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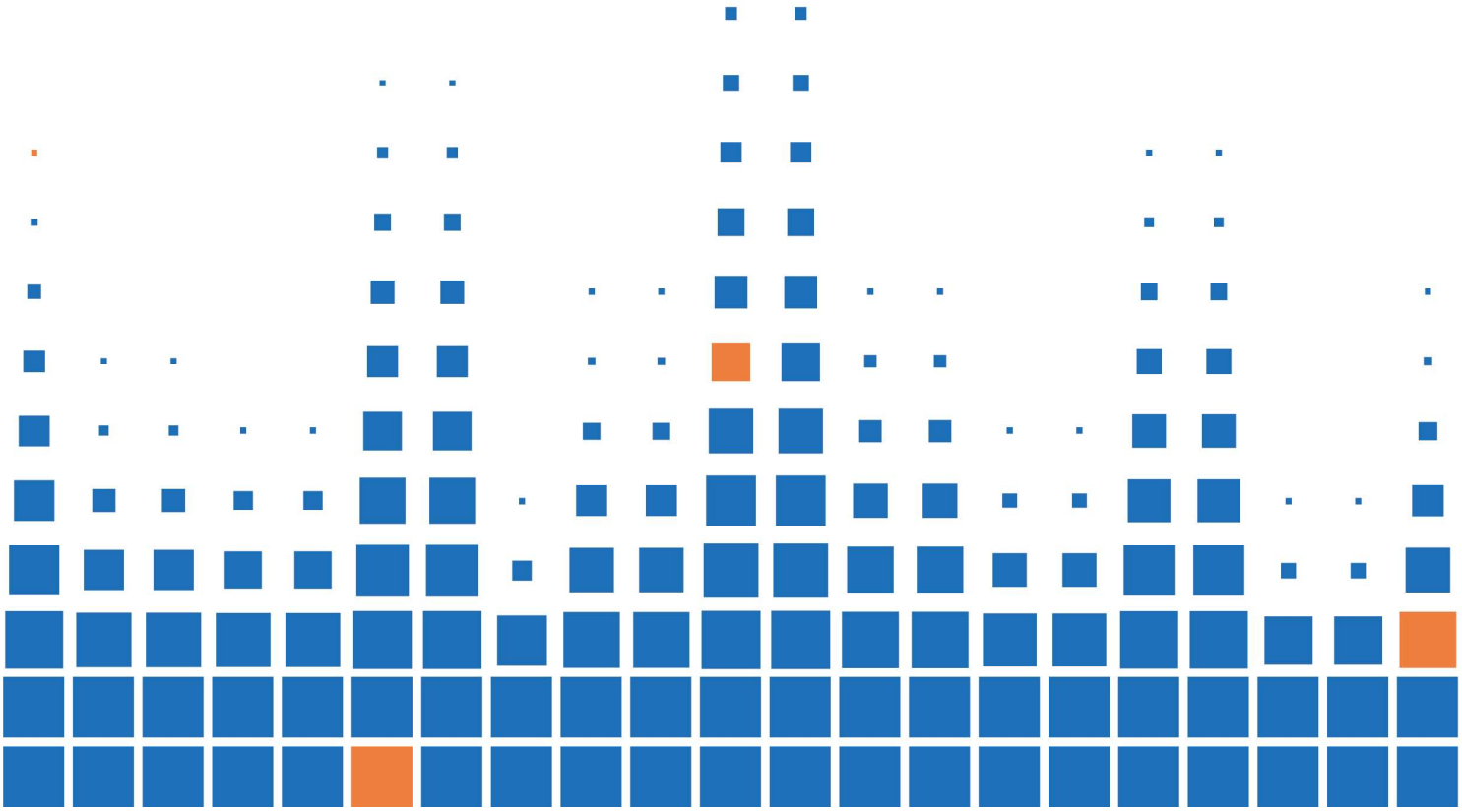
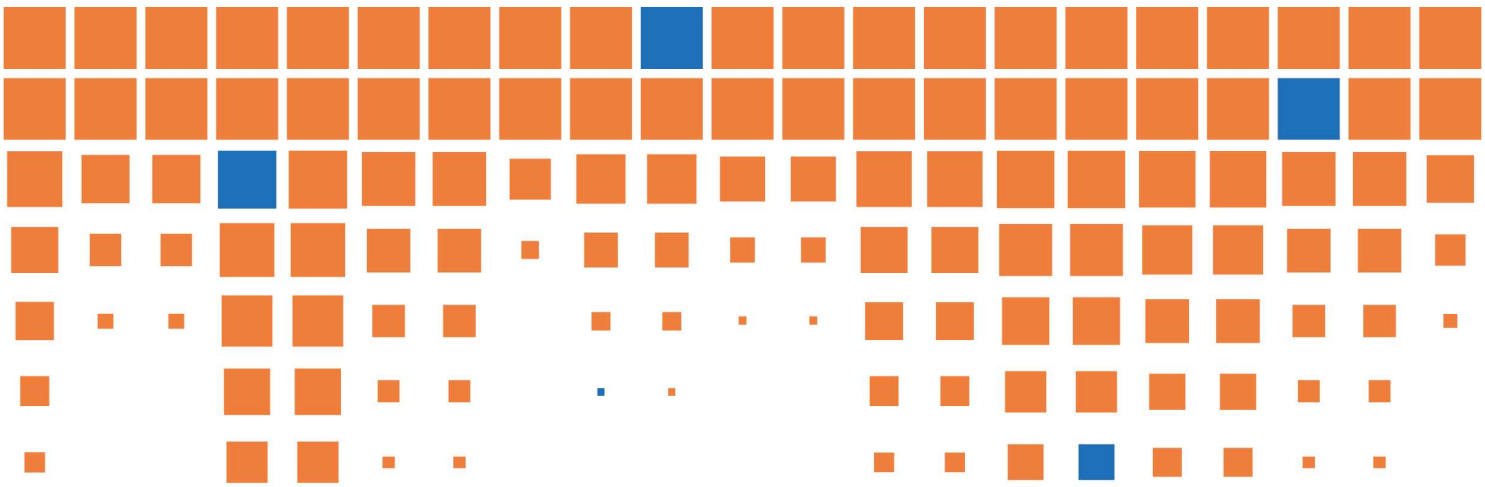


