

ANALYTICAL REPORT

# ASSESSMENT OF CIVIL COURT DECISIONS ON THE ISSUANCE OF PROTECTION ORDERS AGAINST THE PERPETRATORS OF DOMESTIC VIOLENCE

DECEMBER 2020



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This assessment was conducted by the United Nations Entity for Gender Equality and the Empowerment of Women – UN Women Ukraine in the framework of the United Nations Recovery and Peacebuilding Programme (UN RPP) implemented by four United Nations agencies: the United Nations Development Programme (UNDP), the UN Entity for Gender Equality and the Empowerment of Women (UN Women), the United Nations Population Fund (UNFPA) and the Food and Agriculture Organization of the United Nations (FAO). The Programme is supported by thirteen international partners: the European Union, the European Investment Bank and the governments of Canada, Denmark, Germany, Japan, the Netherlands, Norway, Poland, Sweden, Switzerland, USA and the UK.

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# ASSESSMENT OF CIVIL COURT

# DECISIONS ON THE ISSUANCE

# OF PROTECTION ORDERS

# AGAINST THE PERPETRATORS

# OF DOMESTIC VIOLENCE

**UN Women Ukraine**

December 2020

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# 1. OBJECTIVE

Civil court protection orders against gender-based violence, including domestic violence, perpetrators are a vital element of the justice system's response to gender-based violence. The civil court protection order system is designed to create safeguards for victims<sup>1</sup> and their children during times of increased risk.<sup>2</sup> When seeking protection from the court, victims should encounter a system staffed by competent professionals that focuses on safety and accessibility, and is reliable in terms of issuance and enforcement of orders.<sup>3</sup>

The objective of the “Assessment of civil court decisions on the issuance of protection orders against the perpetrators of domestic violence” consists in identifying the extent to which victims utilize the civil court protection

mechanism against domestic violence in Ukraine and particularly in the conflict-affected Donetsk and Luhansk regions, and the rate of positive decisions made by civil courts on the issuance of protection orders against the perpetrators. Additionally, this assessment aims to identify the inconsistency between the grounds used to reject or grant a civil court restraining order, reflected in the motivation of the issued civil court decisions in Ukraine, and national and international standards pertaining to the protection of victims of domestic violence, as well as providing corresponding recommendations to justice sector actors to enhance the normative framework and guide the judicial practice in this field.

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1. The term “victim” is used in lieu of “survivor” because it shows the procedural legal standing of the person who suffers from gender-based violence. The Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence also uses the term “victim”, since it specifically refers to gender-based violence crimes.
  2. Battered Women Justice Program, Engaging in a Best Practice Assessment of the Civil Protection Order System, 2012.
  3. Idem.

## **2. RESEARCH METHODOLOGY**

To achieve the set objective, the assessment consisted of the following stages:

- Desk review of the international standards on the protection of domestic violence victims and of the national legislative framework on domestic violence and protection orders issued by civil courts against the perpetrators of domestic violence;
- Analysis of civil court decisions on the issuance of protection orders against the perpetrators of domestic violence, which were delivered by the Ukrainian courts since the entry into force of amendments to the domestic violence legislation introducing restraining orders (January 2018 – July 2020), including the total number of decisions on the issuance of restraining orders adopted in each region, specifying the number of granted and rejected claims, as well as the number of claims lodged by different perpetrators of domestic violence (e.g. intimate partner, parent, child, etc.);
- In-depth analysis of all first instance civil court decisions of rejected and granted claims, which were issued in Donetsk and Luhansk regions between January 2018 – July 2020, including with specific reference to evidence used by courts in the motivation of decisions.

The civil court decisions on issuing protection orders against the perpetrators of domestic violence were aggregated using the search engine of the Ukrainian State Register of Court Decisions.<sup>4</sup> The unified State Register of Court Decisions is an automated system for collection, storage, protection, accounting, search and provision of electronic copies of court decisions. The State Register includes court decisions of the Supreme Court of Ukraine, higher specialized, appellate and first instance local courts – verdicts, decisions, resolutions, orders, rulings, separate court rulings (resolutions) adopted by courts in criminal, civil, economic, and administrative cases, except court decisions comprising information which is classified as a state secret. The Ukrainian State Register of Court Decisions provides an open and free of charge access in line with the provisions of the Law “On Access to Court Decisions”.<sup>5</sup>

It is important to mention that the analysis of civil court decisions on the issuance of protection orders against the perpetrators was limited to the grounds reflected in the motivation of the decisions to grant or reject a claim.

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4. <http://www.reyestr.court.gov.ua>

5. Law «On Access to Court Decisions» of 22.12.2005 No 3262-IV. <https://zakon.rada.gov.ua/laws/show/3262-15#Text>

# 3. ANALYSIS OF THE INTERNATIONAL AND NATIONAL LEGAL FRAMEWORKS ON THE PROTECTION OF DOMESTIC VIOLENCE VICTIMS

Gender-based violence against women and girls is both a cause and consequence of gender inequality. It affects women disproportionately and thus represents a form of systemic discrimination against women and girls that is rooted in historically unequal power relations between women and men. The General Recommendation 19 of the UN Committee on the Elimination of Discrimination against Women states that the definition of discrimination includes gender-based violence and defines gender-based violence as violence directed against woman<sup>6</sup> because she is a woman or that affects women disproportionately.<sup>7</sup>

The UN Declaration on the Elimination of Violence against Women (UN General Assembly 1993) defines gender-based violence as “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life”.<sup>8</sup> The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic

Violence, signed but not yet ratified by Ukraine, additionally includes economic harm and suffering into the definition of gender-based violence.<sup>9</sup>

Gender-based violence includes various forms such as domestic violence, rape, sexual assault, sexual harassment, stalking, human trafficking, forced prostitution, early marriages, forced abortion and forced sterilization, and female genital mutilation. Throughout their lives, women may experience various forms of gender-based violence. At the same time, women facing multiple forms of discrimination<sup>10</sup> are more vulnerable to violence and its consequences.

The due diligence principle stemming from the international human rights law, explicitly expressed in the UN Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), ratified by Ukraine in 1981<sup>11</sup>, requires the State parties to take specific measures to protect women from violence, to prosecute acts of violence, and to prevent further acts of violence. The failure of the State to apply the due diligence

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6. The term “women” is used to cover females of all ages, including girls under the age of 18 years.
  7. General Recommendation No. 19 of the UN Committee on the Elimination of Discrimination against Women <https://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm>
  8. Declaration on the Elimination of Violence against Women, Proclaimed by General Assembly resolution 48/104 of 20 December 1993 <https://www.ohchr.org/en/professionalinterest/pages/violenceagainstwomen.aspx>
  9. Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (2011) <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210>
  10. Women representing ethnic minorities, women with disabilities, sex workers, older and younger women, refugees, migrant and internally displaced women, rural women, women living in institutions or in detention, women affected by armed conflict, women living with HIV/AIDS and lesbians and transgender persons.
  11. CEDAW ratification by Ukraine [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=183&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=183&Lang=EN)

principle to prevent, investigate and punish the acts of violence against women represents a violation of its international obligations. The European Court of Human Rights has referred to the standard of due diligence in its landmark judgment *Opuz v. Turkey* (2009).<sup>12</sup>

Safety of the victim and the accountability of the perpetrator of gender-based violence are at the core of an effective response of the State to violence against women. Comprehensive protection measures should be in place to provide safety and dignity for victims. The victim's safety should be central to any decision taken by the court in a gender-based violence case.

Domestic violence is one of the most pervasive forms of gender-based violence. According to 2019 OSCE-led Survey on Violence against Women in Ukraine, two-thirds (67%) of the women surveyed stated that they have experienced psychological, physical or sexual violence at the hands of a partner or non-partner since the age of 15 and nearly three in ten women (28%) who have had a previous partner say they have experienced physical and/or sexual violence at the hands of a previous partner compared to 15% of women who currently have a partner who say they have experienced current partner physical and/or sexual violence.<sup>13</sup>

Restraining (barring) and protection orders in respect of the perpetrators of gender-based violence are most often used in domestic violence cases to ensure a physical distance between the victim and the perpetrator as an effective measure to stop violence and its escalation or avoid its occurrence, and ensure victim's safety. The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence requires from the State parties to ensure protection of victims by using, *inter alia*, the emergency barring orders (Art. 52) in situations of immediate danger, ordering the perpetrator to vacate the victim's residence for a sufficient period of time and prohibiting the perpetrator from entering the residence of or contacting the victim, specifically indicating that measures taken pursuant to this article shall give priority to the safety of victims. The Explanatory Report to the Council of Europe Convention

on preventing and combating violence against women and domestic violence<sup>14</sup> explains that the term "immediate danger" refers to any situations of domestic violence in which harm is imminent or has already materialized and is likely to happen again.

