The diversity of Informal influence tools will mostly depends on that how interested a particular local government will be in the preventive work and multiformity of preventive measures. In different districts they might differ, might change both in their content and amount, they can be developed within the framework of different projects and they can be valid for a limited period of time, for example, till the moment, until the local government has an agreement with respective specialists, etc. However, it is important to point out that the existence of Informal methods or tools in a particular local government for the work with low-risk prevention cases will provide great support for state-founded Prevention management system, since it is impossible to ensure POMs for all occasions, otherwise the prevention system becomes unmanageable and complicated and does not achieve its aim.

The task of the Inter-institutional Group is to ensure prevention management in places, where prevention cases take place (a), to ensure professional support to local government Social Service, assessing family risks and needs (b), possibly, to apply separate POMs to children and parents (c), as well as to apply the so-called Informal methods in low-risk prevention cases (d). As can be seen (see Schemes No.1, No.2 and No.3), the IG is actually a mechanism of sorting of prevention cases, which assesses all prevention cases, the information on which is received by it, and decides on how much harm is done in every prevention case, whom the harm might be done to or whom it is already caused to (see Scheme No.9), and only after this assessment it decides on how to act in relation to the potential or possible causer of harm and a person, who might suffer or has already suffered from this harm. Such form of work organization allows saving court's resources, by involving the court only in carrying out

of the decisions, when it is really necessary. As can be seen, the proposed Prevention management system allows persons to directly apply to the court only in cases, when a TPMPR is applied. In cases of POM application a person does not apply directly to the court, while the IG receives the information on a Prevention Case via its members and other IG cooperation institutions, which are usually included in a wider composition of the IG. Legal status of the members of the Inter-institutional Group – State Police and prosecutors – differs from the one of other IG members. This status is related to the specifics of professional duties of the specialists from these institutions and it prescribes how to act in emergency situations, when it is necessary to immediately response in the safety interests of persons, prosecutor and State Police worker will be able to apply directly to court with request to apply Fast reaction POMs to persons – Prohibition from contacting and approaching or Obligation to leave the dwelling or other premises.

The issue whether a person can apply to the IG with request to apply a POM to another person, potential or existing causer of harm, is of particular significance. There is a reasonable ground to believe that such procedure should not be developed, since it would transform the IG from a professional group into an institution, which would regularly maintain correspondence with residents and would respond to complaints and applications, as a result this institute would become bureaucratized, thus, losing its initial meaning. Persons with any kind of applications can apply to the local government, Orphan's Court, Social Service, State and Municipal Police and other establishments or institutions, the specialists of which are included in the composition of the IG, in order to obtain professional platform for implementation of prevention function in the inter-institutional environment by performing preventive function within the framework of their own direct duties. Namely, **the IG is a specially created multi-disciplinary platform of cooperation between establishments and institutions in order for the specialists of different institutions to be able to perform prevention function jointly**.

7. Conclusions

1. In order for the POM system to be successful, appropriate functioning environment is to be ensured for it; therefore, it is necessary to implement the **Prevention management system** in Latvia, comprising **Types** of preventive operational measures for minors[299] and adults[300] (a); Informal influence **methods**[301] (b); Inter-institutional cooperation **mechanism** (c). Appropriate functioning environment also comprises specialists' training, development of legal base and effective organization of prevention work within entire country. Prevention can work only within a multi-disciplinary environment, therefore, prevention management cannot be delegated to one department, namely – system management is to be organized on the state level as well by adhering to this principle. If there is no multi-disciplinary environment, it is to be created and this can be done by defining the forms of cooperation between institutions. Simple distribution of functions between the institutions cannot be considered to be a creation of forms of cooperation between institutions.
2. When developing the POM system for Latvia, it is necessary to make a choice – whether POMs will refer only to particular individuals (both the causer of harm and the victim) or they will be used for the protection of common interests of the society. Namely, **a POM is a tool**, which comprises such a potential **as to serve both the protection of lawful interests and rights of certain persons and protection of common interests of the society**.
3. During the development of the POM system in general and construction of separate POMs, **it is necessary to search for answers to the following questions**: Is a particular POM developed in order to influence the behaviour of a major or a minor? The behaviour of the children of which age do we want to influence?(a); Is a person, whose harmful or potentially harmful behaviour the victim or potential victim is protected from, living with the victim in the same household or not? (b); Is a POM applied to a person, who is under the general civil status or he/she has a special legal status in the already initiated criminal proceeding or he/she has the status of the convict? (c).
4. In Latvia, prevention is actually not defined as a set of general and individual methods, therefore, special attention is to be paid to the development of the system. **The POM system is a part of common system of prevention** and it, as a set of mutually related and purposeful actions, is

[299] Author's note: see POMs for minors – from the age of 7 together with the parents "Child Safety Orders", from the age of 14 "Behaviour Control Order" and "Protection Order".
[300] Author's note: see POMs for majors - PPOMs for parents and persons, who substitute them, together with a "Childe Safety Order" - "Parenting Order"; fast reaction POMs - "Fast Protection Order" and "Eviction Order"; POMs applied according to the general procedure - "Behaviour Control Order" and "Protection Order".
[301] Author's note: Informal influence methods are support activities for adults and minors, causers of harm and potential causers of harm and persons, who have suffered from harm or for whom the probability of causing of harm exists. Informal influence methods vary from agreements on desirable behaviour between respective institution and the causer of harm, to methods of non-violent settlement of conflict of the Restorative Justice (conciliation between the victim and the causer of harm; conferences of problem settlement), specialists' consultations and support programs.

considered to be a method of early intervention, where each preventive measure separately is evaluated as a prevention measure for the achievement of a certain aim.

