COURT CONSIDERATIONS ON ISSUING RESTRAINING OR PROTECTION ORDERS IN CASES OF DOMESTIC VIOLENCE: INTERNATIONAL STANDARDS AND OVERVIEW OF UKRAINIAN NATIONAL PRACTICE

Council of Europe Project
«The Istanbul Convention:
a tool to advance in fighting violence against
women and domestic violence in Ukraine»

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Council of Europe Project "The Istanbul Convention: a tool to advance in fighting violence against women and domestic violence in Ukraine" (2018-2020)

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Table of contents

Acronyms

URPI	Unified Register of Pre-Trial Investigations
ECtHR	European Court of Human Rights
ECHR	European Convention on Human Rights
Law No. 2229-VIII	Law of Ukraine on Prevention and Counteraction of Domestic Violence
CC of Ukraine	Criminal Code of Ukraine
CMU	Cabinet of Ministers of Ukraine
CPC of Ukraine	Criminal Procedure Code of Ukraine
CUAO	Code of Ukraine on Administrative Offences
MIA	Ministry of Internal Affairs of Ukraine
FC of Ukraine	Family Code of Ukraine
Istanbul Convention	Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence
CPC of Ukraine	Civil Procedure Code of Ukraine
CSSFCY	Centre of Social Services for Families, Children and Youth
SSD	Children's Service
EU	European Union

Introduction

The *Court Considerations on Issuing Restraining or Protection Orders in Cases of Domestic Violence: International Standards and Overview of National Practice* study is aimed for the use by Ukrainian judges, assistant judges and candidates for judges, as well as lawyers, prosecutors, police, free legal aid employees, representatives of custody and guardianship agencies and children's services, and those who intend to petition the court concerning issuance or extension of a restraining order.

This study is intended to provide an understanding of international standards pertaining to protection orders, in particular the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) and cases of this category in the case-law of the European Court of Human Rights. The study also contains an analysis of the national case law of the courts of first instance, according to the criteria set out in the methodology, as well as an analysis of decisions of courts of appeal and cassation. It provides general conclusions and recommendations to improve judges' efficiency in applying special measures to combat domestic violence, such as restraining and protection orders.

A separate aspect of the study consists of appendices that contain information on (1) the total number of court decisions of the courts of first instance for the period 1 January 2018 – 31 August 2019 for each region, (2) the results of interviews with judges, and (3) a list of decisions taken by the ECtHR concerning domestic violence cases.

This study has been developed within the framework of the Council of Europe Project "Istanbul Convention: A Tool to Strengthen the Combating of Violence against Women and Domestic Violence in Ukraine".

Scope and Methodology

Court decisions were monitored for this report in cases of issuance and extension of restraining orders, adopted in the period from 1 January 2018 to 31 August 2019. This included:

- 568 decisions of courts of first instance;
- 135 decisions of the appellate instance;
- 16 decisions of the cassation instance.

It should be noted that the court decisions themselves were entered into the Unified State Register of Court Decisions under incorrect categories. In particular, court decisions have been placed in the following categories: "Civil cases; Other cases", "Civil cases; Claim proceedings; Disputes arising from housing legal relations; Disputes arising from housing legal relations on eviction", "Civil cases; Separate proceedings; Disputes arising from family legal relations", "Civil cases; Separate proceedings; Cases arising from family legal relations; Cases arising from family legal relations on the establishment of a separate residence at the request of the spouses", "Civil cases; Separate proceedings; Cases on establishing facts of legal significance", "Civil cases; Claim proceedings; Disputes about inheritance law".

The sampling of court decisions was carried out manually using the search words "restraining order domestic violence" in all regions of Ukraine, except for those regions that are not under the control of Ukraine (part of Luhansk and Donetsk regions, as well as the Autonomous Republic of Crimea and the city of Sevastopol).

The following were analysed in detail:

- 250 decisions of courts of first instance;
- 45 Dispositions of courts of appellate instance;
- 5 Dispositions of courts of cassation instance.

The decisions of the courts of first instance were analysed based on the following criteria:

- the category of the person who applied for a restraining order;
- the sex of the applicant and the person concerned;
- the time period in which the court decision was made;
- participation of the applicant and the person concerned in consideration of the application for the issuance of a restraining order in court;
- the circumstances and evidence relied upon by the applicant in the application, which in his/her view indicates the need for the court to issue a restraining order;
- measures of temporary restriction which were applied by the court to the person concerned, in case of satisfaction of the application for issuance of a restraining order in full or in part;
- risks that were taken into account by the court in making its decision;
- the term for which the restraining order was issued;
- provision of the notice to the authorised person by the court on the prevention and counteraction of domestic violence, and to the National police body on the satisfaction or partial satisfaction of the applicant's petition for the issuance of a restraining order;
- grounds for the court's refusal to satisfy a petition for the issuance of a restraining order.

Dispositions of the appellate and cassation instances were analysed from the point of view of studying and generalising the case-law of higher courts in cases of issuance and extension of restraining orders.

This report focuses on the analysis of national case law on the restraining orders issued or extended by judges in civil proceedings and does not cover the analysis of the practice of issuing emergency barring orders by police officers and the case law on appealing them, as well as the decisions on restraining measures taken by judges in criminal proceedings.

Restraining orders are governed by Article 53 of the Istanbul Convention. In particular, this provision establishes the obligation of a State to "take the necessary legislative or other measures to ensure that appropriate restraining or protection orders are available to victims of all forms of violence covered by the scope of this Convention." Part 2 of said Article sets minimum standards that must be met by restraining or protection orders, namely:

- protection orders must be available for immediate protection and without imposing an undue financial or administrative burden on the victim;

- protection orders must be issued for a specified period or until they are modified or discharged;
- if necessary, protection orders must be issued on an ex parte basis with immediate effect;
- protection orders must be available regardless of the existence of or in addition to other legal proceedings;
- protection orders must be permitted for submission in subsequent legal proceedings.

In addition, Article 53 of the Istanbul Convention also requires that effective, proportionate and dissuasive criminal or other legal sanctions be applied in the event of a violation of the protection orders.

National Legislation on the Issuance and Extension of a Restraining Order

On 7 January 2018, the Law of Ukraine No. 2229-VIII on Prevention and Counteraction of Domestic Violence entered into force, which, for the first time in Ukraine, defined a restraining order against the perpetrator at the national level as a special measure to combat domestic violence issued by a court for up to six months. These changes are very positive, as they are designed primarily to ensure the safety of a person suffering from domestic violence and wrongdoing by the perpetrator. The time period for which the court issues a restraining order can be used by the victim to receive various types of social services, psychological and medical care. Similarly, the victim may seek legal assistance.

According to Article 26 of Law No. 2229-VIII, a restraining order against the perpetrator provides for the application of one or more measures of temporary restriction of the perpetrator's rights, or imposition of obligations, namely:

- prohibition to dwell in the place of joint residence with the victim;
- removing obstacles to access jointly owned property or personal private property of the victim to use property in joint ownership, and/or to use the personal private property of the victim;
- restriction of communication with the injured child;
- prohibition to approach the place of residence, study, work, other places of frequent visits by the victim, within a certain distance;
- prohibition against searching for the victim personally and through third parties, if he/she is at his/her own will in a place unknown to the perpetrator, to harass him/her and in any way communicate with him/her;

- prohibition of correspondence, telephone conversations with the victim or contact with the victim through other means of communication, in person and through third parties.

"Given the provisions of the Law of Ukraine "On Prevention and Counteraction of Domestic Violence", the restraining order is not in its essence a measure of punishment of a person (unlike the norms enshrined in the Code of Ukraine on Administrative Offenses and the Criminal Code of Ukraine), but a temporary measure performing a protective and preventive function and aimed to prevent the commission of violence and ensure the primary safety of persons, given the risks provided for in the above the law, prior to resolving the issue of qualification of the perpetrator's actions and making a decision in this regard in the relevant administrative or criminal proceedings."

Extract from Court Decisions on Issuance and

Extension of a Restraining order

Even if this position is taken by some judges, case law has shown that bringing a perpetrator to administrative and/or criminal responsibility is of paramount importance when applying for a restraining order, as it is evidence that the perpetrator has committed domestic violence. Judges often deny a victim's request for a restraining order, arguing that the person has not been brought to administrative and/or criminal responsibility and therefore cannot be considered an "undisputed perpetrator" in the court's view. The courts favour the principle of presumption of innocence of the perpetrator over the safety of the victim and his/her right not to suffer from domestic violence, while also neglecting the basic principles of preventing and combating domestic violence, as stated in Article 4 of Law No. 2229-VIII, in particular:

- guaranteeing victims' security and protection of fundamental human and civil rights and freedoms, including the right to life, liberty and personal security, respect for private and family life, a fair trial, legal aid, taking into account the case-law of the European Court of Human Rights;
- due cognisance of every case of domestic violence during the implementation of measures to prevent and combat domestic violence;
- taking into account the disproportionate impact of domestic violence on women and men, children and adults, adherence to the principle of ensuring equal rights and opportunities for women and men in the implementation of measures to prevent and combat domestic violence;

- recognition of the public danger of domestic violence and ensuring intolerance of any manifestations of domestic violence;
- respect, impartial attitude to victims by actors implementing measures to prevent and combat domestic violence, ensuring the priority of the rights, legitimate interests and safety of victims in the implementation of measures to prevent and combat domestic violence;
- taking into account the special needs and interests of victims, in particular persons with disabilities, pregnant women, children, incapacitated persons, and the elderly.

Courts are one of the actors for preventing and combating domestic violence. Therefore judges must also adhere to the basic principles in Article 4 of Law No. 2229-VIII when deciding on cases of domestic violence, including when considering an application for issuance and extension of a restraining order.

Law No. 2229-VIII stipulated amendments to the CPC of Ukraine, which was supplemented by Chapter 13 "Court Consideration of Cases on Issuance and Extension of a Restraining order" to Section IV "Separate Proceedings" and Articles 350-1 – 350-8. The application for the issuance or extension of a restraining order is considered by the court in a separate proceeding according to a certain procedure.

As stated in Law No. 2229-VIII, the parties to the case are:
- an applicant;
- a person concerned.

Jurisdiction
The application for the issuance of a restraining order is submitted to the court at:
- place of residence of a person who has suffered from domestic violence;
- the location of the institution that belongs to the general or specialised support services for victims if the person is in the institution.

Who can be an applicant?
An application for a restraining order may be submitted by:
- a victim of domestic violence or his/her representative;
- parents and other legal representatives of a child victim of domestic violence, relatives of the child (grandmother, grandfather, adult brother, sister), stepmother or stepfather of the child;
- children's protection service in the interests of a child who has suffered from domestic violence;
- a guardian, custody and guardianship agency in the interests of an incapacitated person who has suffered from domestic violence.

Who is a concerned person?
Persons concerned in cases of issuance of a restraining order are:

- persons in respect of whom an application for a restraining order has been submitted;
- other individuals, whose rights and interests are affected by the application for a restraining order;
- public authorities and local governments within their competence.

Contents of the application for the issuance of a restraining order
The content of the application for the issuance and extension of the restraining order must meet the requirements of Article 350-4 of the CPC of Ukraine. Thus, in addition to the formal requirements – an indication of the name of the court to which the application is being submitted and information about the parties, the application must indicate:

- circumstances indicating the need for the court to issue a restraining order, and
- evidence in support of them (if any).

If it is impossible to provide evidence, a motion for its request may be attached to the application. Similarly, the court may request evidence on its own initiative by analysing the applicant's application or the testimony of the parties.

Consideration of a case
The case on the issuance of a restraining order shall be considered by a court with the participation of the applicant, and persons concerned, whose failure to appear shall not prelude the consideration of the case on the issuance of a restrictive injunction, provided they were duly notified. If the applicant's participation poses a threat of further discrimination or violence against him/her, the case may be heard without his/her participation.

The court shall notify the parties by telephone, telegram, facsimile, e-mail or message through other means of communication (including mobile), which provide recording of the message or call, meeting the requirements of Part 9 of Article 128 of the CPC of Ukraine. Similarly, the person concerned may be summoned by the court through an announcement on the official website of the judiciary of Ukraine, which must be posted no later than 24 hours before the date of the relevant court hearing. With the publication of the summons announcement, the person is considered notified of the date, time and place of the case hearing (Part 11 of Article 128 of the CPC of Ukraine).

Access to Justice
Access to justice includes consideration of the application within a specified period, the possibility to address the court without paying a court fee, as well as receiving free legal aid.

In accordance with Part 2 of Article 350-5 of the CPC of Ukraine, the court must consider the case of the issuance of a restraining order no later than 72 hours after receipt of the application for the issuance of a restraining order by the court.

In accordance with Clause 12-1 of Part 2 of Article 3 of the Law of Ukraine on court fees No. 3674-VI dated 8 July 2011, the applicant is exempt from paying court fees for filing an application for a restraining order. The court costs related to the case on the issuance of a restraining order shall be borne by the state.

In addition, in accordance with Article 14 of the Law of Ukraine on Free Legal Aid No. 3460-VI dated 2 June 2011, a person who has suffered from domestic violence shall have the right to receive free secondary legal aid, which includes:

- representation of interests of persons in courts, other state bodies, local governments, before other persons;
- preparation of procedural documents.

Court Decision
After considering the application for the issuance of a restraining order, the court shall decide to satisfy the application or to dismiss it based on the results. If the application is satisfied, the court shall issue a restraining order in the form of one or more temporary restrictive measures of the rights of the person who committed domestic violence, provided for in Part 2 of Article 26 of Law No. 2229-VIII. A restraining order issued by a court in respect of a child (a person under 18 years of age) may not restrict the child's right to reside in the place of his/her permanent residence, which is a guarantee of protection of children's property rights.

The court may issue a restraining order for a period of one to six months. According to the application of the persons specified in Article 350-2 of the CPC of Ukraine, the restraining order may be extended by the court for a period not exceeding six months after the expiration of the period established by the court decision.

The decision of the court on the issuance of a restraining order is subject to immediate execution, and its appeal shall not suspend its execution.

Risk Assessment
The decision to issue a restraining order or to refuse to issue a restraining order shall be made on the basis of a risk assessment (Part 3 of Article 26 of Law No.

2229-VIII). The form of such risk assessment to be used by the judges has not been adopted. However, when assessing a case of domestic violence, judges can focus on international standards and best practices in this regard .

In accordance with Para. 2 of Clause 5 of Section I "General Provisions" of the Order of the Ministry of Social Policy of Ukraine and the Ministry of Internal Affairs of Ukraine No. 369/180 on Domestic Violence Risk Assessment" dated 13 March 2019, authorised bodies in the field of prevention and counteraction of domestic violence may use the results of risk assessment during the application of measures to combat such violence in accordance with the Law of Ukraine on Prevention and Counteraction of Domestic Violence. Similarly, the value of a proper assessment of domestic violence risks performed by authorised National Police officers is that it assesses the incident almost immediately after it has occurred.

Delivery of Transcripts of Court Decisions
Transcripts of the full court decision shall be served on the parties to the case who were present at the court hearing immediately after the announcement of such a decision. A transcript of the court decision shall be forwarded to the parties to the case who were not present at the court hearing by registered mail with acknowledgement of receipt immediately, and not later than the day following the day the decision was taken.

Informing the Persons Concerned
In cases of issuance or extension of a restraining order, it is important to inform other actors for the prevention and counteraction of domestic violence about the decisions made by the court in order to ensure further work with both the victim and the perpetrator. In accordance with Part 2 of Article 350-8 of the CPC of Ukraine: "in order to register the person against whom the restraining order has been issued or extended, for preventive purposes, the court shall notify the authorised units of the National Police of Ukraine at the place of residence of the applicant, as well as district, district in the cities of Kyiv and Sevastopol State Administrations and executive bodies of the village, settlement, city councils, district councils in the cities at the place of residence of the applicant about the issuance or extension of a restraining order no later than the day following the day when the decision was taken".

The National Police of Ukraine, having received the relevant court decision, shall register the perpetrator for preventive purposes and ensure control over the perpetrator's behaviour at the place of residence, and conduct preventive work with him to prevent repeated acts of domestic violence, which meets the requirements of the Ministry of Internal Affairs Order No. 124 on Approval of the

Procedure to Register for Preventive Purposes, Carrying out Preventive Work and Deregistration of the Perpetrator by the Authorised Unit of the National Police of Ukraine dated 25 February 2019.

Likewise, in accordance with Clause 33 of the Resolution of the Cabinet of Ministers of Ukraine No. 658 on Approval of the Procedure for Interaction of Entities Implementing Measures to Prevent and Combat Domestic Violence and Gender-based violence dated 22 August 2018, the court shall notify district, district in the cities of Kyiv and Sevastopol State Administrations and executive bodies of village, settlement, city councils, district in the city councils, including amalgamated territorial communities, of the place of residence of the applicant, about the issuance or extension of a restraining order no later than one day following the day when the decision was taken. In its turn, having received the relevant court decision, the authorised body in the field of prevention and counteraction of domestic violence shall take into account the measures applied by the court to temporarily restrict the rights of the person during the preparation or adjustment of the program for the victim. Likewise, the authorised body in the field of prevention and counteraction of domestic violence, having received the relevant information about the victim from the court, will be able to assess the needs of the victim and provide him/her with necessary support and assistance.

Monitoring Compliance with the Restraining order

In accordance with Clause 6 of Part 1 of Article 10 of Law No. 2229-VIII, the powers of authorised units of the National Police of Ukraine in the field of prevention and counteraction of domestic violence include control over the implementation of special measures to combat domestic violence by the perpetrator during their term, including compliance with the restraining order. At the same time, no current statutory instrument of Ukraine stipulates in what way the authorised unit of the National Police of Ukraine should exercise this control and what this control entails. Unfortunately, the lack of a clear action plan leads to the fact that in practice, authorised officers do not exercise control at all, and the relevant rule is of declarative nature.

Enforcement of Court Decision regarding a Restraining order

According to Ukrainian law, enforcement of court decisions, at the final stage of court proceedings, is entrusted to the bodies of the state enforcement service, which is part of the Ministry of Justice of Ukraine and to private executors in the cases provided by law. However, state enforcement officers or private executors are not included in the list of entities in the field of prevention and counteraction of domestic violence, and therefore, according to applicable law, they cannot enforce court decisions on the issuance or extension of restraining orders. The

Law of Ukraine on Enforcement Proceedings No. 1404-VIII dated 2 June 2016 lacks the relevant rules to determine their powers.

Failure to Comply with a Restraining order

Article 390.1 Criminal Code of Ukraine. Failure to Comply with Restrictive Measures, Restraining orders or Failure to Complete the Program for Perpetrators

Intentional non-compliance with the restrictive measures provided for in Article 91.1 of this Code, or intentional non-compliance with restraining orders, or intentional evasion of the perpetrator program by a person in respect of whom such measures have been applied by a court, -shall be punishable by arrest for up to six months or restriction of liberty for up to two years.

