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Civil liability through the lens of a restraining order: Opportunities for protecting victims of domestic violence

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Abstract. The relevance of this study is driven by the need to improve the legal mechanisms for protecting victims of domestic violence in Ukraine. The aim of this research was to identify the specific features of civil law aspects of protection against domestic violence in Ukraine compared to administrative and criminal law approaches, with an emphasis on the necessity of implementing a systematic approach to safeguarding the rights of victims. A comprehensive methodology was applied in this work, encompassing comparative analysis, examination of current legislation, judicial practice, and legal application in Ukraine. The main findings of the research demonstrated that there are three primary grounds for implementing measures against perpetrators: (1) within the framework of administrative and criminal proceedings, (2) protection of victims' civil rights through civil proceedings, and (3) service-based interventions by the National Police, particularly the issuance of an urgent restraining order. Importantly, these measures are not mutually exclusive and can be applied simultaneously or in parallel. Special attention was given to procedural differences, such as evidence requirements, regulatory frameworks, and the objectives of these measures. It was emphasized that the legal mechanism of a restraining order can be applied in the absence of a legal offense, based solely on the presence of substantiated risks of violations of fundamental human rights, a characteristic more commonly associated with civil law remedies. The study highlighted the importance of civil legislation, which provides mechanisms for protecting victims' rights before they are actually violated,

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as well as the distinctions between civil, administrative, and criminal consequences of domestic violence. The research established that a restraining order in Ukraine can be considered a form of civil liability (in the broadest sense of the term) aimed at ensuring the safety of victims' rights and freedoms from domestic violence. The practical value of this work lies in creating a scientific basis for improving law enforcement practices and enhancing the protection of individuals suffering from domestic violence through the use of appropriate legal mechanisms tailored to specific situations

Keywords: domestic violence; legal protection mechanisms; civil offense; judicial practice; acts of law enforcement

Introduction

In the current Ukrainian legal framework, the issue of domestic violence is considered mainly through the lens of criminal and administrative offences, which substantially affects the possibilities of legal protection for victims. The underestimation of the civil law aspects of such a violation leads to the fact that measures to counteract and prevent domestic violence are possible only if there are open proceedings in criminal or administrative cases. This requires rethinking the legal nature of domestic violence and improving the legal mechanism for protecting victims.

K. Spearman *et al.* (2023) concluded that the orders are linked to all branches of law, as well as state statutory law and previous court decisions. J.M. Kafka *et al.* (2019), A. Groggel (2021), and J.L. Hardesty *et al.* (2024) assessed the possibility of obtaining such orders based on factors that are not directly related to jurisprudence (gender of the applicant, social status of the parties to the proceedings, details of the description of the violence (logical structure, lexical clarity, use of specific facts, and details that affect perception), etc. Particularly interesting in this regard is the study by J.M. Kafka *et al.* (2019), which analysed how judges' gender-biased jokes in restraining order cases reduce the seriousness of the problem of domestic violence, which partially contributes to the rejection of substantiated applications for a restraining order.

R. Cordier *et al.* (2019) and T. Logan (2021) demonstrated that restraining orders are more likely to be followed by those who have not previously been held legally liable. Otherwise, such orders are ineffective and should be used in conjunction with other measures of influence. A. Bejinariu *et al.* (2019) noted a substantial positive impact of restraining orders on reducing the number of cases of domestic violence. A. Barrick and M. O'Donnell (2024) pointed out that the existence of a court-ordered restraining order is suggestive evidence in jurisdictional proceedings in domestic violence cases. However, researchers noted that restraining orders are underused due to lack of awareness, complexity of the application process, obstacles in legal systems (Shah *et al.*, 2022; Khan *et al.*, 2023), and judges' and participants' perceptions of procedural and substantive justice (Groggel, 2021). In this context, researchers from the United States of America also focused on the problems of proving and obtaining the status of a "victim of domestic violence" when applying to the court for restrictive/protective orders (Redding *et al.*, 2022; Alsinai *et al.*, 2023).

Ukrainian researchers T.A. Stoyanova and L.A. Ostrovska (2021) addressed the potential civil law nature of violations that may result in a restraining order. The study showed a tendency that courts are more likely to grant a restraining order if there is evidence that the victim has already sought help from other specialised services dealing with domestic violence (especially, as confirmed by numerous court cases, law enforcement agencies), and courts issue restraining orders only when the abuser continues their violent actions or does not stop them. This position is quite reasonable, especially since out-of-court mechanisms should include not only appeals to law enforcement agencies (but also, for example, to NGOs whose statutory activities are related to helping victims of domestic violence, children's affairs agencies, social services, doctors, etc.)

Neither Ukrainian legislation nor the judicial practices of the Ukraine's Supreme Court (as of September 2024) explicitly prescribe the possibility of satisfying an application for a restraining order in case that a civil offence is potentially present. In some cases, courts do not even open proceedings, using the lack of information that the applicant is a victim of domestic violence to substantiate such a decision, or dismiss the application on the grounds that the issuance of an order would restrict the offender's civil rights. T. Tsuvina (2020) and O. Kolisnyk (2020) also noted the inconsistency of the Supreme Court in this regard.