5. **Listing of preventive operational measures in the legal acts should not be exhaustive**, thus, leaving a possibility for the applicators of POMs to act in a manner as to be able to response to the safety needs of a particular victim, simultaneously stopping the harmful action and achieving that the harm is not caused in future.
6. When modelling the POM system, **it is necessary to thoroughly assess**: **the duration of operation of each particular POM** – preventive measure is to be valid as long as it solves respective prevention case by helping the victim and preventing harm risks (a); a procedure, by which **POM content can be amended** by decreasing or increasing the number of conditions included in it, by changing, cancelling or replacing one condition by another, is to be ensured (b); a procedure, by which **a POM can be cancelled** and by which a person can request for cancellation of POM, is to be ensured in legal norms.
7. **It is necessary to foresee a possibility** that certain POMs (prohibition from approaching or communicating) can be applied and be valid, **if a person**, who causes harm threats, **is convicted** of criminal offence or **is in the custody**.
8. It is necessary to foresee a possibility that certain **POMs would be applied concurrently to administrative punishments**, according to the Latvian Administrative Violations Code.
9. A POM is an individual prevention tool, which is to be determined within the framework of unified legal regulation. When developing legal regulation in the area of prevention, it is necessary to carry out decisions on unified legal regulation of POMs, TPMPRs and Preventive measures in educational institutions, simultaneously auditing legal norms of the law "On Educational Operational Measures for Children" and LAVC, with an aim to create the prevention system based on unified principles. To assess whether criminal liability is to be imposed for POM violations at all – if it is stated that this liability is necessary, to supplement the CL with legal norms, which determine the liability for violation of separate POM conditions. If it is stated that the criminal liability for the POM violation is not to be applied, this liability is to be prescribed in a special law, which regulates legal relations arising in the area of prevention.
10. **Liability for POM violations is to be differentiated depending of the type of POM**:

    10.1. Consequences for violation of **POMs for children and parents** cannot be related to the criminal liability, a different POM with more severe conditions is to be applied - educational operational measures to children and administrative liability to parents. However, it is to be taken into account that the types of administrative liability, based on the content of LAVC norms in force, currently are not suited for this purpose, therefore, it would be necessary to develop a new regulation, where it would be possible to include sensible reaction to violation of POMs for

children and parents (a); criminal liability cannot be determined for minors for violations of POMs in any case (b);

10.2. Liability **for violations of Fast reaction POMs** in the Criminal Law is to be determined in the following form - short-term deprivation of freedom (up to one year), community service or pecuniary punishment. Fast reaction POMs are not applied to minors (c);

10.3. The following liability is to be ensured for POMs applicable according to general procedure:

10.3.1. **for violations of a Behaviour Control Order** – 1) duration term of a POM can be prolonged, 2) if a major has violated the conditions of a BCO, which has been applied by the court, he/she is to be held liable according to the procedure set in the Criminal Law by applying to him/her a pecuniary punishment, community service or deprivation for a period of up to 1 year in exceptional cases and as the last possibility; 3) if a minor has violated the conditions of a BCO, which has been applied by the court, he/she is held liable together with the parents or persons, who substitute them; 4) the consequences for the violation of a Behaviour Control Order (BCO) should not be criminalized neither for majors, nor for minors, however, the Latvian Administrative Violations Code does not prescribe any sufficiently effective mechanisms, which could be applied in a form of sanctions for the non-fulfilment or inappropriate fulfilment of this type of POM;

10.3.2. **for violations of a Protection Order** – a person is held liable according to the Criminal Law and is imposed with pecuniary punishment, community service or short-term deprivation of freedom for a period of up to 1 year.

11. **POMs corresponding to the needs of children and parents are to be developed**. When developing POMs for children and parents, it is necessary to take into account that, when obligations are determined for a child within the framework of a POM, simultaneously, a POM is to be determined for the parents in order to make the parents cooperate with rights-protecting and other state and local government institutions and provide all necessary support to their child during the operation of a POM. A POM intended particularly for children – "Child Safety Order" can be applied from the age of 7, simultaneously applying child's "Protection Order" to parents. It is essential that mutually binding support activities would be applied to children and parents – Informal influence tools – during this order.
12. **Fast reaction POM** is applied in two cases: if it is necessary to determine a prohibition from contacting and approaching (a); if a person, who causes threats, is to be required to immediately leave the dwelling or other premises (b). Fast reaction POMs cannot be applied to minors.
13. **POMs applicable according to general procedure** are applied to persons over 14. In general, two types of POMs applicable according to general procedure would be necessary:

13.1. Behaviour Control Order (if a person is causing or might cause stress and feeling of unsafety to other people or the type of this person's behaviour is obtrusive and harmful activities are related to certain repetition and regularity);

13.2. Protection Order – the court decides on a Protection Order in case it is necessary to protect the victim from harassment (as well as different types of molestation), in case the court is to determine a prohibition from contacting the victim or approaching him/her, a Protection Order can also contain an Eviction Order from the shared place of residence or other premises, in case it is necessary to protect a person from the aforementioned harm. The aim of a Protection Order is not to punish the offender for the committed unlawful activity, but rather to protect the victim from fear, threats and possible violence or repetition of such threats.