Relevant amendments to the Criminal Code of Ukraine were made on the basis of the Law of Ukraine on Amendments to the Criminal and Criminal Procedure Codes of Ukraine to Implement the Provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence No. 2227 -VIII dated 6 December 2017, although the changes themselves came into force on 11 January 2019.

Standards of Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)

Prior to the adoption of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), the main document of the Council of Europe regulating the issue of combating domestic violence was the Recommendation of the Committee of Ministers of the Council of Europe (Rec (2002)5) dated 30 April 2002. Among other things, this document mentions the need for states to impose protection orders. In particular, it is recommended to «enable the judiciary to adopt, as interim measures aimed at protecting the victims, the banning of a perpetrator from contacting, communicating with or approaching the victim, residing in or entering certain defined areas perpetrator». Recommendation (Rec (2002)5) is still in force, which is particularly relevant for states that have not ratified the Istanbul Convention, including Ukraine.

The Istanbul Convention contains separate provisions relating to both emergency barring orders and restraining or protection orders. Emergency barring orders are regulated in Article 52, and restraining and protection orders in Article 53. In particular, Article 53 of the Istanbul Convention establishes the obligation of a state to "take the necessary legislative or other measures to ensure that appropriate restraining or protection orders are available to victims of all forms of violence covered by the scope of this Convention". States parties shall have the right to

determine within which area of law these measures are to be prescribed, i.e. whether they will be implemented in civil, criminal or administrative proceedings.

Certain features of terminology are worth noting. According to international legal practices, and in particular at the level of the Council of Europe, the EU and individual EU member states, the concept of "restraining or protective order" is quite broad. It can be defined as a decision made within civil, criminal, administrative or other proceedings, which imposes certain rules of conduct (prohibitions, restrictions, obligations) on one person in order to protect another person from encroachment on his/her life, freedom, honour and dignity, physical, psychological and sexual integrity. Ukrainian legislation provides for a distinction between "restraining orders" issued within civil proceedings (regulated by Chapter 13 of the CPC of Ukraine and the Law of Ukraine on Prevention and Counteraction of Domestic Violence") and "restrictive measures" issued within criminal proceedings (provided for in Article 91.1 of the Criminal Code of Ukraine and Article 194 of the Criminal Procedure Code of Ukraine). As noted in the section "scope and methodology" of this study, the term "restraining order" includes restraining orders within the meaning of Ukrainian law. With regard to emergency barring orders, although formally they may fall under the definition of restraining orders, this study considers only those orders that are issued in court.

Article 53 of the Istanbul Convention provides for a minimum set of standards to be met by restraining or protective orders:

- **Restraining orders must be available for immediate protection and without imposing an improper financial or administrative burden on the victim.** This means that the relevant order must take effect immediately after it has been issued, be accessible without lengthy and complicated court proceedings, and not constitute a significant financial burden for the victim.
- **Restraining orders must be issued for a certain period or until they are modified or removed.** This requirement arises from the need to comply with the principle of legal certainty.
- **Where necessary, restraining orders should be issued on an *ex parte* basis with immediate effect.** This means that a judge or other official must be authorised to issue a restraining order at the request of only one party. In such a case, it is necessary to take into account the procedural rights of the other party, in particular the right to appeal against such a decision.
- **Restraining orders must be available regardless of the existence of or in addition to other legal proceedings.** This means that a person

applying for a restraining order should be able to obtain such an order, regardless of whether he/she is initiating criminal proceedings against the perpetrator or not. Similarly, the right to obtain a restraining order should not be tied to other procedures, such as divorce. Conversely, the fact that civil or criminal proceedings are taking place should not preclude the possibility of obtaining a restraining order.

- **Restraining orders must be permitted for submission in subsequent legal proceedings**. This means that there should be a statutory possibility to notify a judge or another official of the existence of a restraining order during any other legal proceeding involving the perpetrator.

In addition to compliance with listed standards, Article 53 of the Istanbul Convention also requires that effective, proportionate and persuasive criminal or other legal sanctions be applied in the event of a violation of the restraining orders.

According to the Explanatory Report to the Istanbul Convention, the application of restraining orders should limit the perpetrator's possibility to counter the victim's attempts to seek protection. Therefore, restraining orders should not automatically be issued mutually, i.e. against the perpetrator and against the victim at the same time. In addition, such a circumstance as "provocative behaviour of the victim" must be excluded from the circumstances that may affect the right to obtain a restraining order. National law also recommends the possibility that not only by the victim herself/himself but also other persons may apply for a restraining order, in particular in cases of incapacity of the victim or when she/he is in a vulnerable state.

Case law of the European Court of Human Rights

In the practice of the European Court of Human Rights (ECtHR), several questions on the standards on restraining orders in the national legislation and the practice of their execution by stateshave been repeatedly raised. Therefore, the following analysis will be divided into three areas:

- cases in which the ECtHR has established the absence of appropriate legislation governing restraining orders;
- cases in which there was appropriate legislation, but the state was unable to effectively implement and ensure the issuance of restraining orders in cases where the victim needed such protection;
- cases in which a restraining order was issued but the state failed to enforce it properly.

Firstly, the ECtHR has found a violation of the European Convention on Human Rights when there is complete non-existence of legislation in a state for obtaining a restraining order in a case of domestic violence. In the case of Volodina v. Russia, the Court found a violation of Article 3 (inhuman treatment), as the state had failed to fulfil its positive obligation to prevent such treatment by an individual (the applicant's former partner). The ECtHR noted the non-existence of special legislation in the Russian Federation to combat domestic violence, and in particular protective or restraining orders that could provide the necessary protection to the victim. The ECtHR also found a violation of Article 14 (prohibition of discrimination) in connection with Article 3 of the Convention, stating that "the continued failure to adopt legislation to combat domestic violence and the absence of any form of restraining or protection orders clearly demonstrate that the authorities' actions in the present case were not a simple failure or delay in dealing with violence against the applicant, but flowed from their reluctance to acknowledge the seriousness and extent of the problem of domestic violence in Russia and its discriminatory effect on women. Thus, the non-existence of restrictive orders in the legal system of the

state, which can be used by victims of domestic and other types of violence against women fails to acknowledge the fact that women are disproportionally affected by domestic violence and that the lack of legislation amounts to discrimination against women.

In the case of Opuz v. Turkey the ECtHR found a violation of Articles 2, 3 and 14 in connection with Articles 2 and 3 of the Convention. According to the facts of the case, the applicant's husband had committed domestic violence against her and her mother sporadically from 1995 to 2002, causing serious injuries to the women (including stabbing and a motor vehicle collision). In March 2002, the applicant's husband killed her mother. In 1998, Turkey passed Law 4320, which provided for the possibility of issuing restraining orders in cases of domestic violence. Although the applicant did not apply for a restraining order, the Court noted that, first, she had not had such an opportunity until 1998 due to the lack of relevant legislation. Second, after the entry into force of Law 4320, the Turkish authorities could, on their own initiative, without waiting for a special application from the applicant, apply the measures provided for in the law to protect the life and health of the applicant and her mother, but did not do so. Third, at the time of filing the application to the ECtHR, the applicant's husband was on trial for the murder of her mother. However, he was released from custody and remained free until all stages of the appeal were completed, and during this time, he continued to threaten his wife. The ECtHR addressed the Turkish authorities with the request to grant the applicant protection from her husband. However, the appropriate measures were not taken the first time, so they had to petition the Court for a second time. Only then was the man forbidden to appear near the applicant's house. The ECtHR took all these facts into account, arguing its decision as a violation of Article 3 of the Convention. In addition, the Court was establishing a violation of Article 14 in connection with Article 2 and 3 of the Convention, the Court found that the ineffective application by the Turkish authorities of the provisions of Law 4320 to protect women from domestic violence was in itself discriminatory. At the same time, the ECtHR noted the behaviour of the Turkish police, which instead of investigating cases acted as a mediator and persuaded the victims to withdraw their complaints. There were also unjustified delays in the issuance of restraining orders by judges (hearings were scheduled in 2-3 months), who considered the relevant applications as applications for divorce, rather than the application of urgent measures.

Even though the state had enacted legislation that allowed the use of restraining measures in the event of domestic violence, this legislation may provide for such restrictions that will, in fact, restrict such a possibility. Thus, one of the grounds for establishing a violation of Article 3 of the Convention in the case of M.G. v. Turkey

was the absence in Turkey of restraining orders until 2012,when the relevant law was passed. Such a procedure could be used only by victims who at the time of application were in a registered marriage with the perpetrator. Accordingly, the applicant, who divorced the perpetrator in 2007, continued to live in danger and fear for five years, unable to obtain the necessary protection.

The second group of cases concerns situations where the necessary legislation is available in the state, but in practice, it is not applied at all or is not applied effectively. In addition to the above case, Opuz v. Turkey, another example is the case of E.S. v. Slovakia, in which the ECtHR found a violation of Article 3 and 8 (right to respect for private and family life) of the Convention. The case concerned the refusal of the Slovak courts to issue an order to the applicant under the terms of which her husband, who had physically abused her and her three daughters and sexually abused one of her daughters, should be evicted from their jointly rented apartment. By refusing the applicant, the Slovak courts argued that they could not violate her husband's rights as a co-tenant of the apartment. As a result, a woman with her three children was forced to leave the apartment. The Government argued that the applicant had not exhausted all available remedies because she had not applied for an order requiring her husband to refrain from unacceptable conduct. The ECtHR, in turn, noted that the measure proposed by the Government would not adequately protect the applicant and her children, especially since the husband would be required not to take those acts that are already prohibited by criminal law. That is, the application of the measure proposed by the government would provide weaker protection than the eviction of the perpetrator from the apartment.

In addition, in refusing the applicant to have her husband evicted from the apartment, the Slovak courts, referring to the applicable law and practice, also stated that she had the right to file an appropriate application only after the completion of divorce proceedings, despite the fact that at the time of the case hearing criminal proceedings were underway against the perpetrator. In fact, the divorce proceedings were completed a year after the applicant had applied for an order. The ECtHR drew attention to this and noted that, given the seriousness of the violations committed by the applicant's husband, she and her children required immediate protection, without a delay of one or two years. This means that at that time, the applicant did not have access to any effective remedies against her ex-husband, which indicates a failure to fulfil the state's positive obligation under Article 3 and 8 of the Convention.

Another case of improper application of existing law, which also concerned the

relationship between the perpetrator's property rights and the victim's right not to be subjected to torture, ill-treatment or inhuman treatment, as well as violations on physical and psychological integrity, was the case B v. the Republic of Moldova. In this case, the applicant, who had repeatedly been subjected to domestic violence by her husband, sought to have her husband evicted from their shared dwelling (non-privatised apartment) for violating the rules of cohabitation. However, the national Court denied her request, citing the lack of proof of the facts of violence (despite the existence of six cases of administrative offence against the perpetrator). Years later, folowing continued violence by her husband, the applicant managed to obtain a restraining order in accordance with the terms of the order prohibiting the perpetrator from approaching the applicant at a distance of fewer than 200 meters. However, the request for his temporary eviction was still not satisfied. The perpetrator was allowed to stay in the shared dwelling because he had no other accommodation and his right to reside there was confirmed by a previous Court decision. The ECtHR disagreed with the Government's arguments, stating that the evictions, as well as the issuance of the restraining order, were temporary measures in no way aimed at depriving the perpetrator of his property rights, especially as the applicant openly requested that the Court not decide on the issue of property rights. Moreover, the temporary nature of the measures taken allows for a balance between the victim's right not to be subjected to ill-treatment and the perpetrator's right to use his property, thus providing protection to the victim and not depriving the perpetrator of his property. The Court also noted that allowing the perpetrator to remain in the shared dwelling with the victim renders all other measures ineffective and puts her at risk of repeated violence.

The ECtHR case Kalucza v. Hungary also referred to a situation where the state had enacted legislation that allowed for restraining orders, but despite the victim's request, no such order was issued. The peculiarity of this case was that both the applicant and her former partner had repeatedly used violence against each other, as a result of which more than ten criminal proceedings had been registered. During these proceedings, the applicant applied for a restraining order twice, but her request was denied because, according to the national courts, as the violence was reciprocal the applicant could not be considered a victim, despite the obvious risk of repeated violence. However, the decision was made to deny a restraining order based on the first application only one and a half years after the application had been filed, as the court hearings had been postponed several times. The ECtHR found a violation of Article 8 of the Convention. In particular, the ECtHR noted that the state had a positive obligation to protect the applicant, despite the fact that she had also used violence against her former partner. If restraining

orders could not be issued in cases of mutual violence, this would seriously undermine the purpose of such measures, namely the effective protection of victims. Moreover, in such cases, self-defence cannot be ruled out. Moreover, in the Court's view, when both parties use violence, restraining orders could be issued against both parties in order to prevent contact between them. The Court was also struck by the length of time it took the national court to consider the first application for a restraining order. The ECtHR noted that even if a restraining order was ultimately denied, a decision should have been taken immediately, as the essence of this measure was to immediately or at least promptly protect the victim from violence. The Court added that the problem in such cases was also the lack of statutory deadlines for pronouncing appropriate decisions.

In addition to the above arguments, the ECtHR pointed to shortcomings in Hungarian legislation on domestic violence, according to which restraining orders can only be issued in cases of violence between current or previously officially married spouses. However, the relevant legislation does not apply to officially unmarried current or former partners (as was the case with the applicant).

As is often the case in the category of domestic violence cases, in the case of Kalucza v. Hungary, there was also a property dispute between the parties over the ownership of their house. Therefore, the ECtHR stressed that in order to ensure the safety of victims as soon as possible, courts should not only promptly issue restraining orders, but also consider existing property disputes between the perpetrator and the victim within a reasonable time, which in turn can help eradicate the problem. It should be noted that the need to apply for restraining orders in order to protect the victim (in particular, this refers to appropriate measures in criminal proceedings) pertains to the positive responsibilities of a state, the implementation of which requires proactive measures. Thus, in the case of Talpis v. Italy ECtHR found a violation of Article 2, 3 and 14 in connection with Article 2 and 3 of the Convention. In this case, the applicant's husband repeatedly abused her and their two children in common, as a result of which the applicant was forced to leave and live in a shelter. A criminal charge was launched against the perpetrator but no proceedings took place for seven months. Shortly after the start of the criminal proceedings, which took place more than a year after the proceedings had been opened, the husband stabbed the applicant several times and caused the death of his own son, who was trying to stand up for his mother. Establishing a violation of Article 2 of the Convention, the Court noted that the applicant had been summoned for questioning for the first time only seven months after filing her application and that during that time the Italian courts had not applied any restraining measures against the perpetrator, and no risk assessment had been carried out. At the same time, the application of

restraining measures in the case of domestic violence, according to the ECtHR, is aimed exactly at avoiding a dangerous situation as soon as possible.

Such a protraction of the case deprived the applicant of the opportunity to obtain immediate protection. In addition, while the applicant remained in the shelter, her husband kept her in constant fear, threatening her by telephone. During this time, she changed her testimony to a more favourable one for the perpetrator and the police partially closed the case except for accusations of inflicting serious bodily harm on her. On the night of the applicant son's murder, the police had the opportunity twice to intervene to protect the applicant and her son but did not do so. The Court noted that while it made no sense to argue what the situation would have been if the police had intervened, the failure to take "reasonable" measures that could actually change the outcome or at least reduce the damage was sufficient to hold the state accountable. It recalled that the state has a positive obligation to take preventive measures in order to protect the person whose life is at risk. The Court, therefore, found that in the context of this case the state had failed to exercise due diligence, thereby violating the positive obligation to protect the life of the applicant's son and the applicant herself under Article 2 of the Convention.

In the third group of cases, restraining orders were issued but the authorities failed to properly enforce them which endangered the lives, physical and psychological integrity of the victims.

In the case of Eremia v. Moldova, the ECtHR found a violation of Article 3, 8 and 14 in connection with Article 3 of the Convention. The case concerned physical and psychological violence against the applicant by her husband, who worked as a police officer, in the presence of their two teenage daughters. At the applicant's request, a Moldovan Court issued a restraining order, which the perpetrator repeatedly violated. At the same time, the intensity and brutality of the violence against the applicant increased each time. Although criminal charges had been launched against the perpetrator, the prosecutor decided to suspend the investigation for one year, provided that the husband did not commit further violence against his wife during that time. According to the prosecutor, this should have provided sufficient protection for the applicant.

Assessing the violation of Article 3, the ECtHR noted that the legislative level in Moldova provided for criminal liability for domestic violence, as well as available protective measures for victims and liability for violations of such measures. However, despite repeated violations of the terms stipulated by the order, the

government did not take any effective measures to prosecute the perpetrator (except for warnings, preventive conversations and an administrative fine, which only increased the feeling of impunity). Given all these violations, as well as the extension of the restraining order a few days earlier, the prosecutor's suspension of the investigation had the effect of releasing the perpetrator from criminal liability rather than protecting the victim.

Regarding a violation of Article 3 of the Convention, the Court also emphasised the applicant's particular vulnerability in view of the fact that her husband was a police officer and could therefore easily overcome any opposition of hers. In addition, the perpetrator's actions as a police officer not only violated the applicant's rights but also affected public order. Even if the national legislation provided for the possibility of his discharge, as his actions discredited the police, the state did pursue this. The Court also pointed out that since the applicant's husband had worked for the state, the Moldovan Government had more opportunities to influence his conduct than if the violence had been committed by a private individual.

The Court found a violation of Article 3 and of Article 8 of the Convention in respect of the applicant's daughters, who were also subject to the restraining order.

In the case of Murdic v. Moldova, the applicant, a 72-year-old woman, was abused by her ex-husband, whom she divorced 22 years previousy and who had a mental disorder. The perpetrator entered the applicant's house and lived there for a year, periodically abusing her. Almost six months after the first police report, criminal proceedings were opened in response to illegal entry into the house, but not in respect to violence against the applicant. The woman still managed to have three restraining orders issued, but the perpetrator failed to comply with them. Due to non-compliance with the restraining orders, the police also opened criminal proceedings. However, no active measures was taken to ensure their enforcement. More than a year after the applicant's first contact with the police, the perpetrator was found guilty of breaking into her home, but was acquitted due to his mental disorder with the obligation to undergo compulsory psychiatric treatment.

On the violation of the positive obligations of the state under Article 3 of the Convention, the ECtHR noted that there was a serious risk to the applicant from the moment her husband, who had a long history of mental illness and was a danger to society, first broke into her house. In such a situation, the authorities should have acted, immediately initiating criminal proceedings and taking the

necessary measures against the perpetrator (in particular, apply criminal sanctions or establish insanity and apply involuntary psychiatric treatment). As they did not, the actions of the authorities, in this case, were ineffective. The Court also noted the inability of the police to enforce the terms of the restraining orders after their systematic violation.