While the emergency barring orders are issued for a short period of time the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Art. 53) requires that the State parties also make available longer term protection orders. The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence clearly specifies that protection orders should be available for immediate protection of and without undue financial or administrative burdens placed on the victim. The protection orders should be issued for a specified period or until modified or lifted, and, where necessary, issued on an *ex parte* basis which has immediate effect. The availability of protection orders should not be contingent of, or in addition to, other legal proceedings and should be allowed to be introduced in subsequent legal proceedings. Additionally, State parties shall take the necessary legislative or other measures to ensure that breaches of protection orders shall be subject to effective, proportionate and dissuasive criminal or other legal sanctions.

The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence introduces a shift in paradigm in the domestic violence response. Considering the unjust situation when usually the victim and her children are forced to leave their home, the Convention transfers this burden to the perpetrator by introducing temporary no-contact measures and eviction of the perpetrator from the victim's place of residence even if this place is shared.

Removal of the perpetrator from the victim's place of residence does not require for the residence to be joint or shared by the victim and perpetrator.<sup>15</sup> At the same time, who owns or is the legal tenant of the common place of residence is also irrelevant.<sup>16</sup> The only requirement is that it should be the place of residence of the victim.<sup>17</sup>

12. ECtHR Opuz v. Turkey [https://hudoc.echr.coe.int/tur#{"itemid": "001-92945"}](https://hudoc.echr.coe.int/tur#{)

13. Organization for Security and Co-operation in Europe (OSCE), OSCE-led Survey on Violence against Women: Ukraine Results Report, 2019.

14. Council of Europe, Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence, 2011 <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168008482>

15. Idem.

16. Idem.

17. Idem.

Similarly, there is no requirement for the victim to live there permanently, the protection orders should also cover temporary place of victim's residence.<sup>18</sup> The eviction measures provided in the protection orders do not affect property rights but restrict the perpetrator's access to property for a limited time because of the danger they pose to the victim.<sup>19</sup> Property or housing rights of abusive partners should not be taken into consideration in cases of immediate danger because the perpetrator's property rights cannot supersede the rights of the victim to life and physical and mental integrity.<sup>20</sup>

In 2018-2019, in an effort to align the Ukrainian legislation with the international standards on preventing and combating gender-based violence, amendments to legislation in this area were made and came into effect, specifically, in 2019 Art. 126-1 of the Ukrainian Criminal Code was amended, so as to criminalise domestic violence which is characterized as deliberate systematic physical, economic and psychological violence committed against a current or a former spouse or *another person with whom the perpetrator has (had) family or intimate relationships*, which leads to physical or psychological suffering, health impairments, incapacitation, emotional dependence or worsening the quality of life for the victim.

At the same time, Art. 173-2 of the Administrative Code of Ukraine provides that an offence of domestic and gender-based violence is any intentional act or omission of a physical, psychological or economic nature (use of violence that did not cause bodily harm, threats, insult or harassment, deprivation of housing, food, clothing, other property or funds, to which the victim is entitled by law, etc.) as a result of which the victim's physical or mental health may have been harmed, as well as failure of the perpetrator to comply with an emergency barring order, if been issued, or failure to notify the authorized units of the National Police of Ukraine about his/her change of place of residence.

Replacing the 2001 Law on Prevention of domestic violence in 2017 the Ukrainian Parliament adopted the Law on Preventing and Combating Domestic Violence.<sup>21,22</sup> The new law declares zero tolerance to domestic violence,

recognizing its social danger, and introduces the emergency barring orders issued by the police and the longer term protection orders issued by courts, to ensure effective protection for victims of domestic violence.

The Law on Preventing and Combating Domestic Violence defines the emergency barring order as a special measure to respond to domestic violence, which is issued against the perpetrator by the authorized units of the National Police of Ukraine where there is an imminent danger to life or health of the victim in order to immediately stop the domestic violence, prevent its continuation or repetition. According to Art. 25(2), the emergency barring order may include the following measures:

- Obligation to leave the victim's residence/place of stay
- Prohibition to enter and stay in the victim's residence/place of stay
- Prohibition of any contacts with the victim

The Law states that the decision to issue an emergency barring order shall be taken based on the consideration that the victim's safety is a priority. This requirement also applies to the joint residence of the victim and the perpetrator, regardless of their property rights for the relevant dwelling.

An emergency barring order shall be issued based on the results of a risk assessment conducted by the specialized units of the National Police at the victim's initiative or at the initiative of the law enforcement officer. Where an imminent danger to life or health of the victim is detected, the law enforcement officer issues an emergency barring order. The emergency barring order can be issued for up to 10 days.

The domestic violence civil court protection orders are longer-term special measures issued by courts for up to 6 months. The Law on Preventing and Combating Domestic Violence defines a protection order as "a temporary measure established by court for restricting the rights of or imposing the obligations on a perpetrator of domestic violence, which is aimed to ensure the victim's

18. Council of Europe, Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence, 2011 <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168008482e>

19. Idem.

20. See CEDAW Gökce and Yildirim v. Austria 2005 <https://opcedaw.files.wordpress.com/2012/01/yildirim-v-austria.pdf>

21. Law of Ukraine «On the Prevention of Violence in the family," <https://zakon.rada.gov.ua/laws/show/2229-19#Text>

22. Law of Ukraine «On Preventing and Combating Domestic Violence," <https://zakon.rada.gov.ua/laws/show/2789-14#Text>

safety." A protection order is issued by the civil court and may include one or several measures for restricting the rights of or imposing obligations on the perpetrator:

- Prohibition to stay in the place of residence/ place of stay shared with the victim;
- Elimination of obstacles in the use of property, which is co-owned by or is the personal private property of the victim;
- Restrictions on communication with the affected child;
- Prohibition to approach at a certain distance to the place of residence/accommodation, education, employment, other places frequently visited by the victim;
- Prohibition to search for the victim, either personally or through any third parties, if the victim upon his/her will is staying in a place that is unknown to the perpetrator, stalk the victim, and contact the victim in any form;
- Prohibition to write or phone the victim, or contact him/her otherwise using any communication means personally and through any third parties.

A protection order can be issued by the court for a period of 1 to 6 months. Upon a request filed by the victim and based on the relevant risk assessment, the court may extend the duration of the protection order for up to 6 months upon expiry of the term established in the initial decision of the court.

The procedure of issuing domestic violence or gender-based violence civil court protection orders is provided in Chapter 13 of the Civil Procedural Code of Ukraine.<sup>23</sup> Specifically, the Civil Procedural Code provides that the civil court protection order's application is not contingent on the initiation of any administrative or criminal proceedings. At the same time, the application can be lodged to the court in which jurisdiction the victim permanently or temporarily resides (Ukr. "постійно чи тимчасово проживати") or stays. The application must also include a description of the circumstances of the case indicating the need for imposing a special measure against the perpetrator to ensure the victim's safety, and of the evidence that prove them, if available. Where the victim is not able to provide any evidence, a petition can be filed with the court to request them.

The civil court should issue the decision on the issuance of the protection order within 72 hours after the receipt of the application. In addition, an important aspect is that the absence of the person concerned (perpetrator), provided that a proper notification of the time and place of the trial was communicated, is not an obstacle for the court to decide on the merits of the case.

The Law on Preventing and Combating Domestic Violence provides in Art. 26 that in cases when criminal proceedings are initiated, which are related to the commission of domestic violence, the list of measures for temporary restriction of rights or imposition of obligations upon the individual suspected, accused of or found guilty for having committed a criminal offence involving domestic violence, and the procedure for imposition of these measures are defined by the Criminal Code of Ukraine and the Criminal Procedure Code of Ukraine. The Criminal Procedural Code of Ukraine specifies in Art. 194, para 6 that, in the interests of the victim of a crime related to domestic violence, the court may apply to a person suspected of committing such a criminal offense, one or more of the following restrictive measures:

- Prohibition to stay in the shared residence (Ukr. "*місці спільного проживання*") with the victim of domestic violence;
- Restriction of communication with the child in the event the domestic violence has been committed against the child or in his/her presence;
- Prohibition of approaching at a specific distance to a place where the victim of domestic violence victim may permanently or temporarily reside (Ukr. "*постійно чи тимчасово проживати*"), temporarily or periodically stay (Ukr. "*тимчасово чи систематично перебувати*") due to his/her work, study, treatment or other reasons;
- Prohibition of correspondence, telephone conversations with the victim of domestic violence, other contacts through any means of communication or electronic communications in person or through third parties;
- Referrals for treatment from alcohol, drugs or other addiction, from diseases that pose a danger to others, referrals to undergo a program for perpetrators.

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23. Civil Procedure Code of Ukraine, <https://zakon.rada.gov.ua/laws/show/1618-15#n9726>

It should be noted that in the above mentioned legislation on domestic violence the legislator is using the term of permanent or temporary place of stay or residence (Ukr: “*постійно чи тимчасово проживати*”) when referring to measures imposed for removal of the perpetrator from the victim’s home or when referring to the prohibition to enter or approach at a specific distance the victim’s home.