14. **Evidence standard, when applying a POM**. The evidence, which is to be available to the court or the IG (or other institution) in order to carry out a decision on the necessity of a POM, should be sufficient for the court (or other institution) to be able to gain assurance regarding that, whether person's rights have been involved (a) or there is a real threat/real possibility, that such involvement might take place (b). When assessing the evidence and thus justifying the application of a POM, all doubts should be assessed for the benefit of the victim or potential/existing victim. It is to be taken into account that a POM is not a punishment and the guilty person is neither searched for, nor punished, **a POM is rather a legal measure of person's behaviour influence, which is applied in order for one person not to become the victim and in order for another person not to become the guilty by committing a criminal offence**. The fact of POM application actually protects both possible victim and possible guilty person – the victim is protected from possible harm consequences, while the guilty person is protected from possible criminal punishment and consequences related thereto.
15. When developing legal norms for regulation of legal relations in the area of prevention, POMs are to be separated from existing types of judicial liability. **The system of preventive operational measures is a set of purposefully organized methods of anti-social behaviour management, rather than a new system of sanctions**. Any preventive measures differ from the punishment by that its aim is not reactive, but rather proactive – (to identify, to interfere and) to eliminate or to decrease as much as possible the occurrence of harmful consequences of the already on-going or highly possible anti-social behaviour. Unlike punishment, a POM can be applied already when the degree of harm of the anti-social behaviour is not high enough for any of reactive liability types prescribed in the LAVC or CL to be imposed. The main difference from the punishment is that a POM acts both in the interests of the possible victim (in order for harm not to be caused to a person and in order for a person not to become a victim) and in the interests of the possible offender (in order for a person not to cause harm and to be held liable under the norms of the LAVC and CL).

8. List of Used Resources

Books

1. Comments on the Constitution of the Republic of Latvia. Section VIII. Fundamental Human Rights. Collective body of authors. Riga: Latvijas Vēstnesis, 2011. – p. 38-39.
2. Mill J.S. On Freedom. Riga: Tapals, 2007. - p. 116-119.

Periodicals

3. Miezane E. (Miezāne E.) On Implementation of Preventive Operational Measures in Legal System of Latvia (Par preventīvu piespiedu līdzekļu ieviešanu Latvijas tiesību sistēmā). Jurista vārds, September 20, 2011, Nr. 38.

Roundtable Discussions

4. Roundtable Discussion on 17 May 2012 at the State Prosecutor's Office of the Republic of Estonia, with participation of M.Agarmaa, A.Simm, M.Kaur, K.Palu, K.Nõmm, E.Reitelmann, I.Kronberga, A. Lesinska and G.Litvins.
5. Roundtable Discussion on 18 May 2012 at the Tallinn Crisis Centre for Women, with participation of I.Mikiver, I.Kronberga, A. Lesinska and G.Litvins.
6. Roundtable Discussion on June 6, 2012 at the Ministry of Justice of Finland, with participation of K. Jahkola, J. Matikkala, J.Takala, I. Kronberga, A. Lesinska and G. Litvins.
7. Roundtable Discussion on June 7, 2012 at the Non-Governmental Organization "The Federation of Mother and Child", with participation of S. Laaksonen, J. Hautamaki, M. Smolej, R. Lahti, I.Kronberga, A. Lesinska un G.Litvins.