Despite the above, certain prerequisites for understanding a restraining order as a mechanism for protecting civil rights and interests can be found in the case law of the highest courts (Supreme Court of Ukraine, 2021). Thus, the purpose of the present study was to investigate the civil law aspects of protection from domestic violence in Ukraine, with an emphasis on the need to implement a systematic approach to protecting the rights of victims and ensuring their safety through the expansion of prevention mechanisms.

Materials and methods

The study of the restraining order as a manifestation of civil liability in the context of domestic violence was conducted using a comprehensive approach. The study was based on a system of general scientific and sectoral (jurisprudential) methods and techniques. The systemic and comparative methods represented the general scientific level of the study. The systematic method was employed to summarise the scientific literature of judicial practice on the assessment of a restraining order as an integral part of the system of measures aimed at protecting the rights and freedoms of victims of domestic violence. This approach included a study of the relationship between distinct forms of legal liability and the mechanisms for their implementation. The comparative method was employed to establish the sectoral affiliation of measures against the perpetrator in the field of combating domestic violence in different countries. This method helped to identify the civil law nature of the restraining order against the perpetrator.

Sectoral (jurisprudential) methods of interpreting legal provisions and analysing judicial acts were used to identify judges' approaches to solving problematic situations of enforcement of restraining orders in jurisdictional and non-jurisdictional proceedings. The legal analysis also served to establish the content of the provisions of the current legislation of Ukraine, specifically the Civil Procedural Code of Ukraine (2004), as well as the relevant articles of Law

of Ukraine No. 2229-VIII "On Prevention and Counteraction of Domestic Violence" (2017). This helped to establish the place of a restraining order in the system of civil law measures. The analysis of court practice, specifically, the decisions of the Supreme Court regarding the application of restraining orders, helped to identify trends and specific features of application of the law in concrete cases, as well as to identify law enforcement problems arising in practice. The position of the Court expressed in the Decision of the Supreme Court in Case No. 754/11171/19 (2020) and in its more detailed version in the Decision of the Supreme Court in Case No. 509/7151/23 (2024) was particularly significant for the study. In these rulings, the Court emphasised the necessity of considering the specific features of civil and criminal forms of proceedings in domestic violence cases, their different focus and available mechanisms, and therefore procedural independence from each other and the erroneous attitude of making the possibility of issuing a restraining order dependent on the results of criminal proceedings.

The study was based on the review of scientific literature, legal sources, legislation, and documents related to domestic violence and the legal nature of liability for such violence. The search for court decisions on the application of a restraining order against the abuser was conducted based on the Unified State Register of Court Decisions (n.d.) using the keywords "restraining order". The selected restrictions included timeframe (court decisions issued since 2019 were considered) and form of court decision (rulings and decisions). No restrictions were applied to the instance, territorial jurisdiction, or form of proceedings.

Results

Domestic violence as a legal fact. With the adoption of the Law of Ukraine No. 2229-VIII "On Prevention and Counteraction of Domestic Violence" (2017), special measures against the perpetrator, which are distinct from penalties/punishments, were comprehensively introduced into Ukrainian legislation. The simultaneous introduction of analogous measures aimed at influencing perpetrators of domestic violence in civil, administrative, and criminal legislation generated numerous disputes regarding their application, including competition of legal provisions and the use of analogy.

In the scientific literature, measures that have a preventive component and/or act as a response to acts punishable by the state are conventionally classified as administrative and criminal procedure (Levchenko & Lehenka, 2018; Tsyrkunenko, 2021). This classification is also supported by the fact that, within the framework of the fight against domestic violence, the competence of the National Police to apply special measures to combat violence (risk assessment, issuance of an urgent restraining order, preventive registration of persons prone to domestic violence) was greatly expanded, and preventive registration and programmes for the perpetrator were established. Within the framework of criminal and administrative law, these measures have much in common with measures to ensure the conduct of proceedings and restrictive measures. Notably, the procedural regulations do not contain any indication of the need to simultaneously initiate jurisdictional proceedings when taking special measures to combat domestic violence (however, conclusions partially refuting this position can be found in the legal positions of the Supreme Court, as will be discussed below).

The legislator speaks of three cases of establishing the facts and risks of domestic violence and, accordingly, three grounds for applying legal measures against the offender (in the broad sense). The first and most common ground is the application of such measures within the framework of proceedings on administrative offences and prosecution for criminal offences (ensuring proceedings under the Code of Ukraine on Administrative Offences (1984) and preventive measures (detention of a person and restrictive measures under the Criminal Procedural Code of Ukraine (2012), as well as preventive measures (administrative supervision and preventive registration of district police officers and community police officers). The second reason for going to court is for victims to protect their civil rights when they were violated, unrecognised, or disputed, specifically, violations of personal non-property rights, property rights or legitimate interests. The last ground is the provision of service by authorised officials of the National Police in the form of an urgent injunction without reference to the initiation of jurisdictional proceedings.