Art.2 of the Law of Ukraine #1382-IV “On Freedom of Movement and Free Choice of Residence in Ukraine”<sup>24</sup> (2003) explicitly provides that registration of the place of residence or stay (Ukr. “*місця проживання чи місця перебування*”) of a person or its absence may not be a condition for the exercise of rights and freedoms envisaged by the Constitution, laws or international treaties of Ukraine, or a ground for their restriction. The same law defines in Art. 3 the place of stay (Ukr. “*місця перебування*”) as the administrative unit on the territory of which an individual resides less than six month per year and the place of residence (Ukr. “*місця проживання*”) as the housing located on the territory of the administrative-territorial unit in which the person lives, as well as specialized social institutions, institutions of social services and social protection, military units.

Consequently, the *de jure* registration of the place of stay or place of residence is not included in the definition of these terms and is irrelevant in cases of domestic violence, specifically when tackling the issue of removal of the perpetrator from the shared place of residence when the victim, although residing there, does not have an official registration in the place of stay. The victim should just provide sufficient evidence to prove that she shares home with the perpetrator for more or less than 6 months. The jurisprudence of the Supreme Court of Justice also supports this interpretation in the decision of the Supreme Court of Ukraine of 10 January 2019 in an inheritance case No.484/747/17<sup>25</sup>, clearly stating in the motivation of the decision that “*the absence of registration of the plaintiff's place of residence at the place of residence of the testator cannot be considered as a proof of the fact that he did not live with the testator, as in itself*

*the lack of such registration under Article 2 of the Law of Ukraine “On Freedom of Movement and Free Choice of Residence in Ukraine” is not an absolute confirmation of the circumstances that the heir did not live with the testator at the time of opening the inheritance, if the circumstances established by part three of Article 1268 of the Civil Code of Ukraine are confirmed by other relevant and admissible evidence provided by the plaintiff and assessed by the court.*” Consequently, the de facto permanent or temporary residence of the victim should be considered by courts in cases regarding the issuance of protection orders against a perpetrator of domestic violence.

On 3rd September 2020, the European Court of Human Rights (ECtHR) issued the first ever decision on a domestic violence case against Ukraine, finding a violation of Art.8 of the European Convention on Human Rights (ECHR) – right to respect for private and family life.<sup>26</sup> The applicant (Ms. Levchuk) claimed that the Government of Ukraine did not apply the due diligence principle and failed to protect her and her 4 year-old son against the violence by her ex-husband. In 2016 the applicant filed a lawsuit to evict her ex-husband from the apartment provided by the local authority, invoking the provisions of Art. 116 of the Ukrainian Housing Code, since at the time of the claim the legislation introducing protection orders against the perpetrators of domestic violence was not yet adopted. In 2017, a first instance court decided in favour of the applicant, the Court of Appeal ruled against her, and the Supreme Court of Justice supported the findings of the Court of Appeal. The ECtHR found that the Ukrainian Government failed to provide effective protection from domestic violence to the applicant, who has requested the eviction of her ex-husband due to systematic domestic violence affecting her and her child’s health and well-being. The ECtHR noted that domestic judicial authorities did not conduct a comprehensive analysis of the situation and of the risk of future psychological and physical violence against the applicant and her children. The response of the civil court to the applicant’s eviction claim against her former husband has accordingly not been in compliance with the State’s positive obligation to ensure the applicant’s effective

24. Law of Ukraine «On Freedom of Movement and Free Choice of Residence in Ukraine», 11.12.2005 №1382-IV <https://zakon.rada.gov.ua/laws/show/1382-15#Text>

25. Decision of the Supreme Court of Ukraine from 10 January 2019 for the Case #484/747/17 <http://www.reyestr.court.gov.ua/Review/79161670>

26. Decision no. 17496/19 of the European Court of Human Rights from 3 September 2020, CASE OF LEVCHUK V. UKRAINE, Available at: <https://hudoc.echr.coe.int/eng#/{itemid}:{<001-203931>}>

protection from domestic violence, resulting in a violation of Article 8 of the ECHR. Moreover, in its decision the ECtHR has noted that, in domestic violence cases, perpetrators' rights cannot supersede victims' human rights, in particular, to physical and mental integrity.

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**This landmark decision of the ECtHR against Ukraine proves once again the importance of the due diligence principle of the State in ensuring the protection of domestic violence victims. The use of such effective instruments as protection orders against perpetrators of domestic violence is imperative, since they allow the removal of the perpetrator from the victim's home, immediately ending the violence against the victim and ensuring her protection.**

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At the same time the Supreme Court of Ukraine has delivered several judgements in cases pertaining to the issuance of civil court restraining orders in line with the existing international standards in this field, specifically

explaining in the motivation of the decision that "*Failure to take timely restraining measures against the perpetrator may further harm the health of the victim of domestic violence*" and "*When deciding whether there are grounds for issuing a protection order, courts should establish what forms of domestic violence the applicant was subjected to and assess the risks of future domestic violence in its any manifestation.*"<sup>27</sup> Additionally, another decision of the Supreme Court provided a clear reasoning on the temporary restriction of a perpetrator's property rights: "... *Temporary restriction of the perpetrator's property rights in order to ensure the victims' safety by establishing a domestic violence protection order by the court in the manner prescribed by Law № 2229-VIII, is a legitimate measure of interference with the rights and freedoms of the person. In deciding whether to apply such a measure, the Court, on the basis of the established circumstances of the case and assessment of the risk factors for domestic violence, must assess the proportionality of the person's rights and freedoms, taking into account that these measures are related to the wrongful conduct of such a person.*"<sup>28</sup>

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27. Case № 753/23624/18 of 27.11.2019, <http://www.reyestr.court.gov.ua/Review/86173759>

28. Case № 754/11171/19 of 28.04.2020, <http://www.reyestr.court.gov.ua/Review/89034240>

# **4. COUNTRY-WIDE ANALYSIS OF CIVIL COURT DECISIONS ON THE ISSUANCE OF PROTECTION ORDERS AGAINST THE PERPETRA- TORS OF DOMESTIC VIOLENCE**

The assessment of number and type of civil court decisions on protection orders against the perpetrators of domestic violence, which were issued by different levels of courts throughout Ukraine between January 2018 and July 2020, was conducted using the Unified State Register of Court Decisions in Ukraine, which stores the electronic copies of court decisions and allows an aggregated search using diverse criteria (e.g. legal issue, court jurisdiction, level of court).

The civil court system in Ukraine is composed of local courts, appeal courts and the Supreme Court.<sup>29</sup> Accordingly, local courts operating in cities and districts are first level courts. They have a general competence and are authorized to examine civil, criminal, and administrative cases, as well as administrative offences in cases specified by the procedural law. The courts of appeal operate in districts as appeal instances, and in cases specifically defined by the procedural law – as courts of the first instance, examining or reviewing civil, criminal, economic and administrative cases, as well as cases on administrative offences. The Supreme Court is the court of the highest level in the Ukrainian court system, which operates as a court of cassation, and in cases determined by the procedural law – as a court of first or appeal instance.

The Civil Procedure Code of Ukraine enshrines the following classification of court judgements: rulings, decisions and resolutions.<sup>30</sup>

**Rulings** are written or oral court decisions which resolve issues related to the procedural matters pertaining to the case, such as the ones related to transferring the case to another court of first instance, petitions and submissions of the parties to the case, postponement of proceedings, announcement of breaks, suspension or closure of proceedings and leaving the application without consideration.

**Decisions of courts** are final judgements adopted by courts of first instance based on the results of consideration of the case on the merits.

**Resolutions** are court decisions, which summarize the review of court decisions in appellate and cassation courts.

Between January 2018 and July 2020 the civil courts of Ukraine delivered a total of 3076 judgements on the issuance of protection orders against perpetrators of domestic violence, of which 2714 decisions were delivered by local first instance courts, 314 – by Courts of Appeal and 48 – by the Supreme Court. At the same time, the Unified State Register of Court Decisions contains information on 3076 court decisions of different types, including 1385 court rulings, 1391 court decisions, and 300 court resolutions.

29. Law on the Judiciary and Status of Judges of 02.06.2016 No 1402- VIII, <https://zakon.rada.gov.ua/laws/show/1402-19#n83>

30. Civil Procedure Code, <https://zakon.rada.gov.ua/laws/show/1618-15#n7951>

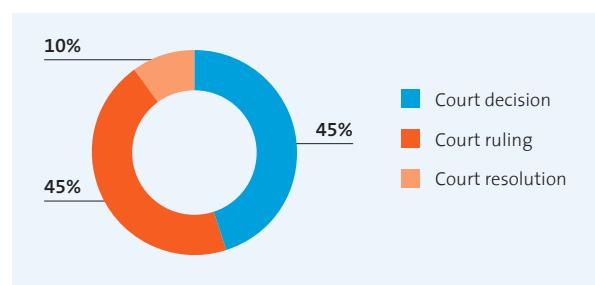
The analysis of the outcomes of the examinations of claims on the issuance of civil court protection orders against the perpetrators of domestic violence shows that in 62.12% of decisions the claims were granted in full or in part (36.8% of them granted in full and 27.4% granted in part), and 35.69% claims were rejected.