Monitoring Response of the Justice System to Domestic and Gender-Based Violence: 2019



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Content

List of abbreviations

CCU	Criminal Code of Ukraine
CPC	Criminal Procedure Code of Ukraine
ECHR	European Court of Human Rights
NHL	National Hotline for Combating Domestic Violence, Human Trafficking and Gender Discrimination
Call Center	State Institution Call Centre for Combating Trafficking in Human Beings, Preventing and Combatting Domestic and Sexual Violence and Violence against Children
Contact Center	State institution “Government Contact Centre”
Istanbul Convention	The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence
Domestic Violence Law	The Law of Ukraine On Preventing and Combatting Domestic Violence
2018 Monitoring report	Monitoring of the Situation of the Justice System's Response to Domestic Violence and Violence against Women: 2018

Background

This monitoring report is implemented within the scope of EU funded Pravo-Justice Project, which includes several activities aimed to strengthen the response of the criminal justice system to gender-based violence cases, including domestic violence. It aims to analyse the changes in the legal and regulatory framework for responding to gender-based violence and domestic violence in particular; the ways the relevant provisions are implemented in practice; and to identify and analyse challenges faced by the authorities when applying the provisions and by the victims of domestic and gender-based violence when exercising their rights to access justice.

The monitoring conclusions and recommendations suggest how criminal justice actors can enhance their responses to gender-based and domestic violence, streamline institutional capacity building, develop more effective training materials (manuals, coursebooks, guidelines, and training programmes) and provide a foundation for improvements to the legislation in this field and future academic research.

1. General situation in Ukraine: international commitments and national context

The OSCE Project Office Coordinator for Ukraine presented the "Report on Well-Being and Safety of Women in Ukraine"[1] in November 2019.

A total of 2 048 women were surveyed. Here are some of the key findings:

- *64% of women said violence against women is a common occurrence Most women are concerned about the issue of violence against women in Ukraine, with.*
- *67% of women stated that they had experienced psychological, physical or sexual violence at the hands of their partner or non-partner from the age of 15. As for perpetrator identity, the violence committed by the ex-partner was most prevalent.*
- *Nearly three women in ten (28%) who had a previous partner stated they had experienced physical and/or sexual violence at the hands of their previous partner. This compares to 15% of women who currently have a partner and said they had experienced physical and/or sexual violence from their current partner*
- *Meanwhile 24% of all women (aged 18–74) stated they had experienced physical and/or sexual violence from a person other than their partner.*
- *Stalking has affected one in ten women (10%).*

Nearly half (49%) of women stated they had experienced sexual harassment from the age of 15, and 17% said they were sexually harassed in the 12 months prior to the survey.

41% of the surveyed women opined that if a husband abuses his wife, it should be settled within the family.

Nearly one in five women believe that sexual intercourse without consent is justified in a marriage or between partners who live together.

Only half of the women felt they are somewhat informed about what to do in the event of violence, while about half of the women (47%) felt they were poorly informed and would not know what to do in such situations.

The vast majority of women victims of violence from a current or previous partner or other person had not reported the most serious incident of physical and/or sexual violence they have experienced to the police.

Ukraine's international obligations to combat and prevent violence against women and domestic violence remained the same in 2019 as in 2018. The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, signed by Ukraine in 2011 still had not been ratified as of May 1, 2020.