The difference between these grounds is as follows:

1) regulatory basis: in the first and third cases, the procedure is regulated by the Code of Ukraine on Administrative Offences (1984), the Criminal Code of Ukraine (2001) and the Criminal Procedural Code of Ukraine (2012), primarily by part 6 of Art. 194 of the Criminal Procedural Code of Ukraine (2012), legislation on administrative procedure and some other sectoral sub-legislative acts, and in the second – civil action proceedings and separate proceedings for issuing a restraining order against the offender – Chapter 13 of the Civil Procedural Code of Ukraine (2004). The application of mechanisms within jurisdictional and non-jurisdictional proceedings is not mutually exclusive, they can be used simultaneously/parallel;

2) legal essence: in the first case, this refers to bringing to public responsibility for violation of those provisions that are intended, among other things, to protect public order and the normal functioning of civil society; in the second case, this refers to protecting private legal relations within the framework of civil (private) proceedings, while in the last case, this refers to protecting private legal relations by resorting to administrative and legal mechanisms;

3) the purpose of application: in the case of jurisdictional proceedings, the purpose is to punish the perpetrator and prevent further offences. For civil proceedings, the purpose is to protect the rights and interests of a particular person and to ensure the possibility of compensation for damage. Administrative police services in this context are also aimed at protecting the rights of an individual, but they also have a preventive focus: they are related to ensuring public safety and order.

4) Evidence: bringing a person to justice for an administrative or criminal offence requires establishing the existence of an offence/crime in the person's actions. Separate proceedings under the Civil Procedural Code of Ukraine (2004), as well as the application of an urgent restraining order, do not necessarily have to be connected with the subsequent prosecution of a person, but are a response to certain factors and risks. However, in the Decision of the Supreme Court in Case No. 756/3859/19 (2018), the Court fairly stated that "a restraining order is a temporary measure... until the issue of qualification of the offender's actions is resolved and a decision is made in the relevant administrative or criminal proceedings".

5) the scope of restrictions applied to a person depends on the purpose of such restrictions. When the purpose is to punish an offence, the restrictions may be more severe and have a punitive nature. However, when it comes to protecting the rights and freedoms of others, restricting the rights of the offender is legitimate and aimed at preventing the commission of new offences. In this case, the measures applied have a protective and preventive function, while their scope is determined by the concrete risks prescribed by law. Additional distinctions can also be made by, for instance, the subject of liability, procedural features, types of sanctions/compensation, specifics of restrictions imposed, etc.

Limits of civil liability. When considering the legal nature of a restraining order in greater detail, it is clear that proving the fact of domestic violence and the risk of its future occurrence in a separate proceeding under the Civil Procedural Code of Ukraine involves establishing the facts of non-recognition, violation, or contestation of a right, interest, and legitimate expectations associated with them in the actions of a person. Therewith, the case may concern both an already committed violation and the real possibility of its commission. The possibility of a court to protect a right or interest in a case where there is only a possibility of its violation was also emphasised by the Supreme Court in Decision of the Supreme Court in Case No. 501/5358/15-ц (2019).

The definition of the essence and content of civil liability is under constant scrutiny of a large cohort of researchers. There are also many approaches to the definition of this institution in the specialised literature. In one case, civil liability is presented as a form of state coercion. Such a position may create the impression of mixing private and public spheres of relations, losing the dispositive feature of civil turnover. Close to the previous point of view is the reduction of civil liability to a sanction (Shyshka & Shyshka, 2012). Civil law does not contain unambiguous provisions on "punishment" of the violator, but there are provisions on the obligation to suffer losses to return the participants to the previous, pre-violation, position (compensatory effect), as well as to compensate for the damage caused (punitive effect) (Kanzafarova, 2007). Thus, it depends entirely on how one interprets the term "sanction". The next point of view is related to the interpretation of civil liability as an accessory, additional obligation that arises in case of non-recognition, violation, or challenge of subjective rights and interests both within the framework of a contract and a tort (Zozuliak & Paruta, 2021). Factually, this refers to the identification of liability with security legal relations. Some researchers have attempted to distinguish between them by a) by including in the concept of liability only those cases when the offender is deprived of what was lawfully in their possession, regardless of the offence committed (Karnaukh, 2012), b) by presenting liability as "punishment of the offender in the form of imposing an additional obligation on them, or deprivation of rights, legal relations, which ultimately (directly or indirectly) leads to a decrease in their property status" (Slipchenko, 2019) or without it (Shyshka & Shyshka, 2012); c) by excluding from the concept of civil liability cases of voluntary compensation for damage (Shyshka & Shyshka, 2012; Nadion, 2019; Zozuliak & Paruta, 2021).

To summarise, one can agree with the position of those researchers who state that civil liability is expressed through an accessory obligation that arises in case of a violation or non-recognition of subjective rights and interests, and which aims to restore the violated right and compensate for the damage caused. This obligation may include the enforcement of obligations by the state based on the victim's request, the imposition of penalties and compensation for damages aimed at restoring the parties' original position, and the protection of a violated, unrecognised, or disputed right or interest.