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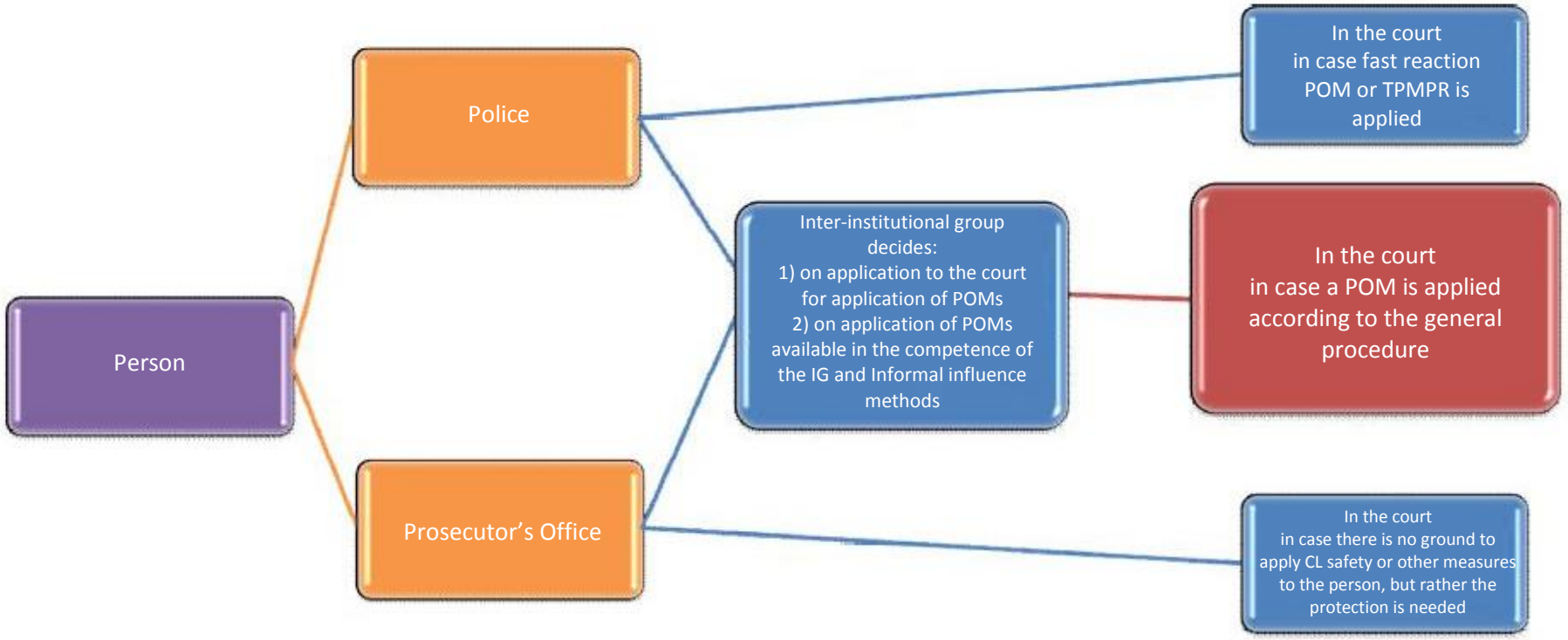
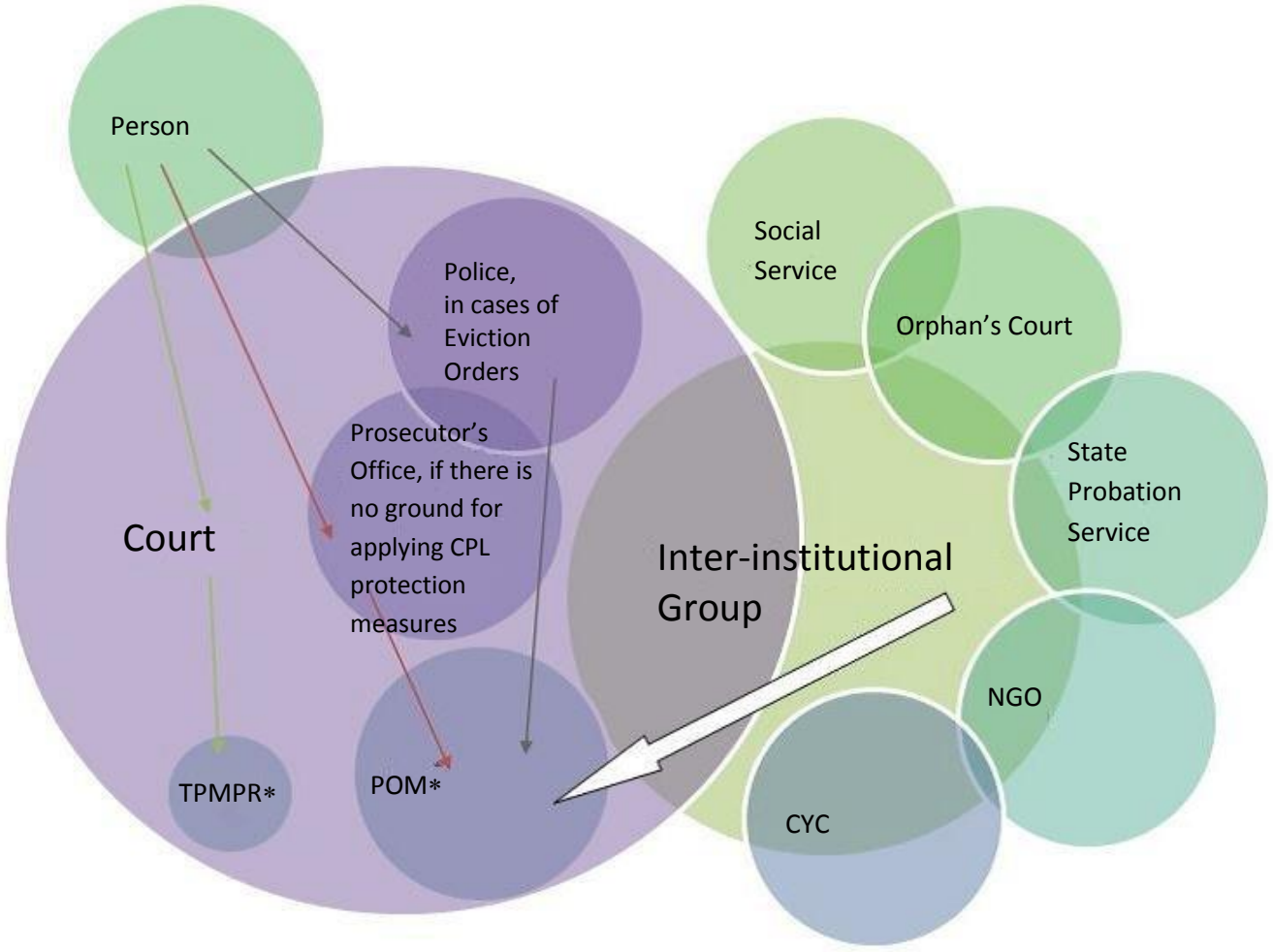
Appendices

Scheme 1 Special Status of the State Police and Prosecutor's Office in POM Application



Scheme 2 Information Turnover in Inter-Institution Environment



*TPMRP – Temporary Protection Measures of Personal Rights
*POM – Preventive Operational Measure