In the case of Civek v. Turkey, the ECtHR also found a violation of Article 2 of the Convention. Due to the inability of the police to ensure compliance with the restraining order, and in particular, to arrest the perpetrator for non-compliance, the perpetrator killed his wife. One of the factors that led to such a sequence of events was the fact that domestic violence cases were considered in Turkey within a private prosecution procedure. Therefore, when the injured woman withdrew her complaint of grievous bodily harm caused by her husband, he was released from custody (subject to compliance with restraining measures) and continued to harass and threaten to kill his wife without obstruction.

In the case of Halime Kilic v. Turkey, the ECtHR found a violation of Article 2, as the state had failed to protect the applicant's daughter from death caused by her husband as a result of the authorities' failure to comply with the terms of the restraining order. In this case, the perpetrator kept a sidearm and therefore posed a special danger. Because of this, he was placed in custody for a short time but was later released. The ECtHR, in this case, noted the ineffectiveness of the application of restraining orders, as firstly there was a significant delay in their issuance (19 days and 8 weeks, respectively), and secondly, the state did not take any measures to bring the perpetrator to justice for non-compliance. In addition, no proper risk assessment was performed when selecting preventive measures in the criminal proceedings, given the particular danger posed by the perpetrator accounting for his possession of a weapon, and therefore more serious preventive measures were not applied to him.

Finally, the case Mohamed Hasan v. Norway concerns the application of restraining orders in the case of domestic violence against children. In this case, two children, whose parents were the perpetrator and the victim and who witnessed such violence, were court-ordered to be placed in a foster home with a confidential address for their protection. Norwegian courts decided to deprive the applicant and her husband of parental rights and allow the foster parents to adopt their children, as the mother of the children, herself a victim of domestic violence, repeatedly returned to the children's father and posed a risk of further violence against the children. The ECtHR found such actions of the government to be well-founded and found no violation of Article 8 of the Convention.

The analysis of the above-mentioned practice of the ECtHR shows that the possibility of obtaining and proper enforcement of restraining orders is closely related to the positive obligations of the state to ensure the right of a person not to be tortured or subjected to inhuman or degrading treatment under Article 3 of the Convention, as well as the right to life under Article 2 and respect for family and private life, in particular the physical and psychological integrity of the person, according to Article 8 of the Convention. In this category of cases the Court most often establishes also a violation of Article 14 of the Convention (in connection with Articles 2, 3, 8), i.e. recognises the existence of gender-based discrimination.

Analysis of National Case Law

First Instance

A total of 250 decisions of the courts of first instance were analysed in detail for this study according to the criteria defined in the methodology. Analysis of these judgements showed the following results:

3,250 court judgements, the courts decided on:

granting of a restraining order	**partial granting of a restraining order**	**denial of a restraining order**
72 cases	76 cases	102 cases
29%	30%	41%

The categories of applicants who applied for a restraining order are as follows:

an applicant category	number	%
Ex-wife	86	34%
Wife	57	23%
Mother	17	7%
Common law wife	17	7%
Former common law wife	11	4 %
Wife (in the process of divorce)	9	4%
Mother of ex-wife	6	2%
Ex-husband	6	2%
Grandmother (in the interest of the grandchildren)	6	2%
Mother (in the interests of a child)	4	2%

Husband	3	1%
Custody and guardianship agency (in the interest of the children)	3	1%
Father (in the interests of a child)	3	1%
Office of Children's Services	2	1%
Sister	2	1%
Daughter	2	1%
Parents-in-law	2	1%
Neighbour	1	each separately < 1% all specified categories together amount to 6%
District State Administration (in the interest of the children)	1	
Grandson	1	
Mother in law (mother of the husband)	1	
Mother of common-law wife	1	
Mother of ex-husband	1	
Mother of the wife	1	
Step-mother	1	
Wife (residing separately)	1	
Daughter (in the interest of the mother)	1	
Step-father	1	
Father of the wife (father-in-law)	1	
Father	1	
Parents	1	

Sex of the applicant and the person concerned:

Applicant		Person concerned	
female	male	female	male
221	29	31	219
88%	12%	12%	88%

Time frames of adjudication:

Time frame	number	%
the court decision did not specify the date when the application for issuing a restraining order was filed with the court	159	64%
within 72 hours	20	8%
from 4 to 9 days	34	14%
from 10 to 25 days	15	6%
1 month	9	4%
1.5 months	5	2%
2 months	3	1%
3 months	3	1%
4 months	1	<1%
6.5 months	1	<1%

Participation of the applicant and the person concerned in consideration of the application for the issuance of a restraining order in court:

Applicant		Person concerned	
took part	didn't take part	took part	didn't take part
191	59	118	132
76%	24%	49%	51%

The circumstances referred to by the applicant in the application, which in his/her view indicate the need for the court to issue a restraining order:

The circumstances referred to by the applicant in the application for a restraining order	
Physical violence, which is expressed in:	• inflicting light and moderate bodily injuries in the form of bruises, hematomas, the injury of various parts of the body; • use of brutal physical force; • a drowning attempt in the bathroom; • infliction of blows to the head with a stick; • battery (including in the presence of a minor); • use of physical force by pushing, kicking, arm-twisting (including in the presence of children); Regarding children: • trying to grab the child by the neck; • beating and taking a child by force; • physical violence against a child (diagnosis: contusion of the chest, contusion of the lumbar spine, pelvic soft tissues); • violence by the the father (abrasions, scratches, bruises on the head, face, ears, eyes, neck, upper back and upper arm observed on the child's body); • infliction of bodily injuries to the child by the mother during visitation with the children; • assault of a child and attempts to take away his/her phone; • physical methods of punishment in raising a child (beating a child with a cane, slapping a child on the head, slapping on the buttocks); • repeated beatings of the child, in connection with which the child experiences constant stress; • the father beating and kicking his child;
Psychological violence, which is expressed in:	• harassment; • threats of physical violence; • insults with obscene words (including against children);

	• aggressive behaviour; • humiliation and intimidation; • death threats; • psychological abuse (forcing to kneel); • systematic threats; • total control; • excessive attention to the life of the victim, which leads to systematic conflicts and violence; • arrival at the victim's dwelling in a state of intoxication, shouting, insulting with obscene words, threatening to take the children; • causing psychological pressure, due to the fact that the victim filed a lawsuit for divorce, threats and attempts to obtain a permit to carry a weapon; • threats of bodily harm in person and by telephone, including by third parties; • control over the victim's behaviour, interference in her/his personal life; • returning home late in the evening or at night, usually intoxicated, causing quarrels (including in the presence of a child); • humiliation of honour and dignity; • constant harassment of the victim together with her daughter, humiliation, threats, intimidation, going to school where the child is studying and extortion of money; • systematic intimidation insults motivated by jealousy and material harassment, terror in the family and the creation of intolerable cohabitation conditions; • threats with a pistol toward the injured person if he/she does not withdraw the divorce claim from the court and does not return the child; • systematic scandals, accompanied by insults and humiliation; • groundless insults, use of obscene language, dissemination of false information about the applicant; • sending letters with threats, insults during telephone conversations, including sending threatening text messages;

	• humiliation and threats to take the child; • exerting psychological and emotional pressure, which is expressed in moral insults and humiliation; • threats of physical violence, in case of appeal to law enforcement agencies; • manifestations of agression, constant quarrels; • threats to set the apartment on fire; • creating unsuitable living conditions; • constant manipulation and control of behaviour and communication circle; • following the divorce, systematic sending of SMS-messages with insults and profanity; • threats to burn down the house in case the court decides on the division of property in favour of the applicant; • causing systematic quarrels and scandals; • blackmail using a child; • intimidation of the applicant and her daughter, who is a Group II disabled person due to mental illness; • abduction of a child and his/her detention by force; • alcohol consumption and violence with greater aggression; • overly aggressive behaviour, which was expressed in threats of physical violence and murder; • pressure, coercion and blackmail, harassment and stalking, interference with the privacy of the applicant and her mother; • extortion of money from the husband and systematic insults;
Economic violence, which is expressed in:	• replacement of locks in the apartment and prohibition of access to personal belongings; • breaking locks to the apartment; • theft/extortion of money; • disconnection of the house from the power supply network; • eviction; • eviction from the apartment together with the child; • damage to personal property;

	• damage to property in the house; • damage to the front door, replacement of locks, dismantling of the bathroom, blockage of entry into the apartment, deliberate power outage in the apartment; • taking away personal belongings; • blocking access to the apartment, which is the property of the victim; • lack of food at home, unsanitary living conditions of the children; • changing the entrance lock on the door, making it impossible to get to the apartment, pick up things, including medicines (insulin);
Sexual violence, which was expressed in:	• committing illegal, immoral acts toward a child aimed at perversion; • committing sexual violence against a child; • committing sexual violence against a woman;
Other circumstances mentioned in the applications for issuance and extension of the restraining order:	• was brought to administrative responsibility under Article 173-2 of the Code of Ukraine on Administrative Offences (CUAO); • perpetration of domestic violence by the perpetrator during married life and harassment of the victim after divorce; • committing physical and psychological violence by the perpetrator causing the child to fear communiction with the father; • appeals to the police authorities turned out to be ineffective because they failed to find the perpetrator, and the latter continues to commit violence; • the man is registered with the police as an offender; • facts of domestic violence took place during 2011-2013 and continued in 2018; • the mother completely avoids raising young children, does not spend the night at home for weeks, and when she appears, constantly quarrels in the presence of children;

	• communication between the father and the child hinders the normal development of the child, with the father systematically committing domestic violence in the presence of the child (humiliation of the mother, insulting, using physical violence, threatening the mother, including through telephone communication); • alcohol abuse, during which the perpetrator commits fights and quarrels, damages household items, furniture and other equipment in the house; • repeated beating of the children by their mother, with her not letting them use the bathroom. The mother constantly uses profane language, causing sleep disorder in the children and them not feeling well; • despite the fact of residing at separate addresses for a prolonged period of time, the man constantly stalks the woman at the place of residence, initiates quarrels, threatens with physical violence and causes bodily harm; • the perpetrator restricts movement and communication, repeatedly commits physical and psychological violence against the victim and a minor child, which was expressed in the infliction of bodily harm and the use of profanity; • the perpetrator is intoxicated almost every day, threatening the mother with physical violence, selling home items, quarreling, beating his daughter and grandchildren; • under the influence of alcohol, the son begins to beat the mother, systematically commits psychological violence; • the perpetrator does not comply with the court's decision with regard to the issuance of a restraining order; • due to pregnancy, it is necessary for her to avoid stress, but due to the systematic illegal behaviour of the perpetrator, she is constantly forced into a state of anxiety; • systematically consumes alcoholic beverages, leads an immoral lifestyle, in particular, maintains intimate extramarital relationships with several women;

	• starts quarrels and scandals, comes home in a state of intoxication and commits domestic violence against the victim and young children, children are under constant psychological pressure, constantly frightened and live in fear; • for the last five years, out of jealousy, a man has been physically and psychologically abusive while intoxicated; • behaves defiantly, brawls tries to break down the door, threatens with physical violence; • being in a state of alcoholic intoxication causes scandals; • a child who is autistic due to systemic conflicts experiences stress, the child's illness worsens, he/she needs to be given psychotropic drugs that negatively affect him/her because they negatively effect his/her mental health and motor skills; • the son was under mental pressure of the father, who, due to religious beliefs, forced him to keep dry fasting, reacted with physical and psychological violence to the mother's remarks, tried to kidnap the child; • the new husband of the child's mother forces the applicant's child to call him "father", is cruel, lives at the child's expense; • intentional deprivation of the applicant of housing, opportunity to use property, the improper reaction of law enforcement agencies; • under the influence of drugs does not control his actions and commits physical and psychological violence; • threatens physical violence using a table-knife; • repeatedly convicted, abuses alcohol and uses physical violence; • waits around for his ex-wife and inflicts bodily harm; • previously convicted, uses drugs and being under their influence does not control his actions and commits physical and psychological violence.

Evidence that was taken into account by the court in making a decision on satisfaction or partial satisfaction of the application for a restraining order:

• information entered into the Unified Register of Pre-Trial Investigations (URPI) (under Articles 126-1, 122, 125, 390-1 of the Criminal Code); • letter of the investigator on the appeal of the victim to the national police and entering information into the URPI under Part 1 of Article 125 of the CC; • Administrative Protocol under Article 173-2 of the CUAO; • a certificate from the police stating numerous appeals to the national police with reference to domestic violence incidents; • official warning about the inadmissibility of domestic violence; • the police officer's report; • the victim's interrogation report in the framework of a criminal case; • being registered in the police authority; • information from the national police authorities and the Prosecutor's office on the results of the verification of the application; • an emergency protective order was issued; • the act of clarifying the circumstances of the commission of domestic violence or the real threat of its commission;	• Act of the Child's Safety Level Assessment; • conclusion of the Commission for the Protection of the Child's Rights; • the Act of Inspection of the Child's Living Conditions; • psychological and Pedagogical Conclusion for the Child; • a letter from the Director of the Social Services Centre for Family, Children and Youth with respect to the confirmation of domestic violence; • evaluation of the child's needs; • letter from the Director of Social Services with regard to respect of the child's rights and interests; • protocols of the Commission for Coordination of Actions to Prevent Domestic Violence of the City Council; • psychological and pedagogical characteristics of the child; • the Act of the Child's Admission to the Social and Psychological Rehabilitation Centre; • conclusion of the Independent Psychologist;

• domestic violence police report; • witness statements; • audio and video recording of the fact of domestic violence made on a mobile phone; • medical documentation; • Conclusion of the Child's Neuropathologist; • registered statements for the police; • copies of letters and electronic messages; • characteristics of the Perpetrator (including signed by the head of the police department, the village head); • forensic expert opinion; • a statement to the police about the violation of the restraining order;	• court ruling on bringing the perpetrator to administrative responsibility under Article 173-2 of the CUAO. • interrogation of witnesses - representatives of bodies and institutions: psychiatrist, district police officer, legal adviser of the Social Services Centre for Family, Children and Youth; • a child's testimony in court; • court verdict on committing a criminal offence (under Articles 125, 126, 162 of the Criminal Code of Ukraine; • court rulings on the closure of criminal proceedings under Part 1 and Part 2 of Article 125 of the Criminal Code in connection with the refusal of the victim to press charges.

Measures of temporary restriction which were applied by the court to the person concerned in case of satisfaction or partial satisfaction of the application for issuance of a restraining order:

Temporary restrictive measures	number	%
prohibition to dwell in the place of joint residence with the victim	62	22%
elimination of obstacles in the use of the property that is personal private property of the victim or the object of the right to joint ownership	9	3%
restriction of communication with the injured child	20	7%
prohibition to approach within a certain distance the place of residence, study, work, other places of frequent visits by the victim	102	35%
prohibition against searching for the victim personally and through third parties, if he/she is at his/her own will in a place unknown to the perpetrator, to harass him/her and in any way communicate with him/her	44	15%
prohibition of correspondence, telephone conversations with the victim or contact with the victim through other means of communication in person and through third parties	52	18%

Risks that were taken into account by the court in making its decision:

Courts of first instance often used formal reasoning for the risks of domestic violence, such as: "the court considers existing risks of domestic violence" or "the court considers that there are reasonable risks of domestic violence against the victim".

In addition, the judges also noted the following risks of domestic violence:

- there is a likelihood of continued or repeated domestic violence against the applicant and her child;
- there is a high probability of continuation or recurrence of domestic violence, the occurrence of severe or particularly severe consequences of its commission against the victim, such risks are real and confirmed by the case file;
- there are obvious risks of recurrence of domestic violence in the future;
- the fact of domestic violence against a child has been established, and therefore, in order to protect the rights and interests of the child, a restraining order must be issued;
- there is a threat to the life and health of a minor child;
- taking into account all the available evidence, the court concludes that there are reasonable risks of domestic violence against the applicant and the children;
- the applicant has provided evidence that the concerned person is committing domestic violence and is an undisputed perpetrator, and therefore there is reason to believe that there are risks of serious consequences for the applicant if a restraining order is not issued;
- there are reasonable risks of domestic violence against the victim;
- the court established cases of domestic violence committed by the concerned person against his ex-wife, as well as the risks of future violence;
- the court concluded that a restraining order should be issued in order to prevent the risk of recurrence of domestic violence;
- the court considers that the applicant, as a victim of domestic psychological and physical violence, needs protection;
- the court assessed the likelihood of continued domestic violence and the likelihood of recurrence of the serious consequences of its commission, establishes a restraining order that meets the interests of the injured child and ensures the safety of the latter;
- a high risk of negative consequences was established in the court session;
- the existence of a threat of illegal actions in the future contrary to the interests of a minor has been proven, and therefore, in order to apply a

preventive measure to deter and prevent the recurrence of wrongdoing by the perpetrator, the court considers that the statement is justified and the restraining order has to be issued against the perpetrator;

- taking into account the case-law of the ECtHR, the court considers that the reasonable measures taken by the applicant to protect herself and punish the perpetrator did not yield the expected result, and therefore the restraining order is an appropriate and permissible way to protect the applicant's rights;
- these circumstances indicate the propensity of the concerned person for violence against others, including women, his immoral lifestyle, the danger to society and indicate the likelihood of continuation and recurrence of domestic violence, severe or particularly severe consequences of its commission, as well as the death of the victim;
- the court considers the fact of domestic violence proven; there is a high probability of continuation or recurrence of domestic violence, the occurrence of severe or particularly severe consequences of its commission on the victim, such risks are real and confirmed by the case file. Therefore, a restraining order must be applied to the perpetrator to ensure effective and efficient protection;
- in view of the above, the court considers that the issuance of a restraining order will give the family the opportunity to calm down emotionally and resolve the issue of cohabitation once and for all.