As a general rule, civil liability arises if a person's actions constitute a civil offence. This is reflected not only in the scientific literature but also in the judicial practice of the highest courts. According to the Supreme Court, the basis for civil liability for property or non-pecuniary damage is the presence of a civil offence in the actions of a person, the elements of which, considering the provisions of Chapter 82 of the Civil Code of Ukraine (2003), are the damage caused, unlawful behaviour, and the causal link between them (Decision of the Supreme Court in Case No. 404/5512/15-ц, 2020; Decision of the Supreme Court in Case No. 372/165/18, 2020).

The general grounds for liability for property and non-property damage are set out in Articles 1166 and 1167 of the Civil Code of Ukraine (2003). Pursuant to the provisions of these articles, property damage caused by unlawful decisions, actions, or inaction that violate personal non-property rights or property interests of an individual or legal entity is subject to full compensation by the person who caused it. At the same time, such a person is exempt from the obligation to compensate if they prove that the damage was not caused by their fault. As a rule, moral damages are subject to compensation provided that the person who caused them is guilty. An analysis of Articles 11 and 1167 of the Civil Code of Ukraine (2003) leads to the conclusion that the very fact of causing such damage to another person is the basis for the obligation to compensate for moral damages. The obligation to compensate for non-pecuniary damage arises if the following mandatory conditions are met: a) the fact of non-pecuniary damage; b) the unlawfulness of the person who caused the damage; c) the causal link between the unlawful behaviour and the damage; d) the fault of the person who caused the non-pecuniary damage (Decision of the Supreme Court in Case No. 163/1088/17-ц, 2019).

The Decision of the Supreme Court in Case No. 755/12796/20 (2022) concluded that a series of facts must be proved to compensate for damage. The first of these is the unlawfulness/illegality of a person's behaviour. Any behaviour that resulted in damage in the absence of the authority of the perpetrator to do so is considered unlawful. In civil law, a person's unlawful behaviour may be manifested in the form of an unlawful decision, as well as in unlawful actions or inaction. Unlawful behaviour is defined as behaviour that violates mandatory rules of law or contractual terms sanctioned by law, resulting in the violation of the rights of another person (Decision of the Supreme Court in Case No. 921/182/20, 2021). It should also be considered that civil law illegality arises not only from a formal violation of a certain rule: civil law operates not only with the category of law, but also with interest and legitimate expectation, which do not have a legislative definition limiting their content and scope. There are also requirements for good faith and reasonableness, compliance with risk limits, etc., which are often referred to in court proceedings arising from contractual obligations (Decision of the Supreme Court in Case No. 753/2965/20, 2021).

The second fact is the existence of damage. Property damage means losses incurred by a person as a result of damage or destruction of their property, as well as loss of income that they could have received in the absence of such damage. The existence of non-pecuniary damage is proved by substantiating the moral suffering and the reasons for which the person suffered it (Decision of the Supreme Court in Case No. 738/387/19, 2021). According to the Resolution of the Supreme Court of Ukraine No. 4 (1995), non-pecuniary damage is defined as non-pecuniary losses arising from moral or physical suffering or other negative phenomena caused by the unlawful acts or inaction of others. This damage can take many forms, including humiliation of a person's honour, dignity, prestige, or business reputation, moral distress related to health damage, and violation of property rights, including intellectual property rights. Furthermore, non-pecuniary damage may be caused by violations of consumer or other civil rights, unlawful detention under investigation or trial, with the corresponding negative consequences. Particularly noteworthy is the impact of non-pecuniary damage on the disruption of a person's normal life ties, specifically due to the inability to continue an active social life or due to disruption of social relations with others. Other manifestations of non-pecuniary damage may include additional negative consequences that deprive a person of the opportunity to exercise their rights or cause substantial discomfort. Thus, non-pecuniary damage covers a wide range of non-property losses that have considerably affect the personal rights, freedoms, and interests of individuals and legal entities, requiring an effective legal mechanism for its compensation (Decision of the Supreme Court in Case No. 823/2108/18, 2023).

The causal link between unlawful behaviour and damage is an integral part of civil liability and must also be proved. This means that the damage must be a direct consequence of the actions or inaction of the responsible person. Fault is also usually a prerequisite, except as provided by law (Decision of the Supreme Court in Case No. 755/12796/20, 2022). Non-pecuniary damage is reimbursed by the person who caused it, if they are at fault. As stated in the Decision of the Supreme Court in Case No. 130/904/16-ц (2019), "civil liability is the imposition on the offender of unfavourable legal consequences based on the law, which consist in depriving them of certain rights or replacing the non-performance of an obligation with a new one, or adding a new additional obligation to the non-performance of an obligation" (for further explanation, see the Decision of the Supreme Court in Case No. 130/904/16-ц (2019)). Considering the construction of the above definition, civil liability can also be considered as a full-fledged obligation that is performed/changed/terminated considering the relationship in which it arose (hereinafter also referred to as an accessory obligation). Notably, an offender means a person who violates, fails to recognise, or disputes the right or interest of another person(s).