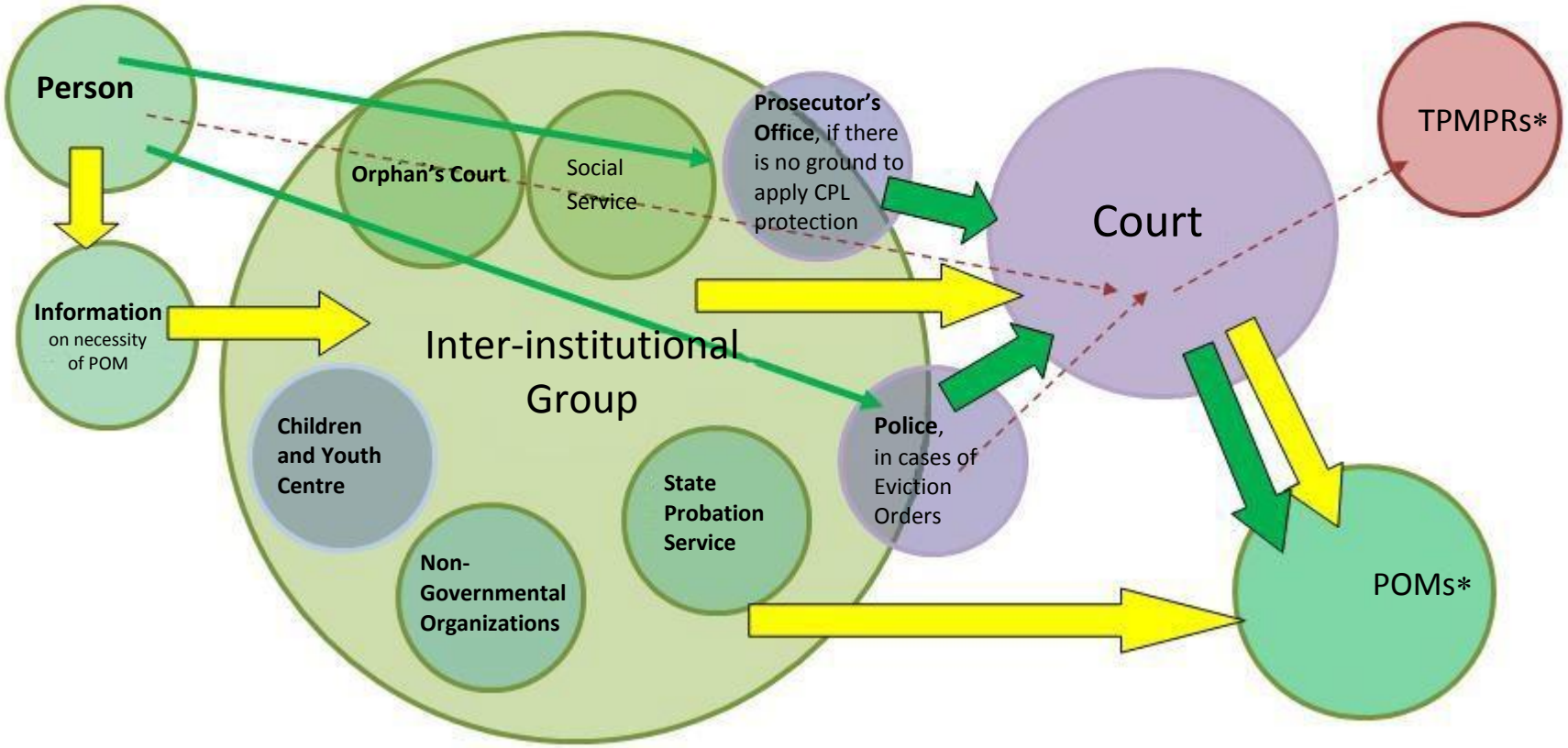
Scheme 3 Sequence, According to Which the Information Comes from a Person to the Inter-Institution Working Group from IG Members and then to Court

Sequence, according to which the information is submitted from a person to the Inter-institutional work group from the IG workers and then to the court – is illustrated with yellow arrows

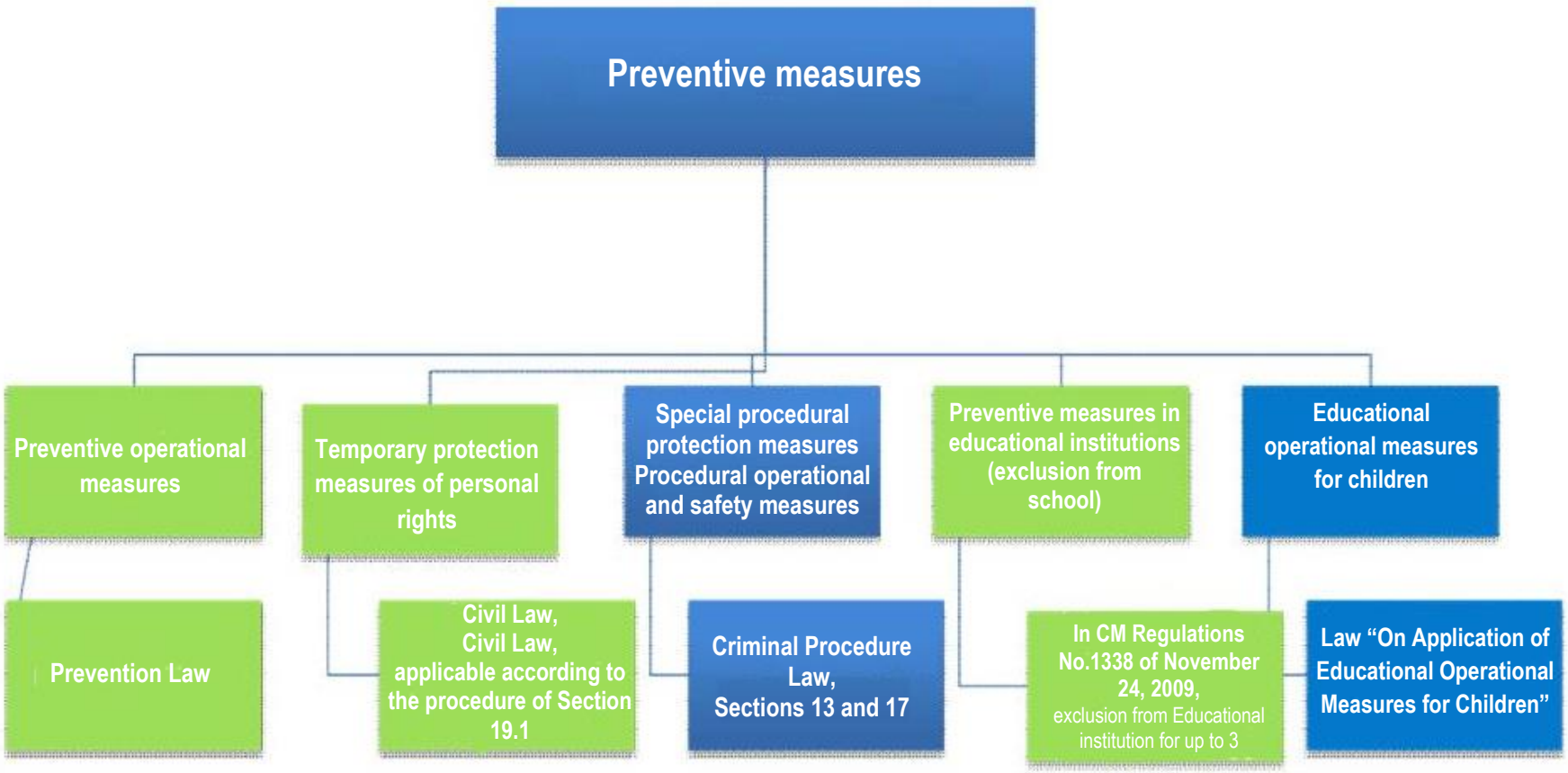
Sequence, according to which the information is submitted to the State Police and Prosecutor's Office, and then to the court – is illustrated with green arrows