Refusing to grant the application for a restraining order, the courts also noted a formal argument regarding the absence of risks: "the court concluded that there were no reasonable risks of committing domestic violence". The judges also noted the following arguments:

- the court considers that the risks of domestic violence are currently minimised;
- the applicant has not provided evidence that the concerned persons have committed domestic violence and are undisputed perpetrators, and there is no reason to believe that there are any risks of serious consequences for the applicant and the minor due to the refusal to issue a restraining order;
- the court does not consider the evidence and statements provided as risks of committing domestic violence;
- the court did not establish the presence of high risks of negative consequences;

- the court concluded that there were no reasonable risks of domestic violence against the applicant and that the application was unfounded. Thus the issue of a restraining order was denied;
- no conclusive evidence to prove domestic violence was submitted to the court by the applicant, and therefore there is no reason to believe that there are risks of serious consequences for the applicant and the minor;
- the applicant has not substantiated the existence of any risks related to the continuation or commission of domestic violence if any;
- no proof of a sufficient level of probability of continuation or repetition of corporal punishment to children was provided to the court, the absence of this risk is evidenced by the behaviour of the concerned person, who undertook not to allow illicit methods of upbringing and did not allow them during January-June;

The term for which the restraining order was issued:

term	number	%
6 months	84	58%
5 months	6	4%
4 months	3	2%
3 months	28	19%
2 months	16	11%
1 month	8	5%
term not stated	3	1%

Provision of the notice to the authorised person in the field of prevention and counteraction of domestic violence **and the National Police body on the satisfaction or partial satisfaction of the applicant's petition for a restraining order;**

actors	number	%
the court informed the authorised person in the field of prevention and counteraction of domestic violence and the body of the National Police	84	64%
the court informed the body of the National Police only	42	25%
the court did not inform any actor	22	11%

Grounds for the court's refusal to satisfy a petition for a restraining order

Not bringing the perpetrator to the administrative and/or criminal responsibility

- there is no adequate evidence that the perpetrator has been held administratively or criminally liable for committing domestic violence;
- the fact of drawing up an administrative protocol on bringing the perpetrator to administrative responsibility for committing domestic violence does not indicate that the person has committed domestic violence;
- the fact of an appeal to the police and drawing up administrative protocols for domestic violence is not proof of the offence, given that the person is presumed innocent until proven guilty in the court of law
- evidence that the husband had been brought to administrative responsibility became apparent after the applicant had filed for a divorce with the court;
- according to the response of the chief of police, the person was not brought to administrative responsibility, is characterised positively at the place of employment;
- the court believes that the fact of entering applications to the URPI under Part 1 of Article 125 of the Criminal Code of Ukraine in itself in no way confirms guilt in committing crimes;
- the person was not found guilty of committing an administrative offence under Part 1 of Article 173-2 of the CUAO pursuant to Article 22 of the CUAO, no information has been provided on the outcomes of appeals to the police, at that the appeals to the police per se cannot serve as proper evidence;
- criminal proceedings under Part 1 of Article 125 of the Criminal Code have been closed pursuant to Clause 2 of Part 1 of Article 284 of the CPC;
- the court was not provided with proper and admissible evidence of domestic violence against a minor son, as there are no court decisions that have entered into force;
- the applicant did not lodge any complaints with the law enforcement authorities concerning her husband's threats;
- a criminal case under Part 1 of Article 125 of the Criminal Code is currently pending in court;
- the very fact of appealing to the police indicates only the existence of a long-lasting conflict and the existence of personal hostility between the former spouses, including as it pertains to the upbringing of a child, which does not confirm the fact that domestic violence is committed;
- information entered into the URPI under Part 1 of Article 156 of the Criminal Code may not be accepted by the court as proper and admissible evidence of violence against a child by a concerned person within the

meaning of Article 77-78 of the CPC of Ukraine, as this information was entered with regard to an unidentified person;
- an extract from the URPI is not evidence, as the pre-trial investigation has not yet been completed, the person has not been prosecuted;
- the applicant did not provide the court with copies of the relevant court decisions, which entered into force, according to which the person was found guilty of committing domestic violence and brought to administrative or criminal responsibility;
- the court considers that the existence of the drawn up protocols against the perpetrator cannot be recognised by the court as a proven fact of committing any illegal actions against the applicant and her son;
- the court was not provided with any evidence that information on systematic cases of domestic violence had been entered into the URPI;
- after the arrival of the police officers, no risk assessment was carried out, no emergency order was issued;

The court's assessment of the evidence submitted by the applicant:
- the court has not been provided with any evidence regarding the inclusion of domestic violence cases in the Unified State Register of Domestic Violence Cases and Gender-based violence;
- the applicant has not provided adequate and admissible evidence to substantiate the grounds for the application of the restraining order, and on top of that the restraining order measures that the applicant is seeking are not specifically defined and therefore cannot be used to enforce a court decision;
- according to the general rule enshrined in Part 3 of Article 12 of the CPC of Ukraine, each party must prove the circumstances that are relevant to the case and to which it is referring as the basis of its claims and objections, the applicant has not proved cases of domestic violence;
- the applicant has not provided evidence that the concerned person is committing domestic violence and is an undisputed perpetrator;
- the applicant did not provide the court with evidence of physical, psychological, as well as financial violence against her or their minor children;
- the CD cannot be taken into account by the court, as it has not been obtained in accordance with the requirements of the CPC of Ukraine;
- a visit to a neurologist and an extract from the medical history confirm the child's health problems, but are not proof that the concerned person is committing psychological violence and that his actions are in direct causal connection with the child's illness;

- the conclusions of specialists on the presence of bodily injuries are not adequate evidence within the meaning of Article 77 of the CPC, given that the written evidence does not prove the commission of any illegal actions;
- the court has not been provided with the confirmation of sending (providing) copies of evidence to other participants in the case. The court does not take into account the evidence in the absence of confirmation of sending (providing) its copies to other participants in the case;
- the court did not obtain evidence of domestic violence;
- the child's explanation, given the absence of other evidence and the hostility between the applicant and the concerned person as former spouses, as well as the presence of other children, is insufficient evidence to issue a restraining order;
- the applicant did not provide proper and admissible evidence of domestic violence toward the child, and the medical records do not show the circumstances under which the child received bruises and abrasions;
- the personal explanations of the applicant, which were received at the court hearing on the commission of domestic violence, which is not confirmed by any evidence examined at the court hearing, may not be considered by the court as evidence of domestic violence;
- written evidence - the conclusion of the forensic medical examination and correspondence with the police and the prosecutor's office regarding the commission of domestic violence against the applicant is not considered by the court as confirmation that the person committed domestic violence;
- the court is critical of the results of the diagnosis of the psycho-emotional state of the child because the person who prepared them was not warned of criminal liability under Article 384, 385 of the Criminal Code;
- the cause of the occurrence of the SMS message printouts has not been provided by the concerned person to the court;
- the applicant requests the issuance of a restraining order making it obligatory for the concerned persons to remove obstacles in using the dwelling, however the applicant has not provided the court with evidence that he/she is a co-owner of the dwelling regarding which he/she requests to remove the obstacles in order to have access to in the application;
- this category of case is limited in time, so the court is deprived of the opportunity to initiate the collection of additional evidence;

Court assessment of the reaction of other bodies and institutions involved in combating domestic violence:

- police officers did not issue an emergency protective order;
- the victim has not applied to the bodies and institutions involved in combating domestic violence for a long time, and the information provided in the application has not been verified by the authorised bodies.
- the applicant did not apply to the social services; accordingly, there is no information from them;
- the very fact of constant recourse to various bodies is regarded by the court as a prolonged conflict between the applicants and does not confirm that domestic violence was committed, which is a necessary condition for the court to be able to apply special measures;

Court assessment when the court did not establish incidents of domestic violence:

- the court found that there was a long dispute between the applicant and the concerned person over the residence of the minor child;
- short-term verbal conflict, which in the sense of the Law of Ukraine on Prevention and Counteraction of Domestic Violence is not psychological violence;
- hand gestures cannot be regarded as psychological violence;
- no evidence proves that the child's frightened condition, as well as his unwillingness to go to the father, is caused by the actions (legal or illegal) of the father, and not by other external factors;
- the court established the existence of a dispute between the parents about participation in the upbringing of the child, which cannot be regarded as domestic violence.
- the parties appear to have conflict and unwillingness to find a compromise;
- the husband wishes to return to a family relationship, but the wife views it as violence;
- there is a dispute between the persons regarding the eviction of the perpetrator, with the case pending in another court, and therefore the satisfaction of the petition to issue a restraining order may currently significantly violate the constitutional rights of the concerned person, moreover, within the scope of this trial, the court is not entitled to resolve a dispute over the right that exists between the parties.
- the efforts of the concerned person to take part in the upbringing of children in common, which do not contradict the general principles of society, may not be grounds for the application of a restraining order;

- the applicant's arguments concerning domestic violence against the child were not confirmed in court;
- the court notes that the current hostility between the parties and the apparent antipathy are not in themselves grounds for restricting a person's constitutional rights;
- corporal punishment of children with the use of a belt has not reached the minimum level of cruelty to recognise such acts as torture;
- the actions are not systemic in nature and were committed on emotional grounds;
- the applicant's request to remove obstacles to her personal private property, namely the obligation to return the keys to these premises, to vacate them and not to interfere with the use of these premises, does not deprive the applicant of the right to sue;
- there is a conflict between the spouses due to jealousy of the wife and the division of joint property;

Other grounds specified by the court when taking a decision on issuing a restraining order

- the applicant and the concerned person live in a common house;
- the marriage between the parties is not dissolved, they live in a common house, the property has not been divided between them;
- the circumstances of the offence against the applicant took place before the entry into force of the Law of Ukraine on Prevention and Counteraction of Domestic Violence and may not apply to legal relations that arose before its entry into force. According to Article 58 of the Constitution of Ukraine, laws and other regulatory acts do not have retroactive effect, except in cases when they mitigate or cancel the liability of a person;
- it has not been proven that the decision to satisfy the application will be in the best interests of the minor child;
- no data effective at the time of consideration that a perpetrator abuses alcohol has been provided to the court;
- the child has the opportunity to go abroad, and the evidence provided by the applicant does not prove that the child's father committed economic violence against his minor son.

Court of Appeal

While analysing the decisions of the courts of appeal, 45 rulings made by the appellate court were analysed in more detail, on which the appellate court made the following decisions:

	number	%
The appellate court overturned the decision of the court of first instance to satisfy the application for a restraining order and issued a new decision refusing to satisfy the application for a restraining order.	14	31%
The appellate court upheld the decision of the court of first instance to refuse to satisfy the application for a restraining order.	9	20%
The appellate court changed the decision of the court of first instance to satisfy the application for a restraining order (reduced/increased the validity of restraining orders, changed the restrictive measures)	6	13%
The appellate court overturned the decision of the court of first instance to deny the application for a restraining order and issued a new decision to satisfy the application for a restraining order.	13	29%
The appellate court upheld the decision of the court of first instance to satisfy the application for a restraining order.	3	7%

Cassation instance

As part of the study, 5 rulings of the Supreme Court were analysed in detail.

Case No. 756/2072/18 dated 21 November 2018

The court of first instance refused to satisfy the applicant's application for a restraining order.
The court of appellate jurisdiction refused to satisfy the applicant's appeal, the decision of the court of first instance was upheld.
The cassation instance denied the applicant a cassation appeal, the decision of the court of first and appellate instances was left unchanged.

Case No. 462/2318/18 dated 13 February 2019

The court of first instance refused to satisfy the applicant's application for a restraining order.
The court of appellate jurisdiction refused to satisfy the applicant's appeal, the decision of the court of first instance was upheld.
The cassation instance denied the applicant a cassation appeal, the decision of the court of first and appellate instances was left unchanged.

Case No. 363/3496/18 dated 17 April 2019

The court of first instance refused to satisfy the applicant's application for a restraining order.
The court of appellate jurisdiction refused to satisfy the applicant's appeal, the decision of the court of first instance was upheld.
The cassation instance denied the applicant a cassation appeal, the decision of the court of first and appellate instances was left unchanged.

Case No. 159/5880/18 dated 30 May 2019

The court of first instance refused to satisfy the applicant's application for a restraining order.
The court of appellate jurisdiction refused to satisfy the applicant's appeal, the decision of the court of first instance was upheld.
The cassation instance denied the applicant a cassation appeal, the decision of the court of first and appellate instances was left unchanged.

Case No. 541/1659/18 dated 28 August 2019

The court of first instance satisfied the applicant's application for a restraining order partially.
The court of appellate jurisdiction refused to satisfy the applicant's appeal, the decision of the court of first instance was upheld.
The cassation instance denied the applicant a cassation appeal, the decision of the court of first and appellate instances was left unchanged.

Conclusions

With regard to judicial decisions of courts of first instance

1. Judicial decisions on the issuance and extension of a restraining order are incorrectly entered in the Unified State Register of Judgments, which complicates the search for current case law. According to the search system parameters [form of proceedings, category of case, form of a judicial decision] for the period January 2018 - August 2019, only 122 judicial decisions are displayed. On the other hand, the search for judicial decisions in "manual mode" using the search terms "restraining order domestic violence" for the same period made it possible to identify 568 judicial decisions.
2. Judges use terms such as "plaintiff" and "defendant" in judicial decisions instead of the correct terminology ("applicant" and "concerned party") Judges also use other incorrect terminology, such as "revocation", "family violence", and "victim of domestic violence".
3. Many decisions included the personal data of the participants in the case: surname and name, identification code, home address, name of the educational institution and preschool institution. Accordingly, the confidentiality of information about victims is disclosed, which is unacceptable.
4. Out of 250 analysed judicial decisions:
    - in 29% of cases judges decide to satisfy the application in full;
    - in 30% of cases the application is satisfied in part [the court does not establish all the restrictive measures requested by the applicant or reduces the validity of the restraining order requested by the applicant];
    - in 41% of cases, judges refuse to issue a restraining order.

5. The following categories are typical applicants for a restraining order:
    - first place - ex-wives (34%);
    - second place - wives (23%);
    - third place - mothers and common-law wives (7% each);
    - fourth place - former common-law wives and wives in the process of divorce (4%);
    - fifth place - ex-wife's mother, ex-husbands, grandmothers in the interests of grandchildren, mothers in the interests of the child (2% each);
    - in one case a neighbour applied for a restraining order and the court granted the application for a restraining order and forbade approaching at a distance of less than one meter for up to two months, which is contrary to current law, as the restraining order may be issued against persons who fall under Article 3 of Law No. 2229-VIII.

6. A total of 88 % of persons applying for a restraining order are women.

7. In 64% of judicial decisions, the date when the applicant filed the application for a restraining order with the court is not specified, so it is not possible to establish whether the court made a decision within 72 hours, as required by law. At the same time, in those decisions where such date is indicated, only in 8% of cases the judges made a decision within 72 hours. In 14% of cases, the decision was made within 4 to 9 days, in 6% of cases within 10 to 25 days, in 4% of cases within one month, in 2% of cases within one and a half months, and in 1% of cases within two to three months. There is also a precedent of considering the case within four or even six and a half months.

8. 76% of applicants and 49% of concerned persons participated in the court hearing during the consideration of the application for a restraining order by the court; respectively 24% of applicants and 51% of concerned persons did not participate in consideration of cases on the issuance of restraining orders by the court.

9. As to the range of violence, including physical, psychological, economic and sexual violence referred to by the applicant when requesting a restraining order, most applicants referred to psychological violence. Cases of all four forms of violence also occurred against children. There have been cases where judges have assessed cases of domestic violence not as domestic violence, but as: "resolution of a family dispute over the father's involvement in the child's upbringing", "hooliganism" to be dealt

with in separate proceedings, "conflict" or "wrong behaviour", while the court imposed additional responsibilities on the Office for Children's Services to control the corresponding "wrong behaviour".

10. When making decisions, judges also take into account the characteristics of the concerned persons provided from their places of employment, as other arguments for refusing to issue a restraining order.

11. With regard to the temporary restrictive measures, which were applied by the court to the concerned person, when satisfying or partially satisfying the application for the issuance of a restraining order, the judges applied:
    - prohibition to dwell in the place of joint residence with the victim – 22%;
    - elimination of obstacles in the use of the property that is the object of the joint ownership right or personal private property of the victim – 3%;
    - restriction of communication with the injured child – 7%;
    - prohibition to approach within a certain distance the place of residence, study, work, other places of frequent visits by the victim – 35%;
    - prohibition to search for the victim personally and through third parties, if he/she is at his/her own will in a place unknown to the perpetrator, to harass him/her and in any way communicate with him/her – 15%;
    - prohibition of correspondence, telephone conversations with the victim or contact with the victim through other means of communication in person and through third parties – 18%.
    - In one case, the court imposed certain restrictions "except for the exercise of the right to participate in the upbringing of the child".

12. The term for which the restraining order was issued:
    - 6 months – 58%;
    - 5 months – 4%;
    - 4 months – 2%;
    - 3 months – 19%;
    - 2 months – 11%;
    - 1 month – 5%;
    - in three cases the term was not specified at all.

13. In 64% of cases, judges informed the authorised person in the field of prevention and counteraction of domestic violence and the National

Police body about the decision to satisfy or partially satisfy the application for the issuance of a restraining order, as required by law. In 25% of cases, judges informed only the National Police. In 11% of cases, judges did not inform anyone at all.

14. With regard to evidence that was taken into account by the court in making a decision on satisfaction or partial satisfaction of the application for a restraining order, case law differs: Some judges (a minority) took into account the information entered in the URPI about the commission of a criminal offence against the applicant (usual infliction of bodily harm) or administrative protocols under Article 173-2 of the Code of Administrative Offenses of Ukraine (committing domestic violence), however, other judges (the majority) did not take such evidence into account and refused to satisfy the application for a restraining order, because in the court's opinion a person is not considered an "undisputed perpetrator" if he was not brought to administrative and/or criminal liability, and until then considered the fact of domestic violence unproven. The judges emphasised the principle of the presumption of innocence.

    Judges used an overly strict approach to evidence in a great number of cases.

    In their decisions, the judges noted that the parties must adhere to the principle of "parties' adversary" and that it was the applicant's responsibility to provide evidence that the concerned party had committed domestic violence in accordance with Article 81 of the CPC of Ukraine. In one case, the court did not accept the evidence submitted by the concerned party, because according to Part 9 of Article 83 of the CPC of Ukraine "concerned person PERSON_4 has not provided the court with confirmation of forwarding (submission) of copies of such evidence to other participants in the case".

    Similarly, the Court did not assess as evidence the recorded conversations between the applicant and the concerned person on technical means made independently by the applicant.

15. As evidence, some judges took into account the "official warning about the inadmissibility of domestic violence" . However, with the adoption of Law No. 2229-VIII, this provision, which was contained in the previous law on Prevention of Domestic Violence lost its effect, although Order No. 3131/386 dated 7 September 2019 which establishes the very form of official warning of inadmissibility of domestic violence, is still in force. In one case, the court

noted: "According to the conclusions on the results of considering appeals of PERSON_1 to Lubny Department of Police of the Main Administration of the National Police in Poltava region, PERSON_1 was informed that an inspection was performed based on her/his appeal, PERSON_4 was issued an official warning about the inadmissibility of domestic violence. Therefore, the case file does not contain data that would confirm the fact of the presence in the actions of PERSON_4 of an administrative offence - the commission of domestic violence, the responsibility for which is provided by Article 173^2 of the CUAO". As a result, the court denied the applicant a restraining order. However, in another case the Court came to another conclusion and issued a restraining order. Similarly, no decision taken after March 2019 mentioned the risk assessment of domestic violence to be carried out by the National Police officers on the basis of domestic violence against each victim. Similarly, in some cases, it was stated that the National Police officers had issued an emergency protective order but this was not deemed convincing evidence for the court to satisfy the application for a restraining order.