Civil liability, considering the private law nature of civil relations, is conventionally associated with the victim filing a lawsuit in court. The purpose of such an appeal is not to punish the offender, but to protect the victim's subjective civil right or interest, and to compensate for losses and damage. Under this interpretation of civil liability, its content may be extended beyond the scope of the lawsuit. Recognition of a person as incapacitated, restriction of legal capacity, involuntary hospitalisation in a psychiatric hospital for treatment, establishment of paternity, and some other cases – those of separate proceedings that are based on imposing an obligation on a person to suffer restrictions due to potential evasion of their duties, non-recognition, or contestation of the rights of third parties or creation of obstacles to the exercise of their rights.

For instance, a person's failure to acknowledge their parentage on a voluntary basis results in a violation of the child's right to proper parental upbringing/support. The absence of a court decision declaring a person incapacitated and appointing a guardian for a person suffering from a chronic, persistent mental disorder, and unable to understand the significance of their actions and/or control them makes it impossible to protect the rights of other persons, such as those who are dependent on such a person or suffered as a result of their actions (this refers to cases where jurisdictional proceedings are closed due to the person's insanity).

Establishing legal facts, such as parentage, in court is not a conventional manifestation of civil liability but can be considered as part of it in a broader context. The main difference is that civil liability is usually related to the consequences of wrongdoing, while the establishment of legal facts is aimed at recognising or establishing a certain legal status or state of affairs. The authors of the present study believe that the establishment of such a legal fact serves to protect the rights of the child, while imposing undesirable legal consequences on the parent.

The establishment of legal facts in some cases can be considered as part of a broader legal context that includes civil liability but is not a manifestation of liability in its classical sense. Particular attention should be paid to the provisions of Article 1163 of the Civil Code of Ukraine (2003), which entitles an individual whose life, health, or property is in danger, as well as a legal entity whose property is in danger, to demand that the person creating the danger remove it. This obligation is of a preventive nature and is aimed at performing a preventive function, the main purpose of which is to prevent harm. The application of this provision provides an effective legal mechanism for protecting the life, health, and property interests of individuals, as well as the property interests of legal entities, even before the factual occurrence of harm.

According to this provision, a person who created a threat to the life, health, or property of another person is obliged to eliminate this threat. The injured party is entitled to demand that the perpetrator cease the actions that led to the danger (Decision of the Supreme Court in Case No. 130/904/16-ц, 2019; Decision of the Supreme Court in Case No. 640/11739/15-ц, 2020). Pursuant to Article 1165 of the Civil Code of Ukraine (2003), damage caused by failure to eliminate a threat to life, health, or property of an individual or legal entity is subject to compensation following the provisions of this Code. This Article establishes a special type of liability arising from the creation of a threat – the liability to compensate for damage caused by the failure to eliminate the threat. This type of liability implies that the person guilty of creating the threat and failing to avert it will bear the negative property consequences of their behaviour.

At the same time, this mechanism is accompanied by condemnation of the offender, which emphasises the tort nature of actions and is aimed at protecting the rights and legitimate interests of the injured party. Compensation in this case performs both a compensatory and a preventive function, encouraging compliance with legal provisions and

preventing analogous violations in the future. The above also suggests that civil law protection applies not only to cases where damage has been caused, but also when there is a risk of damage.

Restraining order as a manifestation of civil liability. Pursuant to Part 1 of Article 293 of the Civil Procedural Code of Ukraine (2004), special proceedings are a type of non-action civil proceedings aimed at considering civil cases related to the establishment of the presence or absence of legal facts that are significant for the protection of the rights, freedoms, and interests of a person, as well as for creating conditions for the exercise of their personal non-property or property rights. These proceedings also confirm the existence or absence of indisputable rights that do not require a dispute between the parties. This type of proceedings provides an effective legal tool for resolving issues that are relevant to the legal status of individuals or legal entities without the need for adversarial proceedings.

The foregoing suggests that the establishment of the fact (or risk substantiated by the facts) of domestic violence is not intended to bring the perpetrator to justice, but to ensure that the victim can properly exercise their rights and freedoms guaranteed by law. The legal nature of a restraining order requires establishing the fact or fact-based risk of domestic violence and/or possible risks of its recurrence, which includes identifying the fact of violation, non-recognition, or contestation of civil rights and interests.

According to the Law of Ukraine No. 2229-VIII (2017), the issuance of a restraining order is one of the measures to protect the rights of victims of domestic violence. When deciding on the application of such a measure, the court is obliged to establish the facts of domestic violence in certain forms and assess the risk of its recurrence in the future (Decision of the Supreme Court in Case No. 509/7151/23, 2024). Thus, to establish a restraining order (based on a literal interpretation of the law), it is not necessary to prove the existence of an administrative offence, or a crime related to domestic violence.

In the Decision of the Supreme Court in Case No. 754/11171/19 (2020), the Court noted that the mere fact that a person has not been brought to legal responsibility cannot serve as a ground for refusing to apply temporary restrictions if there is other objective evidence to support the applicant's arguments. In another ruling, the Supreme Court emphasised that a temporary restriction on the offender's property rights aimed at ensuring the safety of the victim by issuing a restraining order following the provisions of Law of Ukraine No. 2229-VIII (2017) is a legitimate measure of interference with the rights and freedoms of a person. When deciding on the application of such a measure, the court must consider the established circumstances of the case, assess the danger factors (risks) of domestic violence, as well as the proportionality of restrictions on the rights and freedoms of a person. Therewith, it should be noted that the application of such measures is substantiated in connection with the unlawful behaviour of the person concerned, which poses a threat to the injured party (Decision of the Supreme Court in Case No. 509/7151/23, 2024).