Sequence, according to which the information on the necessity to apply TPMPR is submitted to the Police and the court – is illustrated with red dashed line

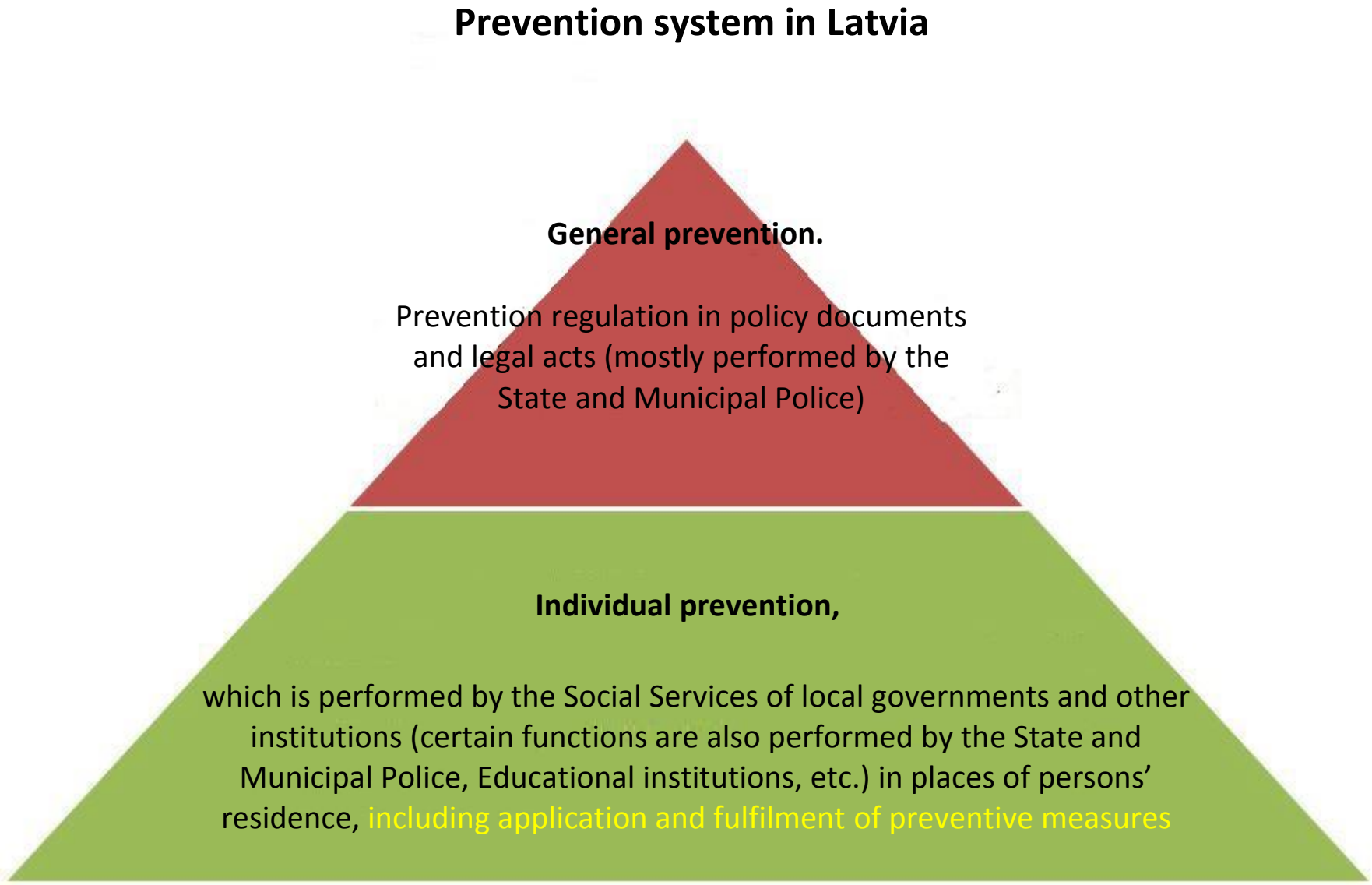
*POMs – preventive operational measures; *TPMPRs – Temporary protection measures of personal rights