16. In deciding to deny the applications for restraining orders, the judges referred to the fact that the applicant had not provided evidence of entry of a domestic violence case in the Unified State Register of Domestic Violence Cases and Gender-based violence. Such an argument of the court contradicts the current legislation.

17. In one case, the court noted that in order to issue a restraining order, the fact of domestic violence had to be apparent at the time of applying to the court.

18. Judges seldom used the opportunity to request evidence on their own. "At the same time, the court in considering this application, given the specifics of the procedure of this category of cases, which is time-sensitive (72 hours), is deprived of the opportunity to initiate the collection of additional evidence", "In addition, the court should not directly participate in gathering evidence".

19. In assessing risks, the court often used formal reasoning for the risks of domestic violence, such as "the court considers existing risks of domestic violence" or "the court considers that there are reasonable risks of domestic violence against the victim." In some cases, the court assessed the likelihood of the continuation or recurrence of domestic violence, the occurrence of severe or particularly severe consequences of its commission, as well as the risk of death of the applicant. Similarly,

in refusing to satisfy the applications for a restraining order, the judges noted that it was the applicant who had to prove the possible risks of the likelihood and continuation of domestic violence and the consequences for the applicant. There are on the other hand, examples of positive decisions assessing the existence of risks for the victim(s).

20. In some cases, judges applied the case-law of the European Court of Human Rights, especially the case law that pertains to domestic violence. However, even in cases where the case-law of the ECtHR was applied, the court did not justify how the ECtHR decision applies to the specific case. In other cases where the court applied the case-law of the ECtHR on domestic violence cases, the court came to the following conclusion: "Thus, such measures as seen from the above rules and practices of the ECtHR are justified because the concerned person is not deprived of such rights, and such are only temporarily restricted in order to ensure the realisation and protection of the victims' rights, namely the right to life, health, safety, housing, freedom, etc., which should be considered a priority in this case. Such measures are accordingly lawful, pursue a legitimate purpose and should be considered proportionate to the goal pursued (necessary in a democratic society)". Such conclusion complies with application of a restraining order in the interests of the victim.

21. When making court decisions, the judges referred to national legislation in the field of family law, in particular the protection of parental rights, as well as in the field of housing law. Often, judges gave greater priority to protecting the family and housing rights of the concerned person than to protect the applicant's right not to suffer from domestic violence when assessing his/her safety. Nevertheless, there are positive conclusions of the court, which deserve special attention: "during the resolution of the dispute in the courts on the upbringing of the child, in accordance with the provisions of the FC of Ukraine, PERSON_3 committed domestic violence against his wife and child, such illegal actions are governed by Law of Ukraine on Prevention and Counteraction of Domestic Violence", as no one is allowed to resolve disputes on the protection of their rights through the use of violence"; "The arguments of PERSON_2 regarding his lack of other housing were rejected by the court, because in this case priority is given to the safety of the victim, and the above requirement may apply to the place of residence of the victim and the perpetrator, regardless of their property rights to the premises".

22. In most cases, children who witnessed domestic violence went unnoticed, especially when parents committed domestic violence against each

other. But there are positive court decisions basing their arguments on the protection of the rights of children who witnessed domestic violence.

23. In six of the analysed cases of the courts of first instance, the applicants in the interests of children (3 girls and 3 boys) were the Office of Children's Service, the Guardianship and Custody authority and the District State Administration. Such case law is widespread in two regions only – Vinnytsia and Zakarpattia. In other regions, applications for a restraining order in the best interests of the child were filed by either the child's legal representatives or close relatives.

24. There were cases where along with the decision to satisfy the application for a restraining order, a person was ordered to undergo a program for perpetrators, which is contrary to national law, in particular Article 39-1 of CUAO.

25. There were cases when the applicant, together with the issuance of a restraining order, asked the court to collect compensation for moral harm from the concerned person. This requirement was denied by the court in accordance with national law.

26. Most of the court decisions were made on the issuance of a restraining order; there were fewer applications with the request to extend the restraining order. The main arguments for filing such an application were a violation of the established restraining order and the commission of new cases of domestic violence.

Regarding the decisions of the courts of appeal

1. There were cases where the decisions of the appellate courts indicated personal data of the parties to the case, as well as incorrect terminology according to national law: "plaintiff", "defendant" instead of "applicant" and "concerned party" or "family violence", "victim of domestic violence" instead of "domestic violence" and "victim".

2. According to the analysis of the decisions of the courts of appeal:
    - the appellate court overturned the decision of the court of first instance to satisfy the application for a restraining order and issued a new decision refusing to satisfy the application for a restraining order – 31%;
    - the appellate court upheld the decision of the court of first instance to refuse to satisfy the application for a restraining order – 20%;

- the appellate court changed the decision of the court of first instance to satisfy the application for a restraining order (reduced/ increased the validity of restraining orders, changed the restrictive measures) – 13%;
- the appellate court overturned the decision of the court of first instance to deny the application for a restraining order and issued a new decision to satisfy the application for a restraining order – 29%;
- the appellate court upheld the decision of the court of first instance to satisfy the application for a restraining order – 7%.

3. In one case, the judge ordered the applicant to pay a court fee in the event of a refusal to issue a restraining order contrary to domestic law, in particular Part 3 of Article 350-5 of the Code of Civil Procedure of Ukraine, according to which, the court costs associated with the case on the issuance of a restraining order are at the expense of the state.

4. In making its decision, the appellate court in some cases took the position of protecting parental rights, as well as protecting the housing rights of the concerned person. However, in one case the court stated, "The existence of a conflict between the parties on the basis of a dispute concerning the participation of PERSON_2 as a father in the upbringing of the applicant's granddaughter confirms the existence of risks of future domestic violence in any form".

5. Arguing for the reduction of the time validity of the restraining order, the appellate court gave the following argument:
    - "The appellate court concludes that taking into account all the established circumstances of the case and the fact that such restraining order is applied to PERSON_3 for the first time, sufficient and reasonable will be the term of coercion of 3 months, in connection with which the term appointed by the court of first instance should be reduced from 6 to 3 months".
    - "At the same time, issuing a restraining order for the maximum period provided by law, the court of first instance did not substantiate such a conclusion and did not state what the risks of continuing and recurring violence in the future are. Therefore, given the time that has elapsed since the date of the Decision, the panel of judges considers that the period for which the restraining order was issued should be reduced to four months".
    - "At the same time, the panel of judges took into account the explanation of PERSON_2 in the court of appeal that he has no intentions and will not commit any violence against PERSON_1,

on the contrary, he is trying to establish friendly relations with the latter and in order to accomplish this, with her consent, provides her with possible help and support. In view of the above, the panel of judges rejected the applicant's arguments about the need to establish a restraining order with a maximum term (6 months) and concluded that the restraining order could be issued for a period of 2 (two) months".

In addition, arguing for an extension of the restraining order the court noted: "The term of the restraining order should be extended from two months to six months, which is the maximum possible term of the restraining order established by law, but given the above circumstances of the case such term is justified in this case and is designed to minimise the risks of the negative behaviour of the concerned person in the future or to correct his negative behaviour".

6. Some judges consider domestic violence to be a proven fact only if there are appropriate decisions to bring the concerned person to administrative responsibility under Article 173-2 of the CUAO or to criminal liability, and adhere to the position that the very fact of appealing to law enforcement agencies indicates the existence of a conflict and does not confirm the fact of domestic violence. In other cases, the court did not take such appeals into account. In one case, the appellate court overturned the decision of the court of first instance and made a new judgement to issue a restraining order, finding the applicant's appeal to the police and recording the bodily injuries on the basis of a certificate from the hospital's trauma centre to be sufficient. Similarly, in another case, the court noted: "It follows from the above that the applicant's statement with the police, appeal to Obukhiv District Centre of Social Services for Families, Children and Youth, confirms the fact of domestic violence against the applicant". However, in other cases, the appellate court noted:
    - "The circumstances that the criminal record of PERSON_3 on the verdict of Volodymyr-Volynskyi City Court of Volyn region dated 06 August 2015, is expunged, and the verdict of Volodymyr-Volynskyi City Court of Volyn region dated 27 February 2019, has not entered into force, is not a direct basis for the issuance or refusal to issue a restraining order, but these court decisions characterise the personality of the perpetrator, allow the court to assess the risks of the likelihood of continuation or recurrence of domestic violence, the occurrence of severe or particularly severe consequences of its commission";

- "The above conclusions are not conclusive evidence in support of the fact that PERSON_3 and PERSON_4 are committing domestic violence against her - PERSON_1, but the panel of judges given that conflicts occur with a certain periodicity between the applicant, who is an elderly person and concerned persons in their place of cohabitation, in connection with which the latter was warned about the inadmissibility of committing domestic violence, as well as given the risks of its continuation and recurrence, in order to protect the applicant's rights from domestic violence, considers it necessary to apply for a restraining order with reference to PERSON_3, INFORMATION_1 year of birth, and PERSON_4 INFORMATION_2 year of birth, by prohibiting these persons from approaching PERSON_1 at a distance of less than two meters and communicating with her for a period of 6 months";
- "The reference of PERSON_3 to the fact that the criminal proceedings which were initiated on the application of PERSON_1 regarding illegal actions against a minor PERSON_2 have not been completed, and that Person 3 has no procedural status in it, has not been declared a suspect, so there is no evidence of him committing any illegal actions against PERSON_2, is rejected by the panel of judges in view of the legal nature of the restraining order, which is a temporary measure, performing a protective and preventive function and aimed at preventing violence and ensuring the primary safety of persons, namely until the decision on the qualification of the perpetrator is made, and the decision in the relevant administrative or criminal proceedings is made with regard to him. Given the preventive function of the restraining order, completion of the criminal proceedings is not required for its issuance, because in this case its use would not be recognised as timely";
- "Despite the fact that the concerned person PERSON_5 was never brought to administrative or criminal responsibility for committing domestic violence before 20 March 2019, the appellate court in the panel of judges considers that the evidence in its entirety confirms the fact of long-term psychological domestic violence and given the repeated demonstration of illegal behaviour, its certain pattern, as well as the increased threat of violence, which in its manifestations also matches the signs of administrative offences, that PERSON_5 has been committing domestic psychological violence against the applicants for a long time, and therefore, we

should consider that there are and will continue to be the risks of a possible continuation of such acts by PERSON_5".

7. Some judges of the appellate court reserve the right not to provide a detailed answer to each argument of the appeal when referring to the decision of the ECtHR.

8. Some appellate judges overturned the decision of the court of first instance to issue a restraining order due to the fact that: "the above-mentioned regulatory acts, which entered into force on 07 January 2018, may not apply to legal relations that arose before their entry into force, in the period from 2016 to 2017".

9. Some appellate judges also overturned the decision to issue a restraining order, noting: "Apart from this, the court was not provided with any evidence of entering at least one case of domestic violence committed by PERSON_2 in the Unified State Register of Domestic Violence in accordance with the provisions of Article 16 of the Law of Ukraine on Prevention and Counteraction of Domestic Violence.

10. Some judges, overturning the decision of the court of first instance to refuse to issue a restraining order and deciding to issue a restraining order, argued the following: "However, taking into account the fact that in connection with the appeal of PERSON_3 to the pre-trial investigation body, the circumstances specified by her are subject to investigation and verification in the criminal proceeding within the time limits established by current criminal procedure legislation, and therefore the panel of judges believes that the restraining order should be valid for the period of two months".

11. Some judges referred in their decisions to the ECtHR case law on domestic violence and gave the following arguments when overturning the decision to refuse the issuance of a restraining order: "Reference of the court of first instance to the fact that quarrels and fights are of a mutual nature does not refute, but on the contrary confirms the existence of extremely hostile relations between the former spouses, which in case of failure to use appropriate means of influence can lead to serious negative consequences".

12. In one case, the court found a violation of procedural law rules by the court of first instance, namely Part 11 of Article 128 of the CPC of Ukraine, which determines the rules of proper notification of the parties.

13. The court's reference to the ECtHR case law on domestic violence is positive. When overturning the decision of the court of first instance

and deciding to issue a restraining order for the maximum term, the appellate court noted: "The case law of the European Court of Human Rights assumes that the problem of domestic violence can take various forms, ranging from physical violence to psychological violence or verbal abuse, which does not always lie on the surface, as it often occurs in the context of personal relationships or closed systems, moreover such violence does not affect women only, but children as well who are often directly or indirectly become victims of such events (case of Opuz v Turkey). Implementing Clause 1 of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms on access to justice and fair trial, each member country in this Convention has the right to establish judicial procedure rules, including procedural prohibitions and restrictions, the content of which is to prevent court proceedings from becoming a disorderly mess".

Regarding the decisions of the courts of cassation

Case No. 756/2072/18 dated 21 November 2018

1. The Decision of the Supreme Court dated 21 November 2018, in case No. 756/2072/18 is the first decision of the Supreme Court in cases of issuance and extension of restraining orders in Ukraine, and therefore the court's conclusions had an impact on further case law in this category.
2. The main argument for refusing to satisfy the cassation appeal and have a restraining order issued to the person was that the victim failed to prove the fact of the perpetrator's domestic violence against her in the presence of their children, namely she did not provide the court with "incontrovertible evidence to confirm the fact of domestic violence against PERSON_6 within the meaning of the Law of Ukraine on Prevention and Counteraction of Domestic Violence". The Supreme Court noted that "the courts of first and appellate instances have not established cases of domestic violence against PERSON_6 and minors, as well as the risks of future violence. According to the court of first instance, in this case, such evidence should have meant a decision to bring the perpetrator to administrative responsibility for committing domestic violence: "The applicant alleged, relying on the Decision of Dniprovskyi District Court of Kyiv dated 07 December 2017, in case No. 755/15109/17 on administrative offence under Part 1 of Article 173-2 of the CUAO, that PERSON_2 on 23 September 2017, committed

domestic violence. However, as can be seen from the content of this Decision of Dniprovskyi District Court of Kyiv, PERSON_2 was not brought to administrative responsibility for committing the specified offence; instead, the administrative material was sent to the Patrol Police Department of Kyiv to address the shortcomings identified in the court ruling. Among other things, the court noted that in the case, in addition to the protocol on administrative offence, there was no evidence to confirm the commission of an administrative offence by PERSON_2 under Part 1 of Article 173-2 of the CUAO". "In her appeal, the appellant alleges that the court of first instance did not properly examine the evidence submitted and did not provide a proper assessment. In particular, the appellant indicates that the court did not take into account the fact of committing domestic violence by PERSON_3 on 23 September 2017, as evidenced by the Decision of Dniprovskyi District Court of Kyiv dated 07 December 2017. However, such arguments of the appellant are unfounded and cannot be grounds for reversing the court's decision. Thus, when filing the application with the court, the applicant provided a copy of the Decision of Dniprovskyi District Court of Kyiv dated 07 December 2017, pursuant to which administrative material concerning PERSON_3 about his committing an administrative offence under Article 173-2 of the CUAO was returned to the Patrol Police Department in Kyiv in order to eliminate shortcomings. From the specified Decision, it is seen that the court received a report on an administrative offence, according to which on 23 September 2017, PERSON_3 raised a family quarrel with PERSON_3. However, this Decision does not contain conclusions on the presence in the actions of PERSON_3 of the set of elements of an administrative offence - perpetration of domestic violence, and therefore may not be appropriate evidence in this case". As for the case under consideration of the relevant administrative protocol, the person was not brought to administrative responsibility and the protocol on the commission of an administrative offence under Article 173 of the CUAO was returned to the police department because: "[…] as a matter of fact, besides the protocol available in the case file there is no evidence of this administrative offence, and available in the case file photocopies are of improper quality, the text of the copies is illegible, which deprives the court of the possibility to fulfil its obligation to provide an evaluation of the evidence in the case. […] At the same time, in the materials of the case on administrative offence, there is no confirmation that Ms PERSON_2 and the person who is brought to administrative responsibility constitute a family. In such circumstances, given the above, the court is deprived

of the possibility to provide an assessment of the proven or unproven circumstances reflected in the protocol of an administrative offence, and therefore, concludes that the case needs to be sent back for completion, during which it is necessary to find out in complete, comprehensive and objective manner all the circumstances that are important for making the right decision, including to consider the arguments of the person who is being brought to administrative responsibility, which is set out by him in written explanations, and subsequently, provided there are legal grounds, to forward those to court". Whether domestic violence really took place in this case is a rhetorical question. The court could have taken these circumstances into account and not rule out the possibility that domestic violence could have taken place. The victim's fear for her own safety and the safety of her children could have been justified in conjunction with other circumstances (child abduction, physical and psychological violence in front of witnesses) as grounds for a restraining order. The practice of considering administrative protocols under Article 173-2 of the CUAO should also be taken into consideration by judges.

3. Similarly, in this case, the Supreme Court noted that "when making a decision with regard to such statement, the courts must assess all the circumstances and evidence in the case, decide on the rights and interests of children and parents, and ensure that one parent is not unduly restricted in exercising his rights in respect of children in case of groundlessness and lack of proof of the requirements stated in the application of the other parent." Similarly, in its decision, the Supreme Court noted: "in addition to the requirements of the *Law of Ukraine on Prevention and Counteraction of Domestic Violence* the rules of the Family Code of Ukraine have to be applied to disputed legal relationships". In these cases, there may be family, residential or other civil disputed legal relationships between the applicant and the concerned person, but those must be considered in the action proceedings, the mere existence of disputed legal relationships or even their consideration in court should not affect the outcome of the case on the issuance or extension of the restraining order. If a person is a parent, he or she has the right to communicate with the children, the spouse has the right to share in the joint property of the spouses, but if one commits domestic violence against the other, the court must make a fair and reasonable decision, the foundation of which is the safety of the victim. Otherwise, it can lead to the abuse by a concerned person of his parental or housing rights in cases on issuance and extension of restraining orders.