However, a civil tort (in the broadest sense) has a special legal meaning compared to administrative and criminal torts, and therefore "domestic violence" as a violation of a subjective civil right or interest established in a separate proceeding does not constitute evidence of a crime or administrative offence. For example, restrictions on access to housing may be the basis for issuing a restraining order but will not be relevant for bringing a person to justice, as there may be no objective party to establish the possibility of physical or psychological harm. This follows from the analysis of the definition "domestic violence" in Article 1 of the Law of Ukraine No. 2229-VIII (2017) and Article 173-2 of the Code of Ukraine on Administrative Offences (1984). Comparing their content, it follows that a condition for bringing to administrative liability for this offence is the factual or potential infliction of damage. The absence of such damage does not mean that domestic violence was not committed but excludes the possibility of prosecution under the legislation on administrative offences. The above leads to the definition of the legal essence of a restraining order.

Legislation in the area of combating domestic violence defines four forms of domestic violence. The consequence of committing any of the types of violence mentioned by law is the possible occurrence of both property and non-property damage. Depending on the goals that the victim wants to achieve, they may (considering exclusively civil law mechanisms) use both lawsuits and separate proceedings. For instance, economic violence in the form of obstacles to the use of housing is a violation of property rights to housing. This situation can be resolved either by filing a negative claim to remove obstacles to the use of housing, or through separate proceedings, proving that these restrictions on the exercise of the right to housing are violence in themselves (Decision of the Supreme Court in Case No. 607/15692/17, 2019). In case of physical harm, the victim may also file a claim for reimbursement of the cost of treatment. Humiliation of honour and dignity is a ground for compensation for non-pecuniary damage, etc. The choice of remedy depends on several factors, among which the position of the victim is central. However, it is vital to consider the specifics of the subject matter of proof and the legal consequences of the chosen legal procedures.

Thus, it was found that a) civil legislation prescribes legal mechanisms for both protection of a violated right or interest and elimination of real threats of such violation; b) protection of a violated right within the framework of legal relations to combat domestic violence is possible both in separate and in action proceedings c) the fact of non-recognition, contestation, or violation of a subjective civil right or the factual possibility of such a violation must be proved within the framework of the claim proceedings, while the fact (risk substantiated by facts) of committing a concrete type of violence and/or the existence of risks of its further commission must be proved within the framework of the special proceedings; d) the fact of violation may be proved without initiating jurisdictional proceedings.

A significant conclusion in this part is that civil law mechanisms make provision for ways to protect the rights of the creditor/victim in case that the factual or potential existence of a civil offence (risk of harm) in the actions of the debtor/offender is established. Proving the fact of domestic violence is inherently close to a lawsuit in terms of establishing the existence of a civil offence or a risk of its commission substantiated by the facts.

When considering whether there are grounds for issuing a restraining order, courts must establish what forms of domestic violence were applied to the applicant and assess the risks of possible continuation of such actions in the fu-

ture in any of their manifestations. According to Part 3 of Article 12 and Part 1 of Article 81 of the Civil Procedural Code of Ukraine (2004), each party is obliged to prove the circumstances relevant to the case and to which it refers as the basis for its claims or objections, unless otherwise prescribed by this Code. The court evaluates the evidence based on its internal conviction, which is formed by a comprehensive, complete, objective, and direct examination of all available evidence in the case. This approach to the evaluation of evidence is prescribed in Part 1 of Article 89 of the Civil Procedural Code of Ukraine (2004) and is aimed at ensuring the fairness and validity of a court decision (Decision of the Supreme Court in Case No. 607/14637/22, 2023).

Pursuant to Article 294 of the Civil Procedural Code of Ukraine (2004), which regulates the procedure for consideration of cases in individual proceedings, the court is obliged to ensure comprehensive, complete, and objective clarification of the circumstances of the case. To accomplish this goal, the court is entitled to request the necessary evidence on its initiative, which is an essential feature of this type of proceeding. Cases of special proceedings are considered in compliance with the general procedural rules set out in the Civil Procedural Code of Ukraine (2004), except for provisions relating to the principle of adversarial proceedings and the determination of the scope of the trial. This approach is aimed at ensuring effective judicial protection of the rights and legitimate interests of the parties to the case, especially in situations where adversarial proceedings are inappropriate or impossible.