It should be noted that the court may leave the application without consideration under the certain circumstances, namely:

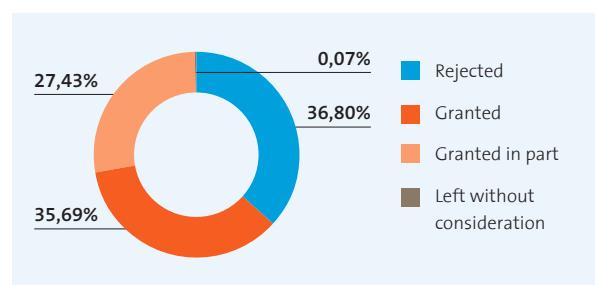
- The applicant has dropped his/her application;
- The applicant has failed to comply with the requirements to the form and content of the application and has not eliminated deficiencies in the prescribed time;
- The applicant submitted the application after the expiration of the procedural deadline and did not file a motion for its extension and did not provide evidence on the validity of the reasons for missing such terms, etc.

The results of the analysis indicate that out of 1304 decisions delivered by the first instance courts, 664 decisions were delivered in 2019, compared to only 276 decisions delivered in 2018 and 364 – in the first 6 months of 2020.

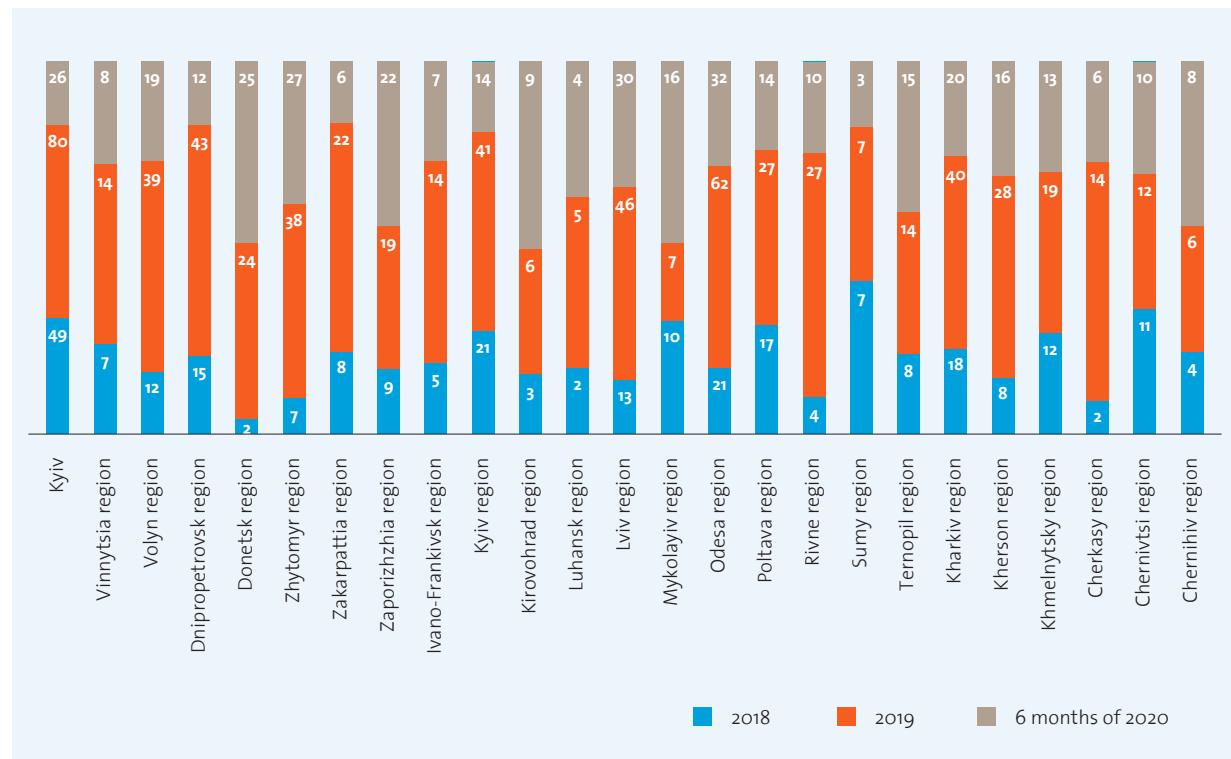
**FIGURE 1**  
**Distribution by type of judgement**

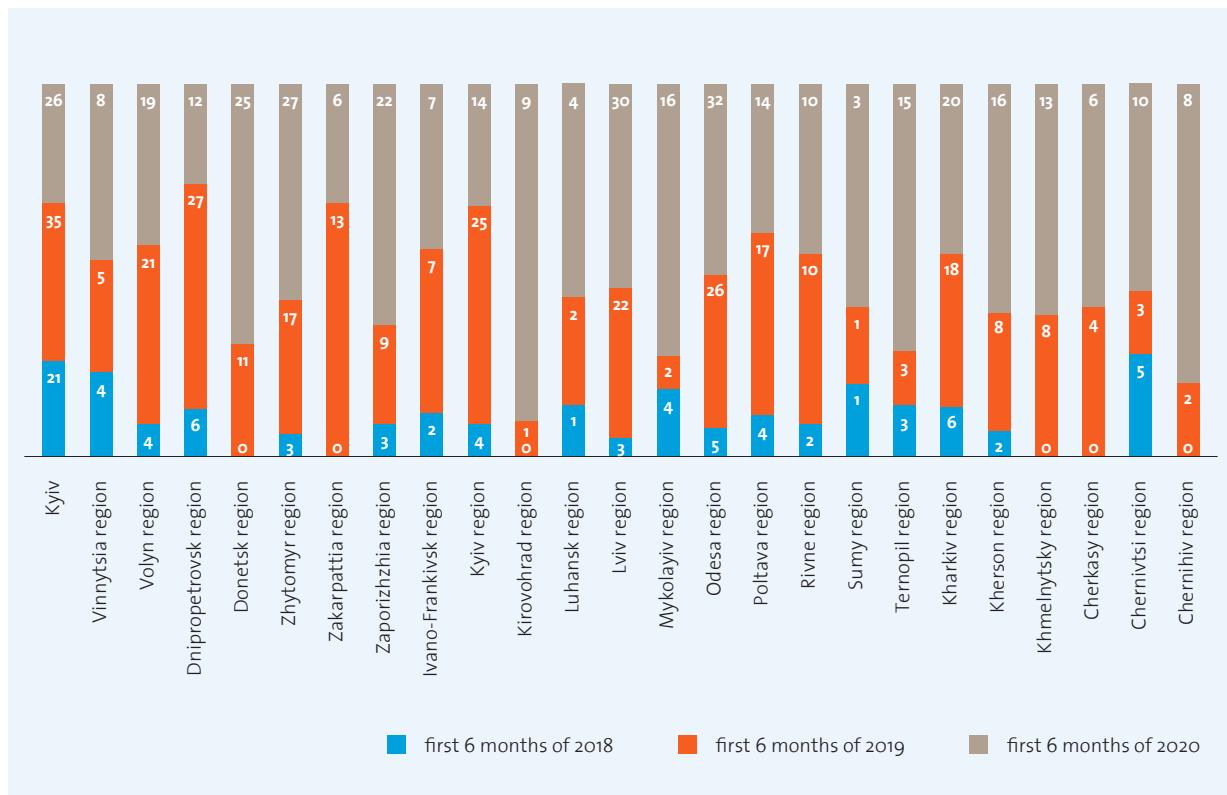


**FIGURE 2**  
**Distribution of court judgements by outcome**



**FIGURE 3**  
**Distribution of court judgements per years (2018, 2019 and first 6 months of 2020)**



**FIGURE 4****Distribution of judgements by first 6 months of 2018, 2019 and 2020**

From the analysis of civil court decisions delivered in the first 6 months of all three years analysed, we can conclude that there is an increasing tendency in the number of decisions on the issuance of protection orders issued by the first instance courts in the first six months of 2020.

This increase in the number of decisions issued by first instance courts in the first 6 months of 2020 may be caused by several factors, such as raised awareness of victims of domestic violence about the existence of civil court protection orders against perpetrators<sup>31</sup>, increase in domestic violence cases due to confinement measures introduced to respond to the COVID-19 pandemic<sup>32</sup>, and as a result of capacity building of justice sector

actors on the international and national standards in gender-based violence cases.

The analysis by geographical regions of court decisions issued between January 2018 and July 2020 reveals that the lowest number of decisions delivered per 100,000 population is in Luhansk region with only 11 decisions (0.52 decisions issued per 100,000 people) and Donetsk region with 51 decisions (1.24 decisions issued per 100,000 people). It is important to mention that both are Eastern regions most affected by conflict in Ukraine. On the other end, Kyiv, Zhytomyr and Kherson have the highest number of decisions issued per 100,000 population.

31. UN Women in the framework of the United Nations Recovery and Peacebuilding Program has been raising awareness of domestic violence victims and women at risk during the 2020 pandemic.

32. According to the data received from the Social Protection Departments of Donetsk and Luhansk regions 1069 domestic violence cases were registered in the 1st Quarter 2020 compared to 748 cases registered in the 1st Quarter of 2019 in Luhansk region; in Donetsk region 1970 cases were registered in the 1st Quarter of 2020 compared to the 1st Quarter of 2019 when 1196 cases were registered.