Case No. 462/2318/18 dated 13 February 2019

1. The court of first instance, in this case, did not establish any incidents of domestic violence against the applicant, despite the fact that the victim had repeatedly appealed to the law enforcement authorities, as well as information had been entered to the URPI for causing minor injuries. "Thus, taking into account that the applicant did not provide the court with proper and admissible evidence of PERSON_4 committing domestic violence against PERSON_2, there are no court decisions finding PERSON_4 guilty of committing the above actions. Therefore the court has not received the proof by proper means that the concerned person is the perpetrator against the applicant and her children". These findings were upheld on appeal, as well as by the Supreme Court. For courts of all levels, the presumption of innocence of the perpetrator prevailed over the safety of the victim.
2. The conclusion of the court of first instance deserves special attention in this case: "Apart from this, the court has not been provided with any evidence that at least one case of domestic violence was entered into the Unified State Register of Domestic Violence Cases and Gender-based violence, and in such circumstances, the court finds the application unfounded and such that is not subject to satisfaction". The appellate court did not take into account that the Unified State Register of Domestic Violence Cases and Gender-based violence had not been created, and it was physically impossible to enter information about a case of domestic violence into the relevant register.
3. The appellate court noted with regard to this case noted that: "Articles 12 and 81 of the CPC of Ukraine stipulate that civil proceedings are conducted on the basis of adversary character of the parties; the parties to the case have equal rights to exercise all procedural rights and obligations provided by law, and that each party must prove the circumstances relevant to the case and to which it refers as the basis of its claims or objections, except as provided by this Code […], the application for a restraining order must state the circumstances that indicate the need for the court to issue a restraining order and the evidence supporting them (if any), and in case of impossibility to provide such evidence with the application, a request for evidence may be attached to the application. Thus, as it is seen from the above, during the court consideration of the application of PERSON_3 on the issuance of a restraining order against PERSON_5, it is the said applicant who is obliged to prove with proper, admissible, reliable and sufficient evidence (Article

76-80 of the CPC of Ukraine) those circumstances that she is a person who has suffered from domestic violence, and that her perpetrator is PERSON_5. According to the case file, there is no request for evidence by the court to prove the circumstances of the need for the court to issue a restraining order attached to the application of PERSON_3 for the issuance of a restraining order against PERSON_5". However, to file a request for evidence is the right (not the duty) of the victim, but the court may also request evidence in separate proceedings, which corresponds to Part 2 of Article 284 of the CPC of Ukraine: "in order to clarify the circumstances of the case, the court may on its own initiative request the necessary evidence". Also, in accordance with Part 3 of Article 284 of the CPC of Ukraine: "cases of separate proceedings are considered by the court in compliance with the general rules established by this Code, except for the provisions on adversary character and the limits of judicial review. Other peculiarities of consideration of these cases are established by this Section". The court must take into account the applicant's arguments set out in the application for the issuance and extension of the restraining order. The court's requirements for the applicant to provide evidence in cases of issuance and extension of restraining orders should not be as "severe" as in lawsuits or in cases of bringing the perpetrator to administrative or criminal liability.

4. Similarly, the appellate court noted the following: "as can be seen from the content of section U "Special Measures to Combat Domestic Violence" of the Law of Ukraine on Prevention and Combating Domestic Violence, the restraining order against the perpetrator is the most severe and harsh measure of all provided by law. At the same time, other special measures provided by law were not applied to PERSON_5, as the applicant did not pose questions with reference to such application. In the above circumstances in their entirety, the panel of judges comes to the conclusion that the court of first instance had no legal grounds to satisfy the application of PERSON_3 on the issuance of a restraining order against PERSON_5 using such measures that are specified in this application. The law defines four special measures: an emergency protective order, a restraining order, registration of the perpetrator for preventive purposes, and referring the perpetrator to a program for perpetrators. Each of these special measures has its own purpose. The law does not stipulate that a restraining order apply only when all other special measures to combat domestic violence have been applied to the perpetrator, and therefore it is not necessarily the most severe. Moreover, all special measures to combat domestic violence can be applied to a person at the same time.

Case No. 363/3496/18 dated 17 April 2019

1. In its decision, the Supreme Court concluded, "the law stipulates that a restraining order is a measure of influence on the perpetrator, which is used only in the interests of victims and in the event of certain factors and risks." However, in cases of this category, judges shall take into account the risk emanating from the fact that the victim does not always receive adequate assistance in a timely manner from other actors in preventing and combating domestic violence, including National Police, whose response to domestic violence should be prompt, professional and effective. In this case, the court of first instance did not establish the fact of domestic violence, as the administrative case under Part 1 of Article 173-2 of the CUAO was closed due to the absence in the perpetrator's actions of the elements of an administrative offence since: "Having assessed the investigated evidence in its integrity and interrelation, the court comes to a conclusion that actions of PERSON_1 expressed in the commission of domestic violence, are not confirmed by the evidence provided, the commission of economic humiliation is not confirmed by the documents attached to the protocol and does not relate to domestic violence whatsoever, and therefore in the actions of PERSON_1, there is no set of elements of an administrative offence […] As seen from the materials of the case, the protocol with regard to PERSON_1 was drawn up on 13 June 2018, by the Inspector of Vyshgorod Police Department of the National Police Administration in Kyiv region, and the event itself took place on 15 May 2018, the explanations of the persons were collected on 15 May 2018, precisely, thus the person was identified on 15 May 2018. Thus, the report on the administrative offence was drawn up in violation of the requirements established by law". In this case, the court found no elements of an administrative offence because it considered that "economic humiliation" is not a form of domestic violence, and the administrative protocol was drawn up in violation of Part 2 of Article 254 of the CUAO. The Supreme Court noted: "[…] the very fact that PERSON_1 repeatedly appealed to various bodies and services on the grounds of psychological, economic and physical violence committed against her indicates a prolonged conflict between the applicant and the concerned party, but does not confirm the fact that the latter committed domestic violence [...]". The court shall assess the inadequate response of other actors of prevention and counteraction of domestic violence as a risk of continuing domestic violence for the victim.

2. The Supreme Court noted: "The panel of judges agrees with the conclusion of the courts that there is a dispute between the parties regarding the use

of the common real estate, determining the place of residence, procedure and manner of communication with children and their upbringing, which is regulated, in particular, by the norms of the Civil Code and the Family Code of Ukraine. The specified dispute cannot be resolved by application of the measures of a restraining order as specified by the applicant, in particular, by the obligation of PERSON_1 to eliminate obstacles in the use of the given house". However, the courts did not take into account that in most cases, on the issuance of a restraining order, there are disputes between the parties in the field of family and housing relations. When considering relevant cases, the court must take a clear position: in order to protect the victim, the court can apply restrictive measures that restrict the rights of the concerned person in access to housing or communication with children if necessary, but such restrictions are justified given that the person commits domestic violence.

3. Given the provisions of Article 400 of the CPC of Ukraine, the Supreme Court is deprived of the procedural possibility to establish or consider proven circumstances that were not established by the courts of previous instances. However, in examining a certain case, the Court could have taken into account information that the applicant was in a shelter for victims of domestic violence when assessing the arguments of the courts of previous instances.

Case No. 159/5880/18 dated 3 May 2019

1. In this decision, the Supreme Court emphasised the principle of the presumption of innocence and gave this principle a greater advantage than the safety of the victim. The Supreme Court could have taken into account that, in accordance with Clause 7 of Part 1 of Article 1 of Law No. 2229-VIII, a restraining order against the perpetrator was a measure established by the courts to temporarily restrict the rights or impose obligations on a person who has committed domestic violence, aimed at ensuring the safety of the victim. The main purpose of restraining orders is to protect a person from any form of domestic violence by way of prohibiting, restricting or imposing requirements on the perpetrator's behaviour. The purpose of restraining orders is to prevent violence and to protect the victim in the first place. In accordance with Part 2 of Article 53 of the Istanbul Convention, restraining orders must, in particular, be available independent of or in addition to other legal proceedings. In accordance with Clause 10 of Part 1 of Article 21 of Law No. 2229-VIII, the victim has the right to apply to law

enforcement agencies and the court in order to bring the perpetrators to justice and to have special measures applied to them to combat domestic violence. The court should have taken into account that the injured person has the right to apply to the court with the application to seek her/his protection against the wrongful conduct of the perpetrator, but at the same time not be ready to initiate a criminal or administrative case. The absence of appropriate appeals to the police or court decisions should not preclude the application for a restraining order if the applicant can prove otherwise that he or she is suffering from domestic violence and that there is a risk that the violence may recur in the future.

Case No. 541/1659/18 dated 28 August 2019

1. The Supreme Court noted: "[…] temporary restriction of PERSON_3 in communication with the applicant and her young son is a coercive measure, but will meet the best interests of the child, so came to the correct conclusion about the satisfaction of the application."

2. In this case, the conclusion of the court of first instance deserves attention as it establishes a restraining order with an exception. "In order to ensure the exercise of the parties' right to proper representation of their rights in court during consideration of civil and criminal cases, which are in the proceedings of Myrhorod City District and Velyka Bahachka District Court of Poltava region, the court establishes a restraining order with the exception that allows the parties to be in the court's premises in order to protect and represent their interests. In addition, the order is established for a period until the Decision in civil case 541/2378/16-ц enters into force, which will resolve the Statement of a claim of PERSON_3 to PERSON_1 on establishing a method of communication with the son PERSON_6, but not to exceed six months. […] To issue a restraining order until the Decision in civil case 541/2378/16-ц enters into force, which will resolve the Statement of a claim of PERSON_3 to PERSON_1 on establishing the method of communication with the son PERSON_6, but not to exceed six months (until 20 March 2019) in respect of PERSON_3, INFORMATION_2 (registration address: ADDRESS_3, 37600), with the following measures of temporary restriction, except for the protection and representation of their interests in court […]", National law does not provide for any exceptions in a court's decision to satisfy or partially satisfy an application for a restraining order. In this part, the courts of appeal and cassation upheld the conclusions of the court of first instance.

Recommendations

For court staff:

1. When examining cases on issuance and extension of a restraining order, judges should develop a unified approach that will ensure victims' safety and protection of fundamental human and civil rights and freedoms, focusing on the provisions of Article 53 of the Istanbul Convention and the case-law of the European Court of Human Rights in cases of violence against women and domestic violence and, in particular, decisions concerning the issuance of restraining orders.

2. When examining cases on issuance and extension of a restraining order, judges must comply with:
    - The basic principles defined by Article 4 of the Law of Ukraine on Prevention and Counteraction of Domestic Violence;
    - The provisions of Articles 21 and 26 of the Law of Ukraine on Prevention and Counteraction of Domestic Violence;
    - provisions of Section IV of the CPC of Ukraine "Separate Proceedings", in particular, Chapter 1 "General Provisions" and Chapter 13 "Court Consideration of Cases on Issuance and Extension of Restraining order", as well as the norms of the CPC of Ukraine concerning proper notification of the applicant and concerned person;
    - the relevant terminology: "applicant", "concerned person", "domestic violence", "victim".

3. When considering cases on issuance or extension of a restraining order and deciding on the evaluation of evidence submitted by the parties, in particular the applicant as the initiator of the application, judges should pay special attention to the following:
    - cases on the issuance and extension of a restraining order are considered by the court in a separate proceeding (Part 1 of Article 293 of the CPC of Ukraine);

- in order to clarify the circumstances of the case, the court may, on its own initiative, request necessary evidence (p. 2 Article 294 CPC of Ukraine)
- cases of separate proceedings are considered by the court in compliance with the general rules established by the CPC of Ukraine, except for the provisions on adversarial proceedings and the limits of the court hearings (Part 3 of Article 294 of the CPC of Ukraine))

4. When deciding on the issuance or extension of a restraining order, judges should take into account the victim's right to initiate an administrative or criminal case on the domestic violence case itself. The absence of an administrative or criminal case (or appropriate decision) should not be a ground for refusal to issue a restraining order. In applying this approach, judges should focus on the provisions of Article 53 of the Istanbul Convention, in particular, "restraining orders must be available regardless of the existence of other legal proceedings or in addition thereto" and Clause 10 of Part 1 of Article 21 of the Law of Ukraine on Prevention and Counteraction of Domestic Violence, in particular, "the victim has the right to apply to law enforcement agencies and the court to bring the perpetrators to justice."

5. Protecting child victims of domestic violence (children who have been abused or witnessed domestic violence) should be a top priority and take precedence over the protection of the parental rights of the perpetrator. The interests and rights of children must be served first, and only then the interests of parents. Judges must also take into account the risk that the perpetrator may use children to gain access to the victim and continue to commit domestic violence witnessed by children. In such situations, the court, taking into account the existing risks, may prohibit approaching places of children's study and frequent visits to children.

6. Similarly, the protection of the victim from domestic violence must be paramount and take precedence over the protection of the property rights of the perpetrator.

7. Judges should freely navigate the indicators of each form of domestic violence, as well as understand the conditions under which domestic violence is committed (often without any witnesses). Judges must also understand the psychological characteristics of the victim, the concept of the "domestic violence cycle" and the fact that the victim may have a "syndrome of acquired helplessness". For example: "The court agrees with

the applicant's arguments that the circumstances of the psychological violence against the applicant by the concerned party did not objectively provide for the presence of witnesses and the possibility of recording the perpetrator's wrongdoing, given the applicant's reasonable fears that such actions might provoke the perpetrator to commit more radical and unpredictable actions that may endanger her health and life". Inflicting psychological violence on the victim alone should be sufficient reason for issuing a restraining order.

8. The Court should take into account the arguments of the victim stated in the application for the issuance and extension of the restraining order and not apply overly strict "approaches" to the evidence, given the fact that the restraining order may be issued regardless of other proceedings. Issuing of a restraining order by the Court is not a measure of bringing the perpetrator to administrative or criminal liability. The Court may, on its own initiative, request evidence, as well as involve representatives of public authorities and local governments as interested parties, who may inform the Court of the results of their response to domestic violence, especially if domestic violence is systematic. Judges need to be clear about which entity is responsible for preventing and combating domestic violence and what documents this entity may provide for the Court to take a justified decision.Judges should not refuse to issue or extend a restraining order on the grounds that information on a case of domestic violence has not been entered into the Unified Register of Domestic Violence Cases and Gender-based violence, as the relevant Register has not been established and does not fully operate in Ukraine.

9. Decisions to issue a restraining order or to refuse issuance of a restraining order must be made on the basis of a risk assessment. An appropriate risk assessment for judges should be adopted. At the same time, when deciding whether or not to issue a restraining order, judges must assess: what forms of domestic violence took place, whether children witnessed domestic violence, what rights and freedoms of the victim were violated as a result of domestic violence, whether the victim applied to other actors in preventing and combating domestic violence and what was their reaction, whether the perpetrator and the victim are divorced or undergo divorce process, whether the perpetrator has access to arms. Similarly, judges in accordance with Paragraph 2 of Clause 5 of Section I General Provisions of the Order of the Ministry of Social Policy of Ukraine and the Ministry of Internal Affairs of Ukraine No. 369/180 dated 13 March 2019 About Carrying out Domestic Violence Risk Assessment, can use the

results of a domestic violence risk assessment conducted by authorised officials of the National Police bodies. According to this Order, such risk assessment should be made for each incident of domestic violence per victim. Therefore, it is justified for judges to request domestic violence risk assessment conducted by authorised officials of the National Police of Ukraine. Similarly, case assessments can be carried out by other actors (such as general and specialised support services). Therefore, it is important to exchange information on case assessment between actors in preventing and combating domestic violence.

10. Judges must comply with the statutory deadline for consideration of an application for the issuance or extension of a restraining order which is 72 hours, in case of impossibility to consider the application within the specified period due to circumstances beyond the court control. The courts must consider applications within the shortest term possible with the mandatory observance of the principle of "immediate protection" of the victim.

11. As judges should refrain from imposing a financial burden on the victim, court costs associated with the consideration of a case on issuance and extension of a restraining order should be borne by the state.

12. Judges must inform the authorised person in the field of prevention and counteraction of domestic violence and the body of the National Police of Ukraine about the decision to issue a restraining order.

13. When deciding to issue a restraining order, judges must indicate the term during which the restraining order will remain in effect. In determining the term, judges should first and foremost focus on the needs of the victim.

14. When considering cases of extradition and extension of a restraining order, judges shall, in the interests of the victim, ensure that contact between the injured party and the offender is avoided in the courtroom.

15. The entry of information pursuant to the results of consideration of cases on the issuance of restraining orders in the Unified State Register of Judgments should be carried out according to the correct parameters, which will provide an opportunity to monitor current case law.

16. It is feasible to summarize the data on the issuance and extension of restraining orders by judges, as well as case law on their violation so that the judges could apply unified approaches to the consideration of cases of this category, which is in line with international standards and ECtHR practice.

17. An analysis of national case law has shown that judicial staff need to undergo further training with regard to the consideration of cases of domestic violence and gender-based violence against women. This is particularly relevant in cases of issuance and extension of a restraining order, which can be ensured through the development of appropriate guidelines and systematic training.

For staff of the National Police bodies:

18. National Police officers must assess the risks of domestic violence for each incident of domestic violence for each victim (including children who have witnessed domestic violence) and provide an appropriate risk assessment to judges, especially when considering administrative cases under Article 173-2 of the CUAO and other cases related to cases of domestic violence.
19. In responding to cases of domestic violence, the National Police officers should not put into practice a special measure - a formal warning about the inadmissibility of domestic violence - given that the law providing for such special measure has expired.
20. National Police officers should exercise proper control over the enforcement of restraining orders, and in view of this, there is a need to adopt instructions that will define a clear algorithm of actions of the National Police officers.
21. The analysis of national case law has shown that the representatives of the National Police require further training in the field of combating domestic violence, in particular responding to cases of domestic violence, drafting administrative materials, and cooperation with other actors in the field of preventing and combating domestic violence, which can be accomplished by developing appropriate guidelines and systematic training.

General recommendations to other stakeholders

22. According to the Law of Ukraine on Prevention and Counteraction of Domestic Violence, custody and guardianship agencies, while protecting the rights and interests of victims of domestic violence, must initiate the issuance of a restraining order in cases where one parent is the perpetrator, and the other evades the action to protect the rights

and interests of children. This provision, however, if applied without a proper understanding of the dynamics of gender-based violence against women, can fail to address the constraints linked to a mother/parent who is a victim of domestic violence and fears to take judicial action against the perpetrator.

23. Persons who apply to the court for the issuance or extension of a restraining order should seek professional legal assistance. It should also be borne in mind that victims of domestic violence and children in difficult life situations (including domestic violence) are entitled to free secondary legal aid, which includes the right to draw up procedural documents and exercise representation in courts, public authorities and local governments.

24. Representatives of the Enforcement Service (state enforcement officers and private executors) should be included in the circle of actors in the field of prevention and counteraction of domestic violence, which requires modifications in the Law of Ukraine on Prevention and Counteraction of Domestic Violence. It is also necessary to introduce necessary amendments on Enforcement Proceedings", which will ensure the possibility to enforce court decisions on the issuance and extension of restraining orders in a compulsory manner.