Thus, according to this provision, the legislator clearly states that the provisions on adversarial proceedings and the limits of the trial do not apply in cases of special proceedings. The adversarial principle may be partially implemented in the context of special proceedings, but its effect is limited, specifically, by the rights of the applicant. The applicant is entitled to submit evidence, take part in its examination, substantiate their claims before the court and other procedural rights. The analysis of the procedural rules governing the consideration and resolution of cases in special proceedings leads to the conclusion that applicants and interested parties are not deprived of the opportunity to provide evidence to substantiate their position. Furthermore, unlike in the action proceedings, in the cases of special proceedings (e.g., No. 692/1033/23, (2024), No. 750/2548/23 (2024), No. 751/3383/23 (2024), No. 751/9455/23 (2024)), the court is entitled to request the necessary evidence on its own initiative. As can be illustrated by the Decision of the Zaporizhzhia Court of Appeal in Case No. 332/6275/23 (2024), Decision of the Chernivtsi Court of Appeal in Case No. 718/849/24 (2024), Decision of the Lviv Court of Appeal in Case No. 450/704/23 (2024), and other cases, this provision not only expands the possibilities for collecting evidence but also strengthens the role of the court in the process, ensuring a comprehensive and objective clarification of the circumstances of the case.

Discussion

According to T. Çitak (2012) and A. Deixler-Hübner *et al.* (2018), in Austria, restraining orders are issued by the court to protect the victim of violence, especially in cases where the police have previously evicted the perpetrator from the home. Therewith, such a measure is governed by civil law provisions. In Germany, a restraining order is also one of the four main civil law instruments that can be used to protect the rights of the victim (Weitzmann, 2014). C. Agnew-Brune *et al.* (2015) also pointed out that in the United States of America, researchers held the position that restraining orders were linked to all branches of law, as well as state statutory law and previous court decisions.

M.V. Sirotkina (2023), considering the restraining order through the Convention on Preventing and Combating Violence against Women and Domestic Violence (2011) as reflected in the Supreme Court's judicial practices, pointed out that "the court is entitled to issue a restraining order regardless of the outcome of civil, administrative, or criminal proceedings". This highlights the self-sufficiency of the legal mechanism for obtaining a restraining order in civil proceedings, its independence from the results of other, especially jurisdictional, proceedings. The understanding of the essence of a restraining order is further enhanced by the fact that, according to the researcher, such an order is "aimed at preventing the commission of violence, ensuring the primary safety of persons until the issue of qualification of the offender's actions and making a decision in relation to them in the relevant administrative, civil, or criminal proceedings is resolved". The foregoing suggests that obtaining an order is one of the initial, non-independent stages of more complex legal mechanisms. However, this creates the need for a correct interpretation of the concept of violence, so that it can be further assessed in civil, administrative (administrative offence proceedings), or criminal proceedings. Since, as a general rule, these proceedings are related to the establishment of civil/administrative/criminal offences in the actions of a person, it appears that within the framework of a separate proceeding, the potential existence of such offences should be established (close in understanding to the way law enforcement agencies, when drafting a report on an administrative offence, provide preliminary qualification of a person's actions). M.V. Sirotkina (2023) did not elaborate on this issue.

L. Hrytsenko (2000), in support of the hypothesis presented in the current study, addressed the shortcomings in understanding the legal nature of measures to combat domestic violence, which are established within the framework of separate proceedings under the Civil Procedural Code of Ukraine (2004). This refers to the need for victims to submit to the court the evidence establishing the fact of violence by other authorised bodies within the framework of administrative or criminal prosecution (prejudicial value).

I.V. Hlovyuk (2022a; 2022b) also emphasised the differences in the mechanisms for applying restrictive measures within the framework of criminal prosecution for crimes related to domestic violence and separate proceedings under the Civil Procedural Code of Ukraine No. 1618-IV (2004). The researcher raised the issue of the need for a clear understanding of the differences between establishing the corpus delicti of a crime and the existence of grounds for applying a restraining order. However, apart from referring to the specific features of civil procedural proof, the researcher did not elaborate on them in detail. However, this is conditioned by the specific features of the researcher's publication and does not substantially affect the value of the conclusions and generalisations made.

L. Andriievska (2022), by analysing judicial practice, concluded that it is possible to obtain a restraining order without first applying to law enforcement agencies

(however, the literature also expresses opposing positions (Turlova, 2018). The researcher cited excerpts from judicial practices wherein civil offences were the basis for issuing an injunction, for instance, restricting access to common property (although the researcher did not define these violations as civil offences). In this regard, L. Andriievska (2023) identified the lack of detail on what circumstances and facts may suggest domestic violence and be sufficient evidence to apply an injunction as a drawback of the Civil Procedural Code of Ukraine (2004). Notably, I.V. Hlovyuk (2022a) pointed out in this regard that, considering the impossibility of clearly defining the boundaries of all manifestations of domestic violence, the identification of a concrete list of sources of evidence "appears unrealistic". Therewith, the researcher identified a fairly extensive list of sources of evidence that developed in the practice of Ukrainian courts. Notably, much of this evidence is not related to the outcomes of jurisdictional proceedings. The researchers' position regarding the absence of the necessary links between the application for a restraining order and criminal or administrative liability was also supported by N.O. Korotka (2020) and A. Yashchenko and A. Shynkarchuk (2021). These reearchers' positions are justified: on the one hand, the absence of an approximate list of the necessary evidence to be submitted with the application for a restraining order complicates the court proceedings and often leads to the dismissal of the application; on the other hand, the availability of such a list, even an exhaustive one, will limit the judicial discretion, which will also have negative consequences for the applicants. A more reasonable solution to the current situation might be to focus on the specifics of individual proceedings, namely the provision of the Civil Procedural Code of Ukraine (2004) that the provisions on adversarial proceedings and the limits of court proceedings do not apply to the consideration of cases. In special proceedings, the legislator granted the court the opportunity to request the necessary evidence on its initiative, subject to the provisions of Part 2 of Article 350 of the Civil Procedural Code of Ukraine (2004). Emphasis on these provisions when applying for a restraining order will help to ensure the completeness of the trial.