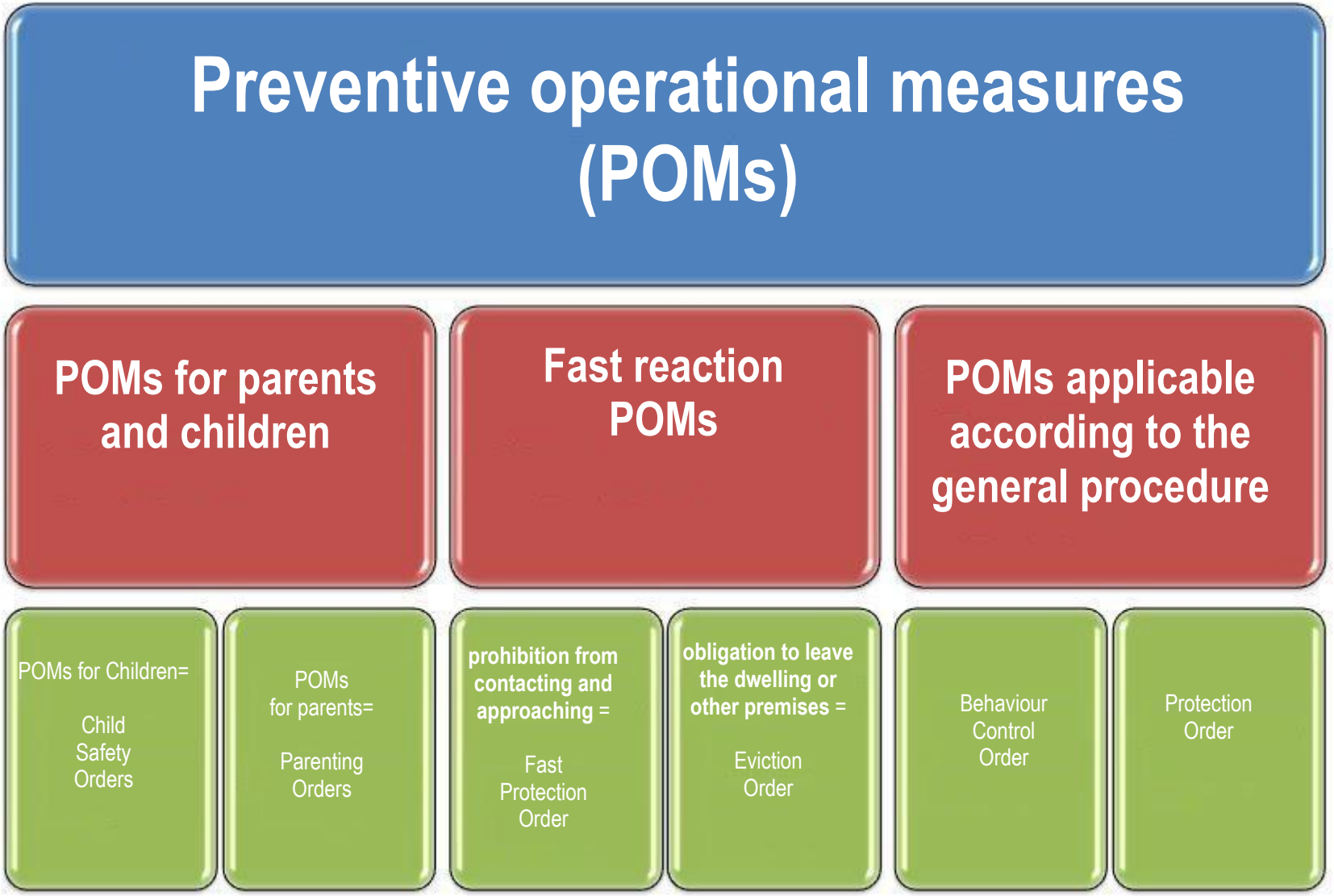
Scheme 4 Preventive Measures in Legal Regulations of Latvia - Current and Planned
* blue colour – valid, while * green – at the stage of development