**TABLE 1**  
**Number of decisions issued per region, January 2018-July 2020**

Territorial unit	Number of permanent population as of 1 June 2020 <sup>33</sup>	Number of decisions issued, January 2018-July 2020	Number of decisions per 100,000 population
Kyiv	2 923 706	155	5,30
Vinnytsia region	1 532 223	29	1,89
Volyn region	1 027 429	70	6,81
Dnipropetrovsk region	3 160 721	70	2,21
Donetsk region	4 107 213	51	1,24
Zhytomyr region	1 204 421	72	5,98
Zakarpattia region	1 249 860	36	2,88
Zaporizhzhia region	1 679 100	50	2,98
Ivano-Frankivsk region	1 362 640	26	1,91
Kyiv region	1 776 112	76	4,28
Kirovohrad region	921 827	18	1,95
Luhansk region	2 126 191	11	0,52
Lviv region	2 488 363	89	3,58
Mykolayiv region	1 114 942	33	2,96
Odesa region	2 362 698	115	4,87
Poltava region	1 373 527	58	4,22
Rivne region	1 150 206	41	3,56
Sumy region	1 060 823	17	1,60
Ternopil region	1 032 630	37	3,58
Kharkiv region	2 633 865	78	2,96
Kherson region	1 022 424	52	5,09
Khmelnitsky region	1 247 634	44	3,53
Cherkasy region	1 183 219	22	1,86
Chernivtsi region	896 690	33	3,68
Chernihiv region	977 657	18	1,84

33. According to the State Statistics Service of Ukraine, <http://www.ukrstat.gov.ua>.

# 5. ANALYSIS OF CIVIL COURT DECISIONS ON THE ISSUANCE OF PROTECTION ORDERS AGAINST THE PERPETRATORS OF DOMESTIC VIOLENCE IN DONETSK REGION

## **1. Quantitative overview of decisions**

Between January 2018 and July 2020 first instance civil courts in Donetsk region delivered only 51 decisions in cases on the issuance of protection orders against the perpetrators of domestic violence. Of all decisions 49% were delivered in the first 6 months of 2020, compared to 47% delivered during the whole 2019.

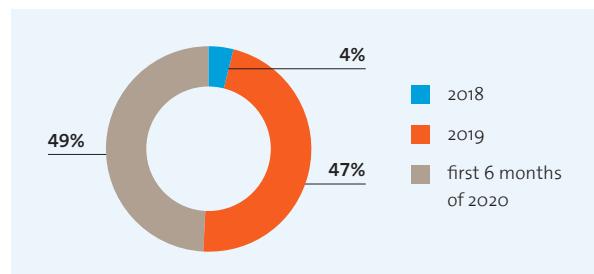
This increase in the number of claims requesting a domestic violence protection order might be because of the escalation of domestic violence cases due to COVID-19 pandemic stay-at-home policies<sup>34</sup> in spring 2020, but also due to increased awareness of the population of available protection measures for victims and capacity building efforts of justice sector actors on gender-based violence legislation conducted in the last years.<sup>35,36</sup>

## **2. The outcome of the claim (Positive outcome rate)**

Out of 51 decisions made in the cases on the issuance of protection orders against the perpetrators of domestic violence in Donetsk region 78% claims were granted in full (31%) or in part (47%).

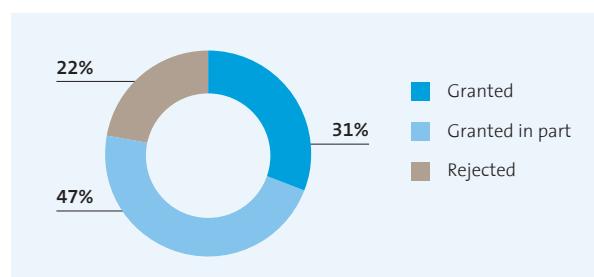
**FIGURE 5**

**Distribution of decisions adopted by first instance courts in Donetsk region, by years (2018, 2019 and first 6 months of 2020)**



**FIGURE 6**

**Distribution of decisions by the outcome of the claim**



34. According to the data from the Department of Social Protection of the Donetsk RSA, 1970 cases were registered in the 1st Quarter of 2020, compared to the 1st Quarter of 2019 when 1196 cases were registered.

35. Trainings for judges on gender-based violence, <http://nsj.gov.ua/ua/news/standartizovani-vimogi-do-pidgotovki-ta-provedennya-seminariy-praktikumiv/>

36. Trainings for police officers from Donetsk and Luhansk oblast on gender-based violence legislation, which were conducted by UN Women in 2019, <https://dduvs.in.ua/2019/10/18/gendernij-rivnosti-butu-u-dduvs-pravoohorontsi-vchat-protidiyatyy-genderno-zumovenomu-i-domashnomu-nasylstvu/>

From the total of 51 court decisions made in the cases on the issuance of protection orders against the perpetrators of domestic violence in Donetsk region, 11 claims were rejected. In 5 of these cases the claims were rejected based on the fact that the courts did not find evidence of domestic violence, recognizing instead the existence of an argument between the child's parents regarding the child's rearing, including alimony obligations.<sup>37,38,39,40</sup>

On the remaining 6 rejected claims the judges grounded their decision on the fact that insufficient evidence was provided supporting the need to protect the applicant from the alleged perpetrator. For example, in some of the cases, even though the victim presented a proof of the previously issued emergency barring order against the respondent or an administrative protocol on the commission of domestic violence, which was drawn up in respect of the respondent based on Art. 173-2 of the Administrative Offences Code of Ukraine, the court still found these evidence insufficient for issuing a longer-term protection order against the perpetrator. The courts therefore do not interpret in some cases the evidence of previous domestic violence instances as a risk of recurrence of violence.

Also, the practice shows that judges do not grant restraining orders against the perpetrators of domestic violence based on the sole statement of the victim, although **Article 350-4 of the Civil Procedure Code of Ukraine stipulates that, in his/her application to the court the applicant should specify “the circumstances that indicate the necessity for the issuance of a restraining order by the court, and the evidence that confirm them (if available)”**. However, the same article provides that **“where it is impossible to provide the evidence, the application to the court may be supplemented by a petition to request such evidence.”**

According to Article 76 of the Civil Procedure Code of Ukraine, **“Evidence is any data, on the basis of which the court establishes the presence or absence of the**

*circumstances (facts) substantiating the claims and objections of the parties and other circumstances relevant to the case.*

*2. These data are established by the following means:*

- 1) written, material and electronic evidence;*
- 2) expert opinions;*
- 3) witness testimonies.”<sup>41</sup>*

Nevertheless, Bulgaria, for example, is considered the country with the best European practice in protecting victims of domestic violence. The Bulgarian legislation allows for several documents to be submitted as evidence to the court, including reports by doctors or social services, but it also explicitly specifies that even if there is no such evidence, the court shall issue a protection order based solely on the victim's statement.<sup>42</sup> This legal logic is based on the fact that gender-based violence against women, including domestic violence, constitutes discrimination against women,<sup>43</sup> and in cases of discrimination the burden of proof is transferred from the claimant to the respondent, considering that in discrimination cases, similarly to domestic violence cases, the claimant very often does not have the opportunity to collect evidence. For example, in labor discrimination cases very often the employees of the same organization will not testify against their employer in a discrimination case because of fear of job loss. Similarly, in a domestic violence case involving controlling behavior of the perpetrator the victim is often not able to collect the evidence, fearing, for example, of the retaliation from the perpetrator if he finds the evidence or simply because the perpetrator might have destroyed the evidence itself. In such cases the burden of proof is therefore lies on the respondent, who must prove that a discrimination case did not take place.

The analysis of the evidentiary base in the court decisions on the issuance of a protection order against the perpetrator in Donetsk region identified that in 40% of the cases victims reported in their statements that they have contacted the police.

37. <http://www.reyestr.court.gov.ua/Review/78182823>

38. <http://www.reyestr.court.gov.ua/Review/89770738>

39. <http://www.reyestr.court.gov.ua/Review/87403078>

40. <http://www.reyestr.court.gov.ua/Review/87918765>

41. Civil Procedure Code of Ukraine, <https://zakon.rada.gov.ua/laws/show/1618-15#n6584>

42. Council of Europe, Emergency Barring Orders in situations of domestic violence: article 52 of the Istanbul Convention”, 2017.

43. Council of Europe, Convention on Preventing and Combating Violence against Women and Domestic Violence, preamble: “Recognizing that violence against women is a manifestation of historically unequal power relations between women and men, which have led to domination over, and discrimination against, women by men and to the prevention of the full advancement of women.”