Endnotes

1. A person concerned, as a party of a case, is a person in respect to whom the court is considering an application for the issuance or extension of a restraining order.
2. The court may also involve representatives of public authorities and local governments, such as national police, prosecutors, social services, general and specialised support services, etc., within their competence as interested parties, to consider cases on issuance and extension of restraining orders and ask about the measures taken by them, if there was a prior appeal from the victim.
3. The approach to the evaluation of the evidence provided by the Court in cases of issuance and extension of a restraining order should not be the same as in cases of bringing the perpetrator to administrative and criminal responsibility, because issuing of a restraining order by the Court is not a measure of bringing the perpetrator to administrative or criminal responsibility; it aims to ensure the safety of the victim by preventing possible future cases of domestic violence.
4. Mann Lori and Bugaiets Tamara (2020), "Risk assessment standards and methodologies for diverse stakeholders in Ukraine: Next steps in implementing international standards to ensure the safety of victims of violence against women and domestic violence", Council of Europe, available at: https://rm.coe.int/eng-26-06-corrected-by-designer/16809eedf5?fbclid=IwAR2thby0BCuP4-GRzUCPfdbizsUUXMXiqRN0Qyex1H5WPKyIucteeB3tzp0.
5. Recommendation Rec (2002)5 of the Committee of Ministers to member states, 30 April 2002, Article 58(b), available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805e2612.
6. For example, the ECtHR referred to this recommendation in support of its Decision in Volodina v. Russia (paras. 59-60), as the Russian Federation has not yet signed or ratified the Istanbul Convention.
7. The simultaneous use of the terms "restraining order" and "protection order" does not mean that the Istanbul Convention provides for only two types of such orders. In fact, by this the drafters of the Convention wanted to emphasise that different states use different terms to refer to this kind of orders: "restrictive order", "protective order", "eviction order", "restraining order", "court injunction" and so on. Therefore, the concept of "restraining order or protection order" in Article 53 of the Istanbul Convention represents a comprehensive category (Explanatory Report to the Istanbul Convention, para. 268).
8. CoE, Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence, 2011, para 269, available at: https://rm.coe.int/16800d383a.
9. Suzanvander Aa et al. (2015). Mapping the legislation and assessing the impact of Protection Orders in the European Member States, European Union, p. 36, available at: http://poems-project.com/wp-content/uploads/2015/04/Intervict-Poems-digi-1.pdf.

10. CoE, Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence, 2011, paras 270-274, available at: https://rm.coe.int/16800d383a.
11. Ibid., para 276.
12. Volodina v. Russia, Application No 41261/17, ECtHR, 9 July 2019, paras 82, 88, available at: https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-194321%22]}.
13. Ibid., para 132.
14. Opuz v.Turkey, Application No 33401/02, ECtHR, 9 June 2009, paras. 171, 174, 175, 69, available at: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-92945%22]}.
15. Ibid., paras 91,192, 195-197.
16. CoE, Summaries of cases of domestic violence, available at: https://rm.coe.int/6098831-v1-legal-summaries-domestic-violence-help-ukr/1680907ab3, p. 24-25.
17. E.S. and others v. Slovakia, Application No8227/04, ECtHR, 15 September, para 33, available at: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-93955%22]}.
18. Ibid., para. 43.
19. B. v. the Republic of Moldova, Application No 61382/09, ECtHR, 16 July 2013, Paras 55, 57, available at: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-122372%22]}.
20. Kalucza v. Hungary, Application No 57693/10, ECtHR, 24 April 2012, paras 17, 24-25, available at: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-110452%22]}.
21. Ibid., paras. 61, 66.
22. Ibid., para. 64.
23. Ibid., para. 67.
24. Ibid., para. 68.
25. Talpis v. Italy, Application No 41237/14, ECtHR, 2 March 2017, paras 113-117, available at: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-171994%22]}.
26. Ibid., paras 121, 123-124.
27. Eremia v. the Republic of Moldova, Application No3564/11, ECtHR, 28 May 2013, paras. 57, 62-65, available at: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-119968%22]}.
28. Ibid., paras 58, 61, 63.
29. Ibid., paras 76-79.
30. Mudric v. theRepublicofMoldova, Application No 74839/10, ECtHR, 16 July 2013, paras 51-52, available at: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-122375%22]}.
31. Ibid., para. 53.
32. CoE, Summaries of cases of domestic violence, available at: https://rm.coe.int/6098831-v1-legal-summaries-domestic-violence-help-ukr/1680907ab3, p. 22.
33. Ibid., p. 26.
34. Mohamed Hasan v. Norway, ApplicationNo27496/15, ECtHR, 26 April 2018, para 20, available at: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-182450%22]}.
35. Cases: 513/954/18, 137/299/19,127/12230/19, 142/492/18, 145/308/18, 148/535/19, 125/863/18, 158/201/18, 161/1364/19, 155/664/19, 211/1868/19, 175/4666/18, 264/1307/19, 219/6154/19 286/1561/19, 288/1627/18, 276/412/19, 308/2785/19, 308/3153/19, 299/3476/18, 336/3551/18, 314/1905/19, 337/2159/18, 345/346/19, 349/802/19, 754/6995/19, 752/8834/18, 381/2435/19, 372/3856/18, 404/4157/19, 385/1813/18, 398/4663/18, 398/1018/19,

398/2220/19, 425/1590/18, 425/1633/19, 415/1012/18 463/1532/19, 466/5602/18, 463/3989/19 486/1354/19, 486/681/19, 488/5713/18, 473/3766/18, 495/1307/19, 545/2048/19, 526/1021/19, 569/14008, 557/371/19, 569/5982/19, 557/849/19, 562/1115/18, 577/1409/19, 580/1788/19, 591/4958/19, 603/691/18, 607/18626/19, 610/2390/19, 644/3570/18, 766/7353/19, 664/2019/19, 683/3050/18, 683/2010/19, 674/416/19, 673/1855/18, 713/462/18, 715/123/19, 713/1939/18, 716/414/18, 713/1811/18 740/2699/19, 739/1951/18.

36. Cases: 209/2103/19, 753/7157/19, 753/22098/18, 509/3381/19, 522/7058/19, 643/8094/18, 644/1682/18, 621/1310/19, 152/1525/18, 159/2124/19, 161/7992/19, 159/2124/19, 199/1538/19, 199/4766/19, 201/5088/19, 263/7259/19, 234/8496/19, 263/2677/19, 234/333/19, 219/5704/19, 234/10614/19, 285/3429/18, 286/4542/18, 308/1843/19, 308/13908/18, 299/884/19, 308/7488/18, 308/4431/19, 308/11661/18, 323/256/18, 335/5597/19, 345/2789/18, 352/1426/19, 342/170/19, 760/21891/19, 752/4527/19, 752/909/18, 359/7771/18, 359/9481/18, 369/5735/19, 398/3394/18, 404/5203/19, 409/900/19, 464/2984/19, 444/2095/19, 484/446/18 522/513/19, 521/16449/18, 495/4667/19, 541/1659/18, 553/222/19, 524/9907/18, 570/2465/19, 562/1253/19 591/4689/19, 577/2723/18, 592/12434/18, 575/1580/18, 574/683/18, 607/4966/18, 607/17680/19, 607/10122/19, 640/15819/19, 640/10352/18, 643/7596/19, 766/15528/19, 766/13370/18, 766/2329/19 686/15971/19, 712/9994/19, 712/15465/18, 697/783/19 718/1478/19, 713/2329/18 740/3820/19, 740/4052/18.

37. Cases: 495/4023/19, 520/3921/18, 646/2662/18, 643/9806/18, 644/6059/18, 753/2368/18, 753/3252/18, 756/8525/18, 127/27032/18, 127/15203/19, 127/23099/18, 165/2118/18, 159/5880/18, 161/5252/19, 154/1814/19, 161/19627/18, 202/2097/19, 182/2625/19, 201/6894/19, 215/3346/19, 199/1242/18, 264/6635/18, 264/2312/19, 296/5787/18, 296/4636/19, 279/4316/18, 285/2651/19, 279/665/19, 308/14937/18, 323/1891/19, 329/583/19, 334/1163/19, 314/125319, 320/2786/19, 344/318/18, 344/2855/18, 344/5683/19, 349/551/19, 755/7150/19, 756/702/18, 758/13793/18, 754/17447/18, 752/5633/19, 360/92/19, 359/500/19, 369/5450/18, 381/4615/18, 361/974/19, 444/796/19, 462/2318/18, 454/1772/19, 464/846/19, 489/690/18, 478/1191/19, 488/1524/19, 489/6391/18, 489/5972/18, 522/4911/19, 520/14748/18, 522/9972/19, 496/3088/19, 523/12454/19, 525/875/18, 525/873/18, 539/132/18, 539/874/19, 531/305/18, 569/4501/19, 569/2897/19, 562/1116/18, 588/1134/17, 588/720/18, 607/16340/18, 607/4523/19, 607/1842/18, 607/5571/18, 607/15990/18.

38. The official warning about the inadmissibility of domestic violence served as a special measure in accordance with Article 10 of the Law of Ukraine on Prevention of Domestic Violence. This law has been repealed, so the use of an official warning about the inadmissibility of domestic violence is unfounded. Along with that, the Order of the Ministry of Family, Youth and Sports of Ukraine, the Ministry of Internal Affairs on Approval of the Instruction on the Procedure for Cooperation of Structural Units Responsible for Implementing State Policy on Prevention of Domestic Violence, Offices of Children's Services, Centers of Social Services for Families, Children and Youth and Relevant Units of Internal Affairs Authorities on the Implementation of Measures to Prevent Domestic Violence No. 3131/386 dated 07 September 2009, which approved the very form of official warning, has not been annulled.

39. According to the Order of the Ministry of Family, Youth and Sports of Ukraine, the Ministry of Internal Affairs on Approval of the Instruction on the Procedure for Cooperation of Structural Units Responsible for Implementing State Policy on Prevention of Domestic Violence, Offices of Children's Services, Centers of Social Services for Families, Children and Youth and Relevant Units of Internal Affairs Authorities on the Implementation of Measures to Prevent Domestic Violence No. 3131/386 dated 7 September 2009, adopted in implementation of the Law of Ukraine on Prevention of Domestic Violence, which has been repealed.

40. Annex 10 to the Resolution of the Cabinet of Ministers of Ukraine "Issues of Custody and Guardianship Agencies Related to the Child's Rights Protection" No. 866 dated 24 September 2008.

41. According to the Order of the Ministry of Social Policy of Ukraine No. 1005 dated 13 of July 2018.
42. According to Clauses 20, 22 of the Resolution of the Cabinet of Ministers of Ukraine No. 658, such authorised persons in the field of prevention and counteraction of domestic violence are: district, district in the cities of Kyiv and Sevastopol State Administrations, executive bodies of councils of united territorial communities, city, district councils in cities (in case of their formation), executive bodies of village and settlement councils.
43. Cases: 640/10352/18, 452/317/19, 154/3423/18, 464/846/19, 349/551/19, 489/6391/18, 752/909/18, 489/7690/18, 569/5982/19, 756/8949/18, 314/1253/19, 752/25278/18, 553/222/19, 607/10122/19, 372/3856/18, 635/9384/18, 308/3153/19, 760/17770/19, 466/5187/18, 336/992/18, 154/258/19, 562/1116/18, 489/5972/18, 464/1302/19, 753/13624/18, 444/3602/18, 541/1659/18, 522/13440/18, 753/23624/18, 154/1692/19, 623/2265/19, 372/2750/18, 336/3551/18, 509/2216/18, 264/2312/19, 754/6995/19, 756/16949/18, 359/500/19, 159/5332/18, 752/18741/18, 607/12573/18, 539/874/19, 757/15627/18, 683/1036/19, 415/1020/18. Cases: 756/2072/18, 462/2318/18, 363/3496, 531/1305/18, 541/1659/18.
44. Cases: 756/2072/18, 462/2318/18, 363/3496, 531/1305/18, 541/1659/18.
45. This term is used in civil cases of action proceedings, not separate proceedings.
46. The correct term is "domestic violence".
47. "Examination of the evidence provided by the applicant established that the arguments of the application had not been substantiated. Indeed, there is a conflict between the parties, a lack of willingness to compromise and agree on certain family issues. At present, when the couple is in the process of divorce, which is opposed by the husband, he is trying to communicate with his wife in order to preserve the family, who does not want to make contact, and considers his ways to establish a relationship as a manifestation of domestic violence. The court, analysing the evidence of bringing PERSON_2 to administrative responsibility, draws attention to the fact that these facts took place already after the applicant's appeal to the court with a claim for divorce. At the same time, having young children living permanently with the applicant, she did not refer in any way as to how such conflicts affected their lives and upbringing, but only motivated the application by fears for her own safety. Based on the above, the court finds no grounds to satisfy the application of PERSON_3 on the issuance of a restrictive order"- the decision of the Illichivsk District Court of Donetsk region dated 04 June 2019, case No. 264/2312/19.
48. Decision of October District Court of Dnipropetrovsk city dated 24 May 2019, case No. 201/5088/19.
49. Decision of Sosnivskyi District Court of Cherkas city dated 02 July 2019, Case No. 712/524/19 [it should be noted that in the relevant case a forensic medical examination was ordered, which affected the term of consideration of the application for the issuance of a restrictive order by the court].
50. Decision of Starokostiantynivka District Court of Khmelnytsk Region dated 22 April 2019, Case No. 638/1068/19.
51. "The facts of domestic violence in the form of psychological and physical violence by PERSON_3 in relation to the applicant were not established during the court session, whereas the letters of Shevchenkivskyi Police Department of the Main Administration of the National Police in Lviv region on conducting preventive conversations with PERSON_3 are dated July, August and September 2018, and the Ruling of the Shevchenkivskyi District Court of Lviv city on bringing PERSON_3 to administrative responsibility under Article 1 of Article 173.2 of the CUAO was dated 27 December 2018. Regarding the attached by the applicant Statement of Family Needs Assessment and the Act of Clarifying the Circumstances of Domestic Violence or the Real Threat of its Commission dated 31 January 2019, which were drawn up by members of the

Commission of Lviv City Center of Social Services for Families, Children and Youth, they confirm the circumstances regarding the existence of a conflict between the spouses PERSON_3 due to jealousy PERSON_3 to his wife and the division of property"- the Decision of Shevchenkivskyi District Court of Lviv city dated 24 April 2019, case No. 466/1555/19.

52. "At the same time, the court understands the existence of hostile relations between the parties, which can even be seen from their communication in court, and in this situation the court assumes that these factors affect the psycho-emotional state of the child. However, these disputes should not be to the detriment of the interests of the child and may only indicate the wrong behavior of PERSON_4 in relation to the child and do not indicate the need to issue a restrictive order against him. […] Refuse to satisfy the application PERSON_1, acting in the interests of PERSON_7, concerned person PERSON_4, Department of Juvenile and Children's Services of Ternopil City Council on the issuance of a restrictive order. To warn PERSON_4, INFORMATION_2, a native of INFORMATION_3, about the need to change the attitude to the upbringing of the daughter PERSON_7, INFORMATION_1, and to compel the Department of Juvenile and Children's Services of Ternopil City Council as a body of guardianship and custody, to monitor the behavior of PERSON_4 in relation to the upbringing of the daughter PERSON_7 ». – Decision of Ternopil City District Court of Ternopil region dated 05 April 2018, case No. 607/5571/18.

53. Decision of Koroliovskyi District Court of Zhytomyr city dated 26 June 2018, case No. 296/5787/18; Decision of Zaliznychnyi District Court of Lviv city dated 05 May 2018, case No. 462/2318/18.

54. By the decision of Znamianskyi City District Court of Kirovohrad Region dated 29 November 2018 in case No. 389/3394/18 the court did not satisfy the applicant's request not to approach the kindergarten at a distance of less than 100 meters, which is a place of frequent visits by the victim, given the fact that the kindergarten is a public place and the applicant did not provide substantial proof of the fact that her son is attending the specified institution.

55. Decision of Ordzhonikidzevskyi District Court of Zaporizhia dated 06 June 2019 case No. 335/5597/19.

56. Decision of Ternopil City District Court of Ternopil region dated 04 July 2019, case No. 607/10122/19; Decision of Amur-Nyzhniodniprovskyi District Court of Dnipropetrovsk dated 01 March 01 2019, case No. 199/1538/19; Decision of Poltava District Court of Poltava region dated 23 August 2019, case No. 545/2048/19.

57. Especially if the information was entered into the URPI regarding an unidentified person [even if it is a suspicion of child abuse] – the Decision of Kominterivskyi District Court of Kharkiv dated 01 November 2018, case No. 641/7592/18; Decision of Korosten City District Court of Zhytomyr Region dated 11 February 2019, case No. 279/665/19; Decision of Sosnivskyi District Court of Cherkasy dated 15 August 2018, case No. 712/3771/18; Decision of Kovel City District Court of Volyn region dated 13 November 2018, case No. 159/5880/18.

58. "Main evidence for this category of cases is lacking – the verdict or ruling (decision) of the court, which has entered into force that PERSON_2 committed domestic violence and his guilt was proven in court proceedings" - the Decision of Fastiv City District Court of Kyiv region dated 10 January 2019, case No. 381/4615/18.

59. Decision of Nizhyn City District Court of Chernihiv region dated 08 August 2019, case No. 740/3820/19; Decision of Kherson City Court of Kherson region dated 22 March 2019, case No. 766/5192/19.

60. "Procedural law stipulates that the circumstances of civil cases are clarified by the court on an adversarial basis, within the limits of the stated requirements and on the basis of the evidence provided by the parties. As for the obligation to prove and present evidence, each party must

prove the circumstances to which it refers as the basis of its claims and objections "- the Decision of Zdolbuniv District Court of Rivne region dated 14 November 2018, case No. 562/1115/18.

61. Decision of Vinnytsia City Court of Vinnytsia Region dated 04 July 2019, case No. 127/15203/19.

62. Decision of Chernihiv District Court of Zaporizhia Region dated 29 August 2019, case № 329/583/19. [It should be noted that the relevant rule should be applied to civil proceedings in action proceeding, but not in separate proceedings].

63. "Photographs and sound files cannot be taken into account by the court as proper and admissible evidence, as it is not possible to identify the voices of persons recorded on soundtracks at the court hearing, and the defendant insists that it is not his voice" - the Decision of Kherson City Court of Kherson region dated 01 August 2019, case No. 766/14799/19; "The court can not take into account photo and audio recording copied on a CD, submitted to the court with the application to confirm the applicant's arguments because they are not received in accordance with the requirements of the CPC of Ukraine" - the Decision of Novovolynsk City Court of Volyn region dated 24 September 2018, case No. 7165/2118/18.

64. Decision of Lubny City District Court of Poltava Region dated 20 March 2019, case No. 539/874/19.

65. "… Issuance of an official warning by this law [Law On Prevention and Counteraction of Domestic Violence] does not provide for…"- the Decision of Ivano-Frankivsk City Court of Ivano-Frankivsk region dated 12 January 2018, case No. 344/318/18.

66. Order on approval of the Procedure for Risk Assessment of Domestic Violence No. 369/180 dated 13 March 2019.

67. Decision of Kazanka District Court of Mykolaiv region dated 29 July 2019, case No. 478/1191/19.

68. For instance, Article 16 of Law No. 2229-VIII provides for the creation of an appropriate register. Also, on 20 March 2019, the Resolution of the Cabinet of Ministers of Ukraine No. 234 on Approval of the Procedure for Forming, Maintaining and Accessing the Unified State Register of Domestic Violence Cases and Gender-based violence" was adopted. However, the relevant register has not been established as of the day of the court decisions.