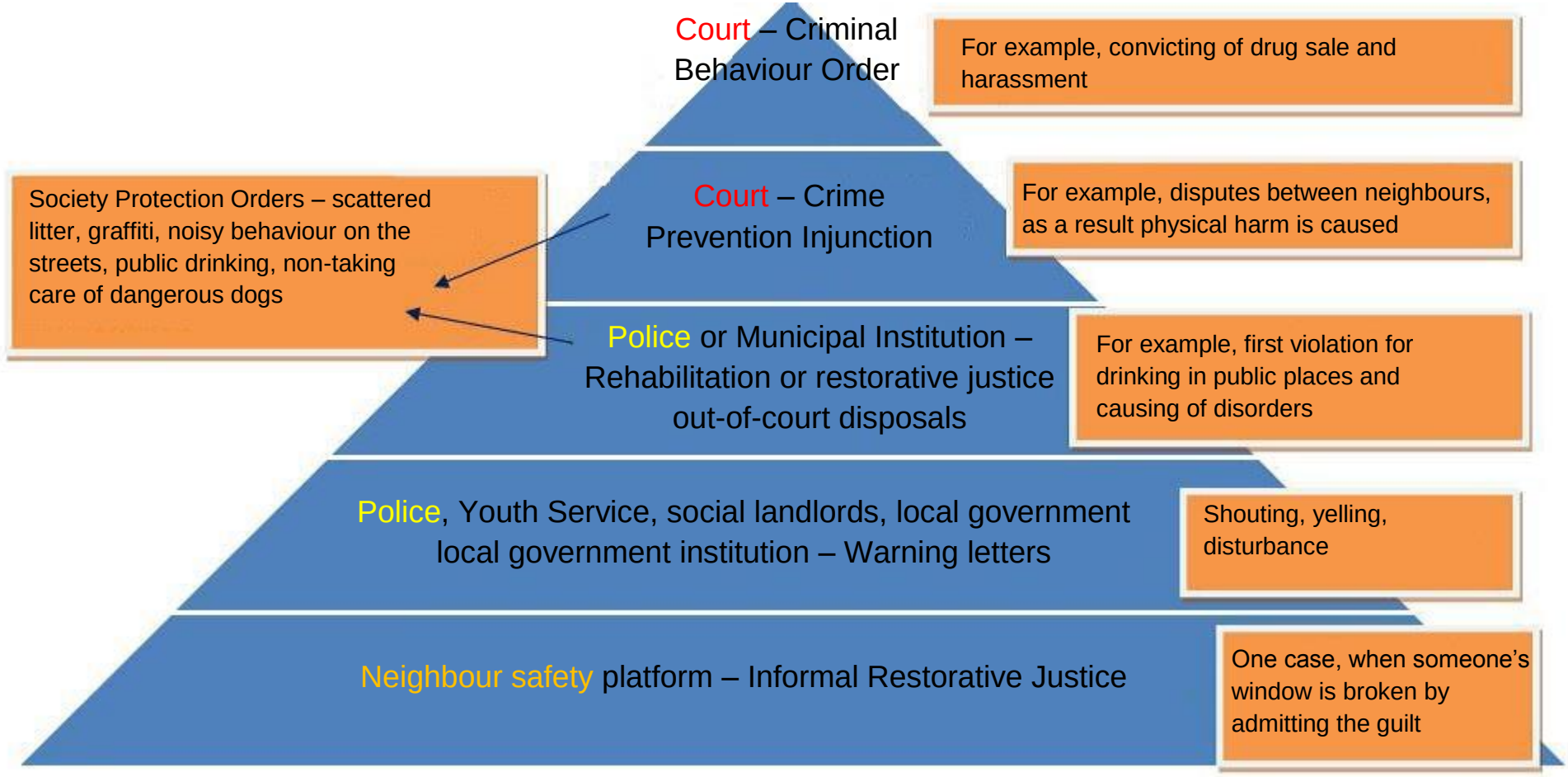
Scheme 5 Prevention System in Latvia



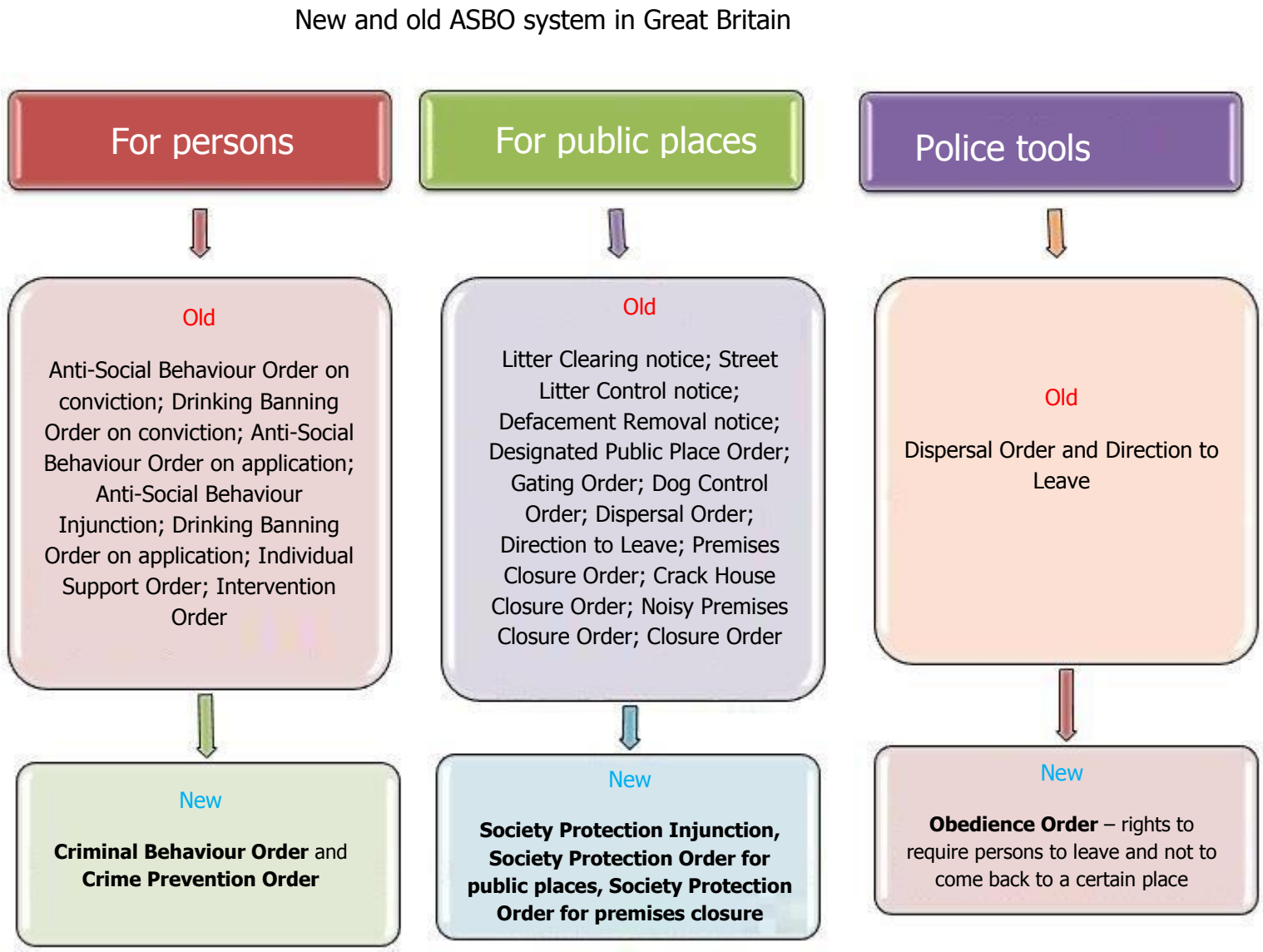
Scheme 6 Possible Model of Preventive Operational Measures System in Latvia



Scheme 7 Application System of Anti-Social Behaviour Order in Great Britain from Municipality to Court Level



Scheme 8 New and Old ASBO System in Great Britain



Scheme 9 Scheme of Prevention Management for Latvia in Compliance with Research Recommendations