The analyzed cases demonstrate that in granting the protection order courts usually take into account the following evidence:

- Copies of court decisions on bringing the perpetrator to justice for committing domestic violence – in 37% of cases.
- Copies of reports to the police – in 28% of cases.
- Copies of excerpts from the Unified Register of Pre-Trial Investigations on entering information on the fact of criminal offence against the applicant – in 28% of cases.<sup>44</sup>
- Emergency barring orders that were previously issued by the bodies of the National Police of Ukraine – in 22% of cases.
- Copies of medical documents – in 20% of cases.
- Copies of the previously compiled protocols on the commission of an administrative offence, as defined in Article 173-2 of the Code of Ukraine on Administrative Offences – in 15% of cases.<sup>45</sup>
- Explanation of witnesses – 9% of cases.
- Previously issued civil court protection orders – in 9% of cases.

In addition, in some cases courts considered evidence, such as photo and video evidence, printout of messages received from the perpetrator, reports of social services and services for the provision of assistance to victims of violence, perpetrator's and victim's profiles issued by different entities (place of residence, employment, district police officer, etc.).

### 3. Status of the applicant

The analysis of civil court decisions on the issuance of protection orders against the perpetrators of domestic violence, which were delivered in Donetsk region,

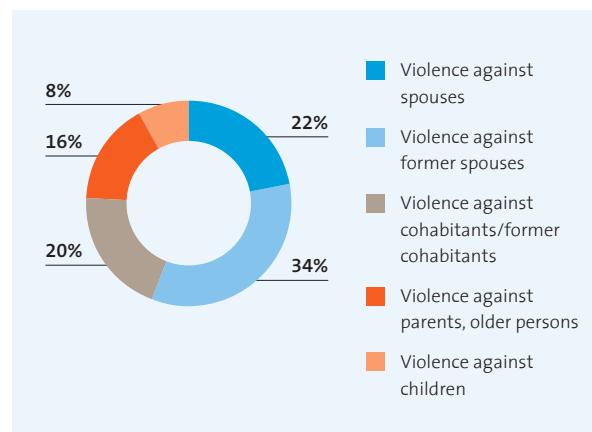
reveals that the majority of claims (76%) were submitted by intimate partners, with 22% of claims submitted by current partners.

The analysis of civil court decisions on the issuance of protection orders against the perpetrators of domestic violence reveals that most applicants were women (95%) and the perpetrators were predominantly men (95%).

It is important to mention that, while in many of the analyzed cases children witnessed domestic violence, and according to the national legislation child witnesses of domestic violence shall be deemed victims of violence, the courts did not specify child witnesses as victims of domestic violence.<sup>46</sup>

**FIGURE 7**

### Relationship between the victims, who applied for civil court protection orders, and the perpetrators of domestic violence



### 4. Type of violence

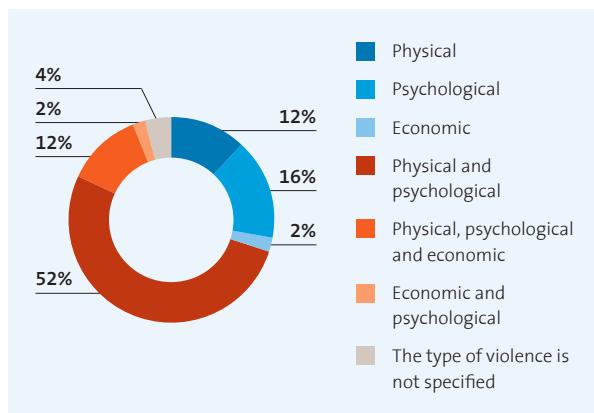
In most of the studied cases (52%), both physical and psychological violence were specified as grounds for the issuance of a protection order, while in 16% of cases only physical violence and in 12% – only psychological violence were specified.

44. The Unified Register of Pre-Trial Investigations (URPTI) – automated system of electronic database, according to which the collection, storage, protection, accounting, search, generalization of data on criminal offences and the course of pre-trial investigation in criminal proceedings is carried out. The URPTI was launched simultaneously with the entry into force of the Criminal Procedure Code (CPC) on 20 November 2012. A pre-trial investigation begins at the moment when the information has been entered into the Unified Register of Pre-Trial Investigations.

45. The Code of Ukraine on Admictative Offences, Article 173-2. Committing domestic violence, gender-based violence, failure to comply with an emergency barring order or failure to report their place of temporary residence, <https://zakon.rada.gov.ua/laws/show/80731-10#Text>

46. Law of Ukraine "On Preventions and Combating Domestic Violence", <https://zakon.rada.gov.ua/laws/show/2229-19#Text>

**FIGURE 8**  
**Types of violence**

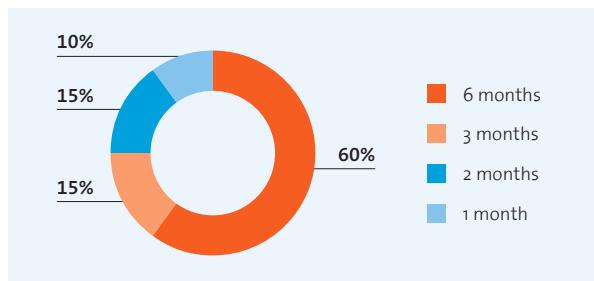


## 5. Duration of the protection order granted

According to Article 26 of the Law On Preventing and Combating of Domestic Violence, protection orders are issued by courts for a period from one to six months.

The analysis of court decisions revealed that in most cases (60%) courts of first instance in Donetsk region grant protection orders for the maximum permissible period, specifically for 6 months. At the same time, 10% of restraining orders against a perpetrator were granted for the minimum period of 1 month.

**FIGURE 9**  
**Distribution of court decisions by the period granted for the protection order**



In 5 cases where claims were granted in part the court reduced the duration of the protection orders requested by the victims from 6 to 3 months<sup>47</sup>, in another 5 cases the duration of the restraining orders was reduced to 2 months<sup>48</sup> and in 2 cases – to 1 month<sup>49</sup>. Only in one case the court increased the duration of the requested protection order against a perpetrator.<sup>50</sup>

## 6. Granted protection measures

Article 26 of the Law on Preventing and Combating Domestic Violence states that the protection order determines one or more of the following measures to temporarily restrict the rights of or impose the specific responsibilities on the perpetrator, such as:

- 1) Prohibition to stay in the place of residence/place of stay shared with the victim;
- 2) Elimination of obstacles in the use of property, which is co-owned by or is the personal private property of the victim;
- 3) Restrictions on communication with the affected child;
- 4) Prohibition to approach at a certain distance to the residence/place of stay, education, employment, other places frequently visited by the victim;
- 5) Prohibition to search for the victim, either personally or through any third parties, if the victim upon his/her will is staying in a place that is unknown to the perpetrator, stalk the victim, and contact the victim in any form;
- 6) Prohibition to write or phone the victim, or contact him/her otherwise using any communication means personally and through any third parties.

47. <http://www.reyestr.court.gov.ua/Review/87840414>, <http://www.reyestr.court.gov.ua/Review/90621963>, <http://www.reyestr.court.gov.ua/Review/87095335>, <http://www.reyestr.court.gov.ua/Review/83155526>, <http://www.reyestr.court.gov.ua/Review/84858107>

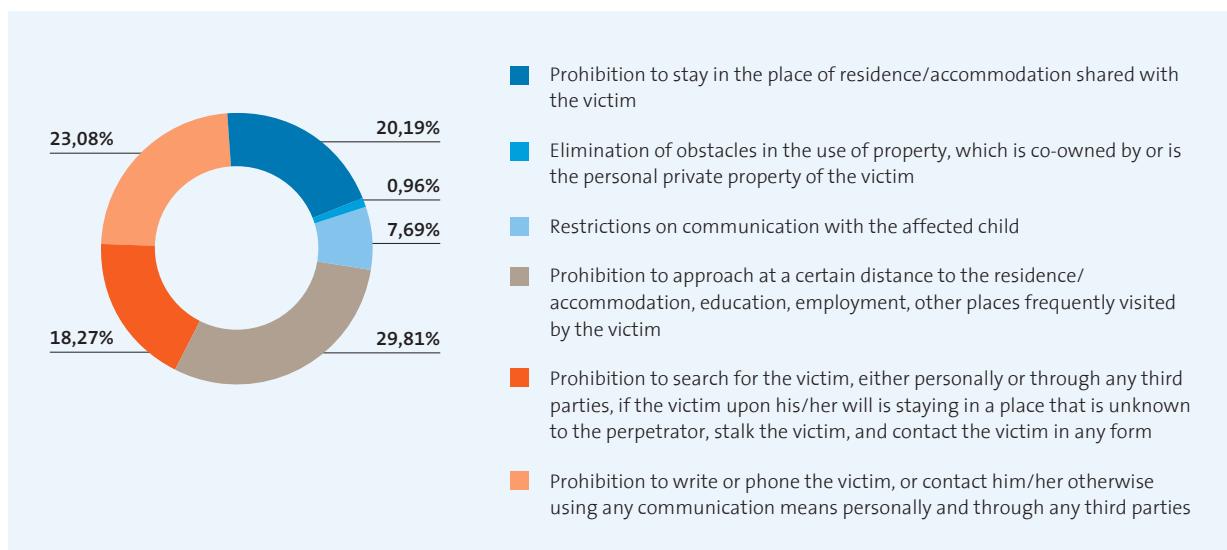
48. <http://www.reyestr.court.gov.ua/Review/79116371>, <http://www.reyestr.court.gov.ua/Review/82431465>, <http://www.reyestr.court.gov.ua/Review/86844227>, <http://www.reyestr.court.gov.ua/Review/88032493>, <http://www.reyestr.court.gov.ua/Review/89195429>

49. <http://www.reyestr.court.gov.ua/Review/81973075>, <http://www.reyestr.court.gov.ua/Review/89684287>

50. <http://www.reyestr.court.gov.ua/Review/82778165>

**FIGURE 10**

**Distribution of protection measures imposed on the perpetrators**



**1** **Prohibition to stay in the place of residence/place of stay shared with the victim** applied in 21 decisions out of 24 claims requesting this measure. In 87% of the total number of claims with a request to remove the perpetrator from the victim's home the courts granted this measure. **In 2 cases the court only limited the stay of the perpetrator in the victim's place of residence to specific rooms of the apartment – measure which does not ensure the actual safety of the victim, exposing the victim to continuous risks of violence.**

**2** **Elimination of obstacles in the use of property, which is co-owned by or is the personal private property of the victim.** This measure was requested in 3 claims and only in one case the court granted this measure.