Conclusions

The study investigated the specific features of the civil law mechanism for protection of victims of domestic violence in Ukraine. The subject of the study was the civil law aspects of restraining orders in the context of administrative and criminal procedures, as well as law enforcement practice related to the protection of victims' rights. To fulfil this purpose, a comprehensive approach was employed, which included an analysis of current legislation, court practice, and law enforcement, as well as comparative analysis methods that helped to identify the specific features of various legal procedures related to domestic violence.

The key findings of the study included the identification of three principal grounds for taking action against perpetrators: 1) within administrative and criminal proceedings, 2) protection of civil rights of victims through civil proceedings, and 3) services of the National Police, including urgent restraining orders. It was found that these grounds can be used simultaneously, emphasising the significance of a comprehensive approach to addressing the problem of domestic violence. It is vital that these grounds are not mutually exclusive and can be used simultaneously or in parallel, which enables a comprehensive approach to victim protection.

Attention was focused on the procedural differences between these approaches, specifically regarding evidence collection, regulatory framework, and the purpose of the measures. Within the framework of administrative proceedings, the emphasis is placed on rapid response and urgent measures in connection with the establishment of the potential existence of an administrative or criminal offence, while in civil proceedings, it is crucial to prove the facts of a factual violation of the victim's (civil) rights or the existence of a reasonable risk of such a violation. The legal mechanism of a restraining order can be applied without the presence of an offence but only based on a reasonable risk of violation of fundamental human rights. This is particularly true for civil remedies, which allow for proactive measures to prevent possible violations before they occur. Furthermore, the study found substantial differences between civil, administrative, and criminal consequences of domestic violence, which may affect the choice of remedy for victims. The key findings were that a restraining order in Ukraine can be considered as a form of civil liability (in the broadest sense of the term) aimed at protecting the rights and freedoms of victims of domestic violence. This approach contributes to the development of a more flexible and adaptive protection system that meets the needs of victims and the specifics of the Ukrainian context.

Prospects for further research include a deeper study of the effectiveness of various legal mechanisms of protection, as well as the development of recommendations for improving law enforcement practice to ensure a comprehensive and systematic approach to protecting the rights of victims of domestic violence.

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Conflict of interest

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Цивільно-правова відповідальність крізь призму обмежувального припису: можливості для захисту потерпілих від домашнього насильства

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Анотація. Актуальність цього дослідження зумовлена необхідністю вдосконалення правового механізму захисту потерпілих від домашнього насильства в Україні. Метою даного дослідження було встановлення особливостей цивільно-правових аспектів захисту від домашнього насильства в Україні у порівнянні з адміністративними та кримінально-правовими з акцентом на необхідність впровадження системного підходу до захисту прав потерпілих. У процесі роботи було використано комплексний підхід, який включав порівняльний аналіз, аналіз чинного законодавства, судової практики та правозастосування в Україні. Основні результати дослідження продемонстрували, що існує три основні підстави для застосування заходів щодо кривдника: 1) у межах адміністративних і кримінальних проваджень, 2) захист цивільних прав потерпілих через цивільний процес, та 3) сервісні послуги Національної поліції, зокрема терміновий заборонний припис. Важливим є те, що ці підстави не є взаємовиключними й можуть використовуватися одночасно або паралельно. Особливу увагу приділено процедурним відмінностям, таким як докази, нормативна база та цілі застосування заходів. Підкреслено, що правовий механізм обмежувального припису може застосовуватися без наявності складу правопорушення, а лише на підставі наявності обґрунтованих ризиків порушення основних прав людини (що характерно більшою мірою для цивільно-правових способів захисту). Наголошено на важливості цивільного законодавства, яке передбачає механізми для захисту прав потерпілих до моменту їх реального порушення, а також на відмінностях між цивільно-правовими, адміністративними та кримінальними наслідками домашнього насильства. Встановлено, що обмежувальний припис в Україні може розглядатися як форма цивільно-правової відповідальності (у найширшому розумінні цього поняття), яка має на меті убезпечення прав і свобод потерпілих від домашнього насильства. Практична цінність роботи полягає у створенні наукової бази для вдосконалення правозастосовної практики та поліпшенні захисту прав осіб, які страждають від домашнього насильства, через використання адекватних правових механізмів в залежності від конкретної ситуації

Ключові слова: домашнє насильство; юридичні механізми захисту; цивільне правопорушення; судова практика; акти правозастосування