69. "PERSON_1 has provided no evidence regarding the grounds for entering into the Unified State Register of any cases of PERSON_2 committing domestic violence against PERSON_3 " - the Decision of Kyivskyi District Court of Odessa city dated 12 October 2018, case No. 520/14748/18; the Decision of the Vyzhnytskyi District Court of Chernivtsi Region dated 27 April 2018, case No. 713/730/18; Decision of Trostianets District Court of Sumy region dated 03 November 2018, case No. 588/1134/17; Decision of Lutsk City District Court of Volyn Region dated 01 April 2019, case No. 161/5252/19.

70. "The applicant did not provide the court with proper and admissible evidence of PERSON_2 committing domestic violence at the time of appeal to the court against PERSON_3, and therefore it wasn't not proven that PERSON_" is an perpetrator against his wife "- Decision of Novovolynsk City Court of Volyn region dated 24 September 2018, case No. 7165/2118/18.

71. Decision of Pershotravnevyi District Court of Chernivtsi dated 06 June 2018, case No. 725/4623/18.

72. Decision of Okhtyrka District Court of Zaporizhia Region dated 19 July 2019, case No. 323/1891/19.

73. Decision of Desnianskyi District Court of Kyiv dated 05 February 2019, case No. 754/17447/18.

74. "In such circumstances, the court considers justified the risk of possible perpetration of domestic violence by PERSON_2 in the future against the applicant and her young son, and therefore they, as victims of domestic violence need protection from the state. In view of the above and in order to prevent re-traumatisation of the child, the court concluded that the application and

the need to issue a restrictive order with the measures proposed by the applicant to temporarily restrict the rights of the concerned person were justified. This very temporary restriction of the perpetrator's rights will help prevent psychological and physical violence, meet the purpose of these measures and will be commensurate with the commission of an illegal act "- the Decision of Monastyrskyi District Court of Ternopil region dated 28 September 2018, case No. 603/691/18.

75. Decision of Yuzhnoukrainskyi City Court of Mykolaiv region dated 22 April 2019, case No. 486/681/19.

76. "Given the inviolability of the principle of ownership, the court can not prohibit the owner of the apartment to approach it and enter it" - Decision of Podilskyi District Court in Kyiv dated 31 October 2018, case No. 758/13793/18; "taking into account that the adoption of a restrictive order cannot replace the current legally established procedure on the eviction of a person from a dwelling or deregistration of residence, the court concludes that the prematurely stated requirements regarding the prohibition of PERSON_2 to be in permanent residence with PERSON_1 and to approach it at a distance of 50 m, as the absence of a solution to the above circumstances deprives the court to impose restrictions in this part "- the Decision of Kyivskyi District Court of Kharkiv dated 12 August 2019, case No. 640/15819/18; "Based on the applicant's chosen method of protection, the court does not see the possible application to PERSON_2 of measures specified by the applicant to temporarily restrict the rights of the perpetrator, which are directly aimed at restricting his rights as an apartment owner, thereby depriving him of the right to have free access to housing" - Decision of Koroliovskyi District Court of Zhytomyr dated 19 June 2019, case No. 296/4636/19.

77. Decision of Kirovohradskyi District Court of Kirovohrad city dated 09 August 2019, case No. 404/5203/19.

78. Decision of Putyvl District Court of Sumy Region dated 20 August 2018, case No. 574/683/18.

79. "The court is convinced that the imposition on PERSON_3 of such responsibilities, which the applicant notes in the application for a restrictive order, will not be able to protect a minor child from psychological violence, but will only exacerbate the conflict between the applicant and PERSON_3" - the Decision of Novhorod-Volynskyi City District Court of Zhytomyr Region dated 02 August 2019, case No. 285/2651/19.

80. "In such circumstances, given the age of the minor PERSON_4 INFORMATION_2, the fact that he lives with his mother PERSON_1 and witnessed the perpetration of physical violence against her by the father PERSON_3, ensurance of the child's development in a safe, calm and sustainable environment will be in the best interests of the child, and therefore, in order to counteract psychological violence that took place on the part of the concerned person, the court concludes that it is necessary to apply measures to temporarily restrict the rights of PERSON_3"- the Decision of Kalush City District Court of Ivano-Frankivsk region dated 23 July 2018, case No. 345/2789/18.

81. Decision of Lityn District Court of Vinnytsia Region dated 12 March 2019, case No. 137/299/19, Decision of Bar District Court of Vinnytsia Region dated 08 May 2019, caseNo.125/863/19, Decision of Uzhhorod City District Court of Zakarpattia Region dated 31 January 2019, case No. 308/13908/18, decision of Tyvriv District Court of Vinnytsia Region dated 28 February 2018, case No. 145/308/18, Decision of Uzhhorod City District Court of Zakarpattia Region dated 21 March 2019, case No. 308/2785/19, Decision of Uzhhorod City District Court of Zakarpattia Region dated 30 May 2019, case No. 308/5131/19.

82. Decision of Uzhhorod City District Court of Zakarpattia Region dated 10 July 2018, Case No. 308/7488/18, Decision of Uzhhorod City District Court of Zakarpattia Region dated 25 April 2019, Case No. 308/4431/19.

83. Decision of Nizhyn City District Court of Chernihiv Region dated 10 October 2018, case No. 740/4695/18.

84. The following terminology should be used: "plaintiff", "concenrned party", "domestic violence", "victim".

85. "To collect from PERSON_1 in favor of PERSON_3 court fee for filing an appeal in the amount of 1,057 UAH and 20 kopecks" - Decision of Kharkiv Court of Appeal dated 23 October 2018, case No. 640/10352/18.

86. Resolution of Lviv Court of Appeal dated 30 May 2019, case No. 452/317/19; Decision of Kyiv Court of Appeal dated 04 September 2019, case No. 760/17770/19; Decision of Kyiv Court of Appeal dated 13 March 2019, case No. 753/23624/18; Decision of Volyn Court of Appeal dated 15 August 2019, case No. 154/1692/19.

87. "Besides, the Decision made by the Court of Appeal forbade PERSON_3 to enter and stay in the apartment located at ADDRESS_1, for a period of 3 (three) months. However, the court did not take into account that the apartment also belonged under the right of joint tenancy of the spouses to PERSON_3 as well with his natural children residing there, in connection with which PERSON_3 was coming to the apartment to pick up the children or bring them home after having visitation with them. However, the court decision restricted PERSON_5's communication with his children at the place of permanent residence, which is an unfounded violation of his rights, as well as children's rights to communicate with the father, and therefore is inadmissible"- Resolution of the Court of Appeal of Odessa region dated 13 November 2018, case No. 509/2216/18.

88. Resolution of Khmelnytskyi Court of Appeal dated 27 June 2019, case No. 683/1036/19.

89. Resolution of Volyn Court of Appeal dated 21 January 2019, case No. 154/3423/18.

90. Resolution of Zakarpattia Court of Appeal dated 11 July 2019, case No. 308/3153/19.

91. Resolution of Kyiv Court of Appeal dated 01 November 2018, case No. 753/13624/18.

92. Resolution of Lviv Court of Appeal dated 02 May 2019, case No. 466/5187/18.

93. Resolution of Lviv Court of Appeal dated 02 September 2019, case No. 464/846/19, Decision of Mykolayiv Court of Appeal dated 29 January 2019, case No. 489/7690/18.

94. Resolution of Kyiv Court of Appeal dated 17 January 2019, case No. 372\2750\18; decision of Zaporizhia Court of Appeal dated 18 December 2018, case No. 336/3551/18.

95. "The very fact of repeated appeal of PERSON_1 to law enforcement agencies, on the grounds of domestic psychological violence committed against her and evidence that PERSON_3 underwent treatment for alcohol intoxication, indicates a long conflict between the applicant and the concerned person, but does not confirm the fact that PERSON_3 committed domestic psychological violence against the applicant, which is a necessary condition for the possibility of the court to apply special measures to the concerned person to combat domestic violence which are defined by the Law of Ukraine on Prevention and Counteraction of Domestic Violence" - Decision of Kharkiv Court of Appeal dated 21 March 2019, case No. 635/9384/18.

96. Resolution of Poltava Court of Appeal dated 01 April 2019, case No. 553/222/19.

97. Resolution of Kyiv Court of Appeal dated 12 March 2019, case No. 372/3856/18.

98. Resolution of Volyn Court of Appeal dated 26 March 2019, case No. 154/258/19.

99. Resolution of Lviv Court of Appeal dated 11 April 2019, case No. 444/3602/18.

100. Resolution of Kharkiv Court of Appeal dated 24 September 2019, case No. 623/2265/19.

101. Resolution of Poltava Court of Appeal dated 29 May 2019, case No. 539/874/19.

102. "The extent to which the court must fulfill the obligation to substantiate the decision may be different depending on the nature of the decision (the case" Seriavin and others v. Ukraine" dated 10 February 2010)" - Resolution of Ivano-Frankivsk Court of Appeal dated 04 July 2019, case No. 349/551/19.
103. Resolution of Kyiv Court of Appeal dated 08 May 2019, case No. 752/909/18.
104. Resolution of Rivne Court of Appeal dated 25 July 2019, case No. 569/5982/19, decision of Ternopil Court of Appeal dated 10 September 2019, case No. 607/10122/19, Decision of Rivne Court of Appeal dated 14 November 2018, case No. 562/1116/18.
105. Resolution of Kyiv Court of Appeal dated 28 November 2018, case No. 756/8949/18.
106. Resolution of Zaporizhia Court of Appeal dated 06 July 2019, case No. 314/1253/19.
107. Resolution of the Court of Appeal of Zaporizhia region dated 02 August 2018, case No. 336/992/18.
108. Resolution of Donetsk Court of Appeal dated 28 August 2019, case No. 264/2312/19.
109. Decision of Obolonskyi District Court of Kyiv dated 22 February 2018, case No. 756/2072/18.
110. Decision of the District Court of Appeal of Kyiv dated 29 March 2018, case No. 756/2072/18.
111. Resolution of Dniprovskyi District Court of Kyiv dated 07 December 2017, case No. 755/15109/17.
112. For example: according to the analysis of case law under Article 173-2 of the CUAO Kryvyi Rih (Dnipropetrovsk region) for the period of January-February 2020, only in 46% of administrative protocols under Article 1732 of the CUAO judges make decisions on the merits and impose an administrative penalty on the perpetrator; in 27% of cases, administrative protocols are sent for revision due to: shortcomings in the preparation of administrative protocols (21%), failure to ensure the perpetrator's appearance (30%), failure to ensure the cause of the offender (49%); in 14% of cases, judges release the perpetrator from administrative liability due to insignificance of the act, limiting themselves to verbal remarks; 12% of administrative cases are closed, of which: 27% of cases were closed by the court for lack of corpus deliciti of an administrative offense , 68% of cases were closed due to the expiration of the statute of limitations, and 5% of cases were closed due to the death of the perpetrator.
113. Decision of Zaliznychnyi District Court of Lviv dated 05 May 2018, case No. 462/2318/18
114. Ibid.
115. Resolution of Vyshhorod District Court of Kyiv Region dated 27 June 2018, case No. 363/2398/18.
116. In accordance with Clauses 4 and 14 of Part 1 of Article 1 of the Law No. 2229-VIII, "economic violence" is a form of domestic violence, which includes intentional deprivation of housing, food, clothing, other property, funds or documents or the ability to use them, leaving without care or guardianship, obstruction in obtaining necessary medical services or rehabilitation, work ban, forced labor, study ban and other economic offenses; "psychological violence" is a form of domestic violence that includes verbal abuse, threats, including against third parties, humiliation, harassment, intimidation, other acts aimed at restricting the will of the person, control in the reproductive sphere, if such actions or omissions of actions caused the victim's fear for his or her own safety or the safety of third parties, caused emotional insecurity, inability to protect himself or herself or harmed the person's mental health.
117. Decision of Tysmenytsia District Court of Ivano-Frankivsk Region dated 01 August 2019, case No. 352/1426/19.

APPENDICES

Appendix 1. Court decisions adopted by courts of first instance

The total number of court decisions adopted by the courts of first instance from January 2018 to August 2019 in each region, which became the subject of analysis during the study:

Name of the region	Satisfied in full	Satisfied in part	Denied	Total
Vinnytsia	8	1	3	12
Volyn	13	7	9	29
Dnipropetrovsk	12	13	15	40
Donetsk	2	9	2	13
Zhytomyr	8	7	11	26
Zakarpattia	3	12	1	16
Zaporizhia	9	5	7	21
Ivano-Frankivsk	5	4	5	14
Kyiv	9	8	20	37
Kirovohrad	5	1	0	6
Luhansk	3	1	0	4
Lviv	15	8	15	38
Mykolaiv	6	1	8	15
Odesa	16	10	21	47
Poltava	13	9	6	28
Rivne	6	4	2	12
Sumy	3	5	2	10
Ternopil	5	3	7	15
Kharkiv	14	12	9	35
Kherson	4	9	6	19
Khmelnytsk	13	1	6	20
Cherkasy	0	3	4	7
Chernivtsi	5	3	3	11
Chernihiv	2	2	3	7
the city of Kyiv	18	23	45	86
			Total:	**568**

Appendix 2. Judges' Interview Results

13 judges (7 women, 5 men) were interviewed.

All interviewed judges work in the court of first instance.

Experience of judges:

4-6 years - 1 judge 7-10 years - 5 judges more than 10 years - 7 judges

Among the difficulties that arise when considering applications for a restraining order, the judges noted the following:

- observance of the period for consideration of the case. According to the judges, this is explained by the period for consideration of the application for the issuance of a 72-hour restraining order, and a number of procedural actions that need to be carried out during these 72 hours;
- request for evidence;
- appropriateness and admissibility of evidence (noted by 2 judges);
- proper notification of the perpetrator in a short time (noted by 2 judges); this call is correlated with the period for consideration of the application within 72 hours, which is often impossible due to the proper notification of the perpetrator;
- the inability of the perpetrator-homeowner to enter and use his property (this aspect was mentioned in cases where the property belongs exclusively to the perpetrator);
- the possibility of abuse by the victim through imposing restrictions.

When conducting the risk assessment, the judges paid primary attention to the following circumstances and evidence:

- the onset of psychological and physical consequences, their confirmation by appropriate evidence;
- explanation of the injured person, circumstances of the event;
- prosecution of the perpetrator for committing domestic violence;
- whether children were present when the domestic violence was committed;
- the importance of assessing the level of risk that threatens the victim, in order to prevent abuse of her rights by herself.

All 13 judges who have been interviewed noted that they considered a restraining order to be an effective special measure to prevent and combat domestic violence,

but one that required a thorough approach to its application. At that, some of the judges expressed the following reservations:

- a restraining order is an effective special measure to prevent and combat domestic violence, but only in cases where it is enforced. There is currently no mechanism for enforcing a court decision to issue a restraining order.
- for greater efficiency of restraining orders, it is necessary to determine the bodies responsible for verifying its compliance and prescribe the appropriate algorithm;
- in addition to combating domestic violence, a restraining order is also an effective measure to protect the rights of women, men, to protect personal life and safety of the family.

As a result of the survey, the following conclusions can be drawn.

- All judges, without exception, consider a restraining order to be an effective special measure to prevent and combat domestic violence.
- The greatest difficulties that arise when considering this category of cases are the establishment of the appropriateness and admissibility of evidence, notification of the perpetrator in a short time, compliance with the deadlines for consideration and request for evidence. There is also a lack of understanding by some judges of the legal nature of the restraining order, primarily as a means of protecting the victim, rather than restricting the perpetrator's rights. This misconception emerges as a concern that issuing a restraining order may violate the perpetrator's property rights.
- Judges generally correctly assess the circumstances and arguments to be taken into account when assessing risks, noting the psychological and physical consequences for the victim, the presence of children in the commission of domestic violence, the explanation of the victim.
- Judges, in general, are also quite critical of the effectiveness of the restraining order as a special measure to prevent and combat domestic violence, noting the importance of its practical enforcement, the need to identify responsible authorities and so on.
- Finally, it is worth noting a certain tendency of judges to distrust the victim, as several judges mentioned the possibility of abuse on the part of the victim. However, the relevant allegations of the judges were not based on the judges' personal experience in considering applications for restraining orders, but rather on stereotypes. Training, therefore, is important to equip judges with the necessary skills and knowledge to address widespread stereotypes regarding victims of violence against women.

Appendix 3. List of ECtHR Decisions Concerning Domestic Violence Cases

1. Kontrová v. Slovakia - 7510/04. Decision dated 03 October 2007.
2. Branko Tomašić and Others v. Croatia) – 46598/06. Decision dated 15 January 2009.
3. Opuz v. Turkey) – 33401/02. Decision dated 09 June 2009.
4. E.S. and Others v. Slovakia) – 8227/04. Decision dated 15 September 2009.
5. N. v. Sweden) – 23505/09. Decision dated 20 July 2010.
6. A. v. Croatia) – 55164/08. Decision dated 14 October 2010.
7. Hajduová v. Slovakia) – 2660/03. Decision dated 30 November 2010.
8. E.M. v. Romania) – 43994/05. Decision dated 30 October 2012.
9. Valiulienė v. Lithuania) – 33234/07. Decision dated 26 March 2013.
10. Eremia v. the Republic of Moldova) – 3564/11. Decision dated 28 May 2013.
11. Civek v. Turkey) – 55354/11. Decision dated 23 February 2016.
12. M.G. v. Turkey) – 646/10. Decision dated 22 March 2016.
13. Halime Kılıç v. Turkey) – 63034/11. Decision dated 28 June 2016.
14. Bălşan v. Romania) – 49645/09. Decision dated 23 May 2017.
15. Talpis v. Italy) – 41237/14. Decision dated 02 March 2017.
16. D.M.D. v. Romania) – 23022/13. Decision dated 03 October 2017.
17. Y.C. v. the United Kingdom) – 4547/10. The decision as of 13 March 2012.
18. D.M.D. v. Romania) – 23022/13 Decision dated 03 October 2017.
19. Mohamed Hasan v. Norway) – 27496/15. Decision dated 26 April 2018.
20. Volodina v. Russia) – 41261/17. Decision dated 09 July 2019.

A more detailed description of relevant ECtHR decisions can be found at https://rm.coe.int/6098831-v1-legal-summaries-domestic-violence-help-ukr/1680907ab3

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Kalucza v. Hungary, Application No 57693/10, ECtHR, 24 April 2012.

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Mudric v. the Republic of Moldova, Application No 74839/10, ECtHR, 16 July 2013.

Opuz v.Turkey, Application No 33401/02, ECtHR, 9 June 2009.

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Volodina v. Russia, Application No 41261/17, ECtHR, 9 July 2019.

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