**3** **Restrictions on communication with the affected child.** This measure was requested in 10 claims and the courts granted it in 8 cases. In all 8 cases the claim was made by the child's mother against the child's father.

**4** **Prohibition to approach at a certain distance to the place of residence/place of stay, education, employment, other places frequently visited by the victim.** This measure was granted in 31 claims out of 36 requesting it. This measure is requested in most claims lodged in Donetsk region and in the majority of cases (86%) the judges grant this measure.

**5** **Prohibition to search for the victim, either personally or through any third parties, if the victim upon his/her will is staying in a place that is unknown to the perpetrator, stalk the victim, and contact the victim in any form.** This measure was granted in 19 out of 26 filed claims requesting this measure.

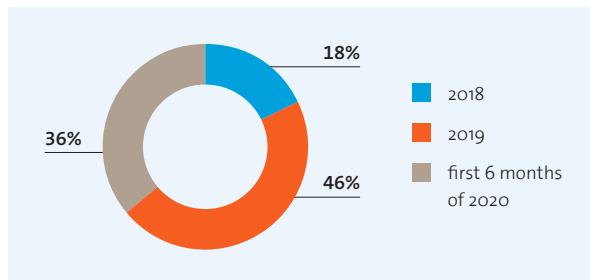
**6** **Prohibition to write or phone the victim, or contact him/her otherwise using any communication means personally and through any third parties.** This measure was applied in 24 cases out of 30 claims with no specific clarifications on the means that may not be used by the perpetrator to communicate with the victim.

# **6. ANALYSIS OF CIVIL COURT DECISIONS ON THE ISSUANCE OF PROTECTION ORDERS AGAINST THE PERPETRATORS OF DOMESTIC VIOLENCE IN LUHANSK REGION**

## **1. Quantitative overview of decisions**

During January 2018 to July 2020 the first instance civil courts of Luhansk region delivered only 11 decisions on claims requesting the issuance of protection orders against the perpetrators of domestic violence. Of all decisions 46% were issued in the whole year of 2019 and 36% in the first 6 months of 2020, suggesting a positive trend in claims lodged in 2020 compared to previous years.

**FIGURE 11**  
**Distribution of decisions adopted by first instance courts in Luhansk region**



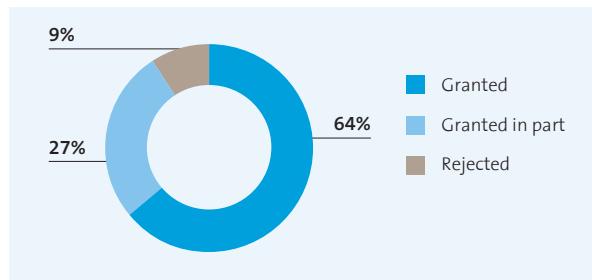
## **2. The outcome of the claim (Positive outcome rate)**

From the total of 11 decisions on the issuance of protection orders against the perpetrators of domestic violence 91% were granted in full (64%) or in part (27%).

In the only rejected claim out of 11 those lodged in Luhansk region the case concerned a dispute between a daughter and a mother over the use of the house. The applicant asked the court to provide the keys to the house that she owns for repairs and home improvement. The evidence in the case were documents of ownership, a

certificate of family composition and registration of residents in the house, an urgent protection order. In assessing the evidence, the court indicated that the applicant's mother was registered and lived in the disputed house, there was no evidence that the applicant had applied to the court to evict her mother, and that the fact of domestic violence had not been proven by the applicant.

**FIGURE 12**  
**Distribution of decisions by the outcome of the claim**



The analysis of the evidence provided in the analyzed decisions on the issuance of protection orders against the perpetrators in Luhansk region, 54% of the victims indicated in their claims that they had reported violence to the police.

In making a decision whether to grant the application for the issuance of a protection order against a perpetrator in full or in part, the courts took into account the following evidence:

- Copies of reports to the police – in 54% of cases.
- Copies of excerpts from the Unified Register of Pre-Trial Investigations on entering information on the fact of criminal offence against the applicant – in 54% of cases<sup>51</sup>.
- Emergency barring orders that were previously issued by the bodies of the National Police of Ukraine – in 36% of cases.
- Copies of court decisions on bringing the perpetrator to justice for committing domestic violence – in 27% of cases.
- Opinions of the social services and services providing assistance to victims of violence – in 9% of cases.
- Copies of medical documents – in 10% of cases.
- Reports by psychologists – in 9% of cases.
- Verdicts of courts on bringing the perpetrator to criminal liability for inflicting bodily injury, committing domestic violence, etc. – in 9% of cases.<sup>52</sup>

In addition, in some cases such evidence as printouts of messages received from the perpetrator or previously issued civil court protection orders were used.

### 3. Status of the applicant

The analysis of civil court decisions on the issuance of protection orders against the perpetrators in Luhansk region reveals that all 11 claims were lodged by women (100%) and in 82% of the cases the perpetrators were men while in 12% of cases perpetrators were women.

In 50% of cases the claims were lodged against husbands (25%) or ex-husbands (25%), another 25% of claims were lodged against current or former co-habitants.

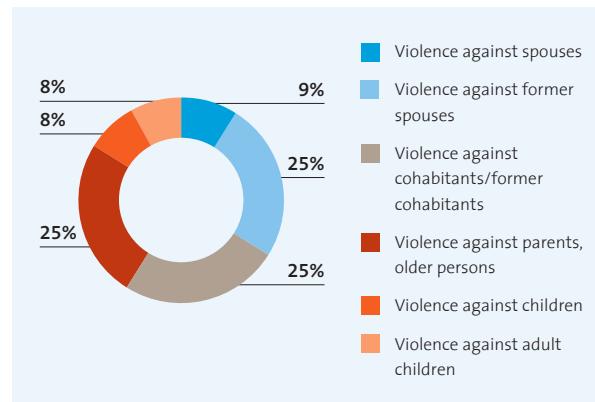
### 4. Type of violence

In 55% of claims the grounds that were specified by the applicant for the issuance of the restraining order were both physical and psychological violence, in 36% – only

psychological violence, while only in 9% of cases victims indicated both psychological and economic violence.

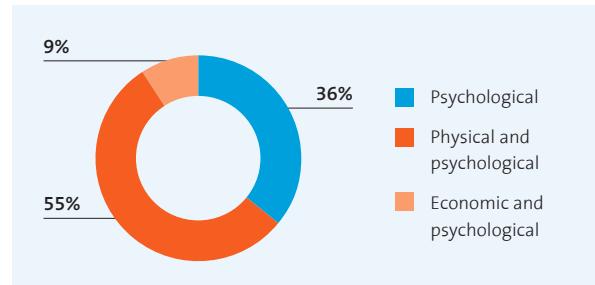
**FIGURE 13**

### Relationship between the victims, who applied for civil court protection orders, and the perpetrators of domestic violence



**FIGURE 14**

### Types of violence



### 5. Duration of the protection order granted

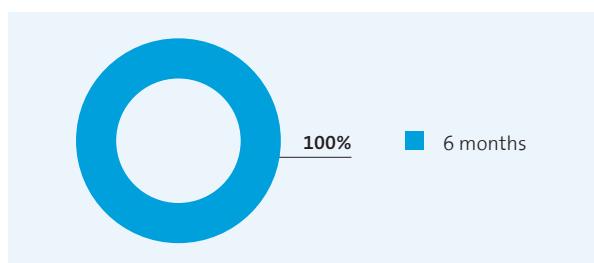
According to Article 26 of the Law on Preventing and Combating Domestic Violence, protection orders are issued by courts for a period from one to six months.

All court decisions on the issuance of protection orders against the perpetrators of domestic violence in Luhansk region were granted for the maximum period of 6 months.

51. The Unified Register of Pre-Trial Investigations (URPTI) – automated system of electronic database, according to which the collection, storage, protection, accounting, search, generalization of data on criminal offences and the course of pre-trial investigation in criminal proceedings is carried out. The URPTI was launched simultaneously with the entry into force of the Criminal Procedure Code (CPC) on 20 November 2012. A pre-trial investigation begins at the moment when the information has been entered into the Unified Register of Pre-Trial Investigations.

52. The commission of systematic and deliberate domestic violence is subject to criminal liability under Article 126-1 of the Criminal Code of Ukraine, <https://zakon.rada.gov.ua/laws/show/2341-14#Text>

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**FIGURE 15****Distribution of court decisions by the period granted for the protection order****6. Granted protection measures**

Article 26 of the Law of Ukraine on Preventing and Combating Domestic Violence states that the protection order determines one or more of the following measures to temporarily restrict the rights of or impose the specific responsibilities on the perpetrator, such as:

- 1) Prohibition to stay in the place of residence/place of stay shared with the victim;
- 2) Elimination of obstacles in the use of property, which is co-owned by or is the personal private property of the victim;
- 3) Restrictions on communication with the affected child;
- 4) Prohibition to approach at a certain distance to the residence/place of stay, education, employment, other places frequently visited by the victim;
- 5) Prohibition to search for the victim, either personally or through any third parties, if the victim upon his/her will is staying in a place that is unknown to the perpetrator, stalk the victim, and contact the victim in any form;
- 6) Prohibition to write or phone the victim, or contact him/her otherwise using any communication means personally and through any third parties.

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**FIGURE 16****Distribution of protection measures imposed on the perpetrator**

The protection measures that were imposed by civil court decisions in Luhansk region are the following:

**1** **Prohibition to stay in the place of residence/place of stay shared with the victim.** This measure was granted in 6 out of 6 claims requesting the removal of the perpetrator from the victim's home.

**2** **Elimination of obstacles in the use of property, which is co-owned by or is the personal private property of the victim.** This measure was requested in one claim, but was rejected.

**3** **Prohibition to approach at a certain distance to the place of residence/place of stay, education, employment, other places frequently visited by the victim.** This measure was granted in 8 court decisions out of 8 claims requesting to prohibit the perpetrator to approach at a certain distance to the place of residence/accommodation of the victim or other places frequently visited by the victim.

**4** **Prohibition to search for the victim, either personally or through any third parties, if the victim upon his/her will is staying in a place that is unknown to the perpetrator, stalk the victim, and contact the victim in any form.** This measure was applied in 7 decisions out of 7 claims requesting this measure.

**5** **Prohibition to write or phone the victim, or contact him/her otherwise using any communication means personally and through any third parties.** This measure was granted in 8 decisions out of 8 claims requesting the prohibition to contact the victim.

## **7. CONCLUSIONS**

The results findings of the “Assessment of civil court decisions on the issuingance of protection orders against the perpetrators of domestic violence perpetrators” are indicating that currently in Ukraine there is no uniform application of the national and international standards pertaining to the civil court protection orders system.

The findings of the assessment lead to the following conclusions:

**1** The number of issued civil court protection orders against the perpetrators is still very low, compared to the magnitude of domestic violence in Ukraine. Particularly, Donetsk and Luhansk regions have the lowest number of civil court decisions on protection orders issued during the assessment period (Donetsk region – 51, Luhansk region – 11). At the same time, the number of claims is progressively increasing since the introduction of protection orders in the Ukrainian legal framework on gender-based violence.

**2** A good trend has been observed with regard to the positive outcome rate for the claims requesting the issuance of protection orders against the perpetrators of domestic violence, with 62.12 % of them granted in full or in part.

**3** The assessment of civil court decisions on the issuance of protection orders against the perpetrators of domestic violence in Donetsk and Luhansk regions reveals that most applicants, who applied to the court for the issuance of protection orders, were women (95% in Donetsk region and 100% in Luhansk region), while the perpetrators were predominantly men (95% in Donetsk region and 82% in Luhansk region).

**4** In 56% of analyzed cases for Donetsk region and 52% – for Luhansk region, the claims for granting a civil court protection order were lodged by a current or a former spouse.

**5** While in many of the analyzed cases children witnessed domestic violence, and according to the national legislation child witnesses of domestic violence shall be deemed victims of violence, the courts did not specify child witnesses as victims of domestic violence.

**6** In most of the studied cases (52% for Donetsk region and 55% for Luhansk region), both physical and psychological violence were specified as grounds for the issuance of a protection order against the perpetrator of domestic violence.

**7** In cases on the issuance of protection orders against the perpetrators a high burden of proof lies on claimants (victims of domestic violence). Article 3504 of the Civil Procedure Code of Ukraine stipulates that, in his/her application to the court the applicant should specify “*the circumstances that indicate the necessity for the issuance of a restraining order by the court, and the evidence that confirm them (if available)*”. At the same time, the same article provides that “*where it is impossible to provide the evidence, the application to the court may be supplemented by a petition to request such evidence.*” Nevertheless, the assessment shows that judges do not grant domestic violence protection orders based on the sole statement of the victim. And in some instances even when the victim presented a proof of previously issued emergency barring order against the respondent or an administrative protocol on the commission of domestic violence, which was drawn up in respect of the respondent based on Art. 173-2 of the Administrative Offences Code of Ukraine, the court still found these evidence insufficient for issuing a longer-term civil court protection order against the perpetrator. The courts therefore do not interpret in some cases the evidence of previous domestic violence instances as a risk of recurrence of violence.

Although, the Civil Procedure Code provides that the application of a protection order by the court is not contingent on the initiation of any administrative or criminal proceedings the courts rely heavily on evidence that prove the presence of other proceedings or criminal investigations against the perpetrator.

**8** The analysis of court decisions revealed that in most cases (60% for Donetsk region and 100% for Luhansk region) courts grant protection orders against the perpetrators for the maximum period, specifically for 6 months.

**9** Most often, where courts issue domestic violence protection orders, they impose measures for prohibiting the perpetrator to approach the victim, to contact the victim via any available forms of communication or removal of the perpetrator from the victim's residence. At the same time, in two of the analyzed cases the court only limited the stay of the perpetrator in the victim's place of residence to specific rooms of the apartment – a measure which does not ensure the actual safety of the victim, exposing the victim to continuous risks of violence.

**10** Some of the civil court decisions on the issuance of protection orders published in the State Register of Court Decisions, contain information and personal data that allow the identification of the victim, in particular, by specifying the victim's home address, the name of the educational institution attended by the victim, victim's personal phone number or the addresses of women shelters.

## **8. RECOMMENDATIONS**

The implementation of the following recommendations for the justice sector actors that are involved in handling domestic violence cases is essential for ensuring strong and effective protection for victims of domestic violence:

**1 Legally empower victims of domestic violence.** To increase the number of civil court protection orders against the perpetrators of domestic violence, there is a need to legally empower victims of domestic violence and inform them about their right to apply to the court for issuing domestic violence protection order. In addition, the police officers must inform the victim about the possibility to request a domestic violence protection order against the perpetrator from the court, especially during the validity of the emergency barring order issued by the police, which would provide sufficient time for the victim to secure her safety for a longer period. Police officers must also inform victims about the availability of free legal aid for victims of domestic violence and other targeted services, to ensure that the victim is assisted to effectively navigate the justice system.

**2 Provide ongoing capacity development for judges.** Judges should have available on-going training to maintain and update their knowledge about the issuance of protection orders and a broad range of information in order to provide appropriate assistance.<sup>53</sup> A special focus should be on lightening the burden of proof that lies on victims of domestic violence and recognizing children, who witnessed domestic violence, as such.<sup>54</sup>

**3 Provide guidance to judges on adjudicating cases on the issuance of protection orders against the perpetrators of domestic violence.** Based on the evaluation of the case law on domestic violence civil court protection orders the specialized judicial bodies should develop guidelines for judges for ensuring uniform application of the relevant legislation in conformity with national and international standards.

**4 Ensure coordination of practitioners responsible for the protection of victims of domestic violence.** Practitioners working on prevention and combating gender-based violence need to be linked to each other so that the system as a whole is effective.<sup>55</sup> Standardized policies should guide the enforcement of protection orders, so that interventions and their implementation are consistent and predictable.

**5 Introduce a mandatory risk assessment tool for courts to be used in examining domestic violence cases.** Victims' safety requires an ongoing evaluation of risk, detention, outreach and support measures, and consistent enforcement of protection orders.<sup>56</sup> For this reason, there is a need to develop a mandatory risk assessment tool to be used by the courts when deciding on claims pertaining to issuance of civil court protection orders.

**6 Ensure personal data protection for victims of domestic violence.**

53. Battered Women Justice Program, Engaging in a Best Practice Assessment of the Civil Protection Order System, 2012.

54. Idem.

55. Idem.

56. Idem.



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The United Nations Recovery and Peacebuilding Programme (UN RPP) is being implemented by four United Nations agencies: the United Nations Development Programme (UNDP), the UN Entity for Gender Equality and the Empowerment of Women (UN Women), the United Nations Population Fund (UNFPA) and the Food and Agriculture Organisation of the United Nations (FAO).

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