1 https://www.osce.org/uk/secretariat/440318?download=true

The novel international instruments related to the prevention of gender-based violence, including domestic violence, include the following:

- Council of Europe Recommendation Preventing and Combating Sexism (CM / Rec (2019) 1), applies to all Council of Europe member states, including Ukraine.

- International Labour Organization Convention #190 on the Elimination of Violence and Harassment in the World of Work, which, once ratified, will be incorporated into the national legislation and shape national policy in this area.

The Law of Ukraine On Preventing and Combatting Domestic Violence ("the Domestic Violence Law"), which entered into force on 6 January 2018, continued to be implemented in 2019, including through cases of domestic and gender-based violence. A detailed analysis of the regulations adopted to implement the Domestic Violence Law is presented in the "Monitoring the response of the justice system to domestic violence and violence against women: the year 2018"[2], which was also published under this project.

Article 25 of the Domestic Violence Law, regarding domestic violence emergency barring orders [3] issued by the National Police of Ukraine, is now being applied. The application of this rule was postponed until March 2019 when bylaws for this special measure came into force. Thus, the procedure for issuing a domestic violence emergency barring order was approved on August 1, 2018, while the procedure for conducting a risk assessment as part of the emergency barring order was not approved until March 13, 2019. The delay likely due to the procedures being developed by different drafters: the Ministry of Social Policy and the Ministry of the Interior.

The amendments to the Criminal Code and Criminal Procedure Code of Ukraine, adopted by the Verkhovna Rada of Ukraine in December 2017, came into force on January 11, 2019. They concern the introduction of criminal liability for domestic violence (Article 126.1 of the CCU), and amend the articles that stipulate punishment for crimes against sexual freedom and inviolability of the person.

2 2018 Monitoring report

3 An emergency barring order is a special measure to combat domestic violence introduced by Art. 25 of Domestic Violence Law. It is issued by the police in case of immediate threat to life and health of a victim. An emergency barring order can be issued for up to 10 days. This measure in Ukrainian domestic violence legislation corresponds to the emergency barring order under Art. 52 of the Istanbul Convention and is legally distinct from restraining orders (defined further below in footnote 5).

2. The current objectives of harmonizing the legislation

One of the challenges facing the state today is responding to cases of domestic violence perpetrated by servicemen and other officials subject to disciplinary statutes (including police officers), who are currently exempt from administrative liability for domestic or gender-based violence. Consequently, family members and other victims of domestic and gender-based violence perpetrated by such persons are discriminated against since they are denied justice. Indeed, disciplinary action was imposed against only 3 police officer perpetrators of domestic and gender-based violence in 2018-2019. No other individuals covered by these disciplinary statutes were disciplined for domestic and gender-based violence in 2018-2019. It seems unlikely that this reflects the number of perpetrators within this category, given the incidence of domestic and gender-based violence in the population.

The need to draft a Bill to end this discrimination is recognized in the National Action Plan implementing the recommendations by the UN Committee on the Elimination of Discrimination against Women.

In view of the above, the Government Commissioner for Gender Policy initiated the development, discussion and advocacy of a Bill to strengthen the response of the justice system to domestic violence cases. As a result, the draft Law of Ukraine On Amendments to the Code of Administrative Offenses aims to amend the established procedure of bringing administrative charges for domestic and gender-based violence. The effort was spearheaded by experts from the National Police of Ukraine, the National Prosecution Academy of Ukraine, the EU Advisory Mission, the CSO La Strada-Ukraine and other stakeholders.

The Bill indirectly broadens the scope of persons covered by domestic violence legislation to combat the gender discrimination described above in compliance with international standards. It proposes to amend Part 1 of Article 15 of the Code of Administrative Offenses of Ukraine regarding the liability for domestic and gender-based violence committed by servicemen and other persons covered by disciplinary statutes. In particular, it is envisaged that these persons will in general bear administrative responsibility for these offenses. In addition to officers of authorized agencies of the National Police of Ukraine, the draft law includes servicemen, conscripts and reservists during the training exercises, line and management personnel of the State Penitentiary Service of Ukraine, the Civil Protection Service and the State Special Communications and Information Protection Service of Ukraine.

The proposed changes aim to strengthen guarantees for the protection of the rights of family members of servicemen, police and other persons covered by disciplinary statutes. The Bill was submitted to the Members of Parliament, but had not been registered in the Verkhovna Rada as of May 1, 2020.

Another urgent legislative problem is that administrative cases cannot be considered in court when the perpetrator of domestic violence is not present. This provision is abused by offenders, who regularly fail to appear for a court hearing and consequently manage to evade administrative liability when the statute of limitations comes into effect.

Therefore, there is a need to amend Part 2 of Article 268 of the Code of Administrative Offenses to allow consideration of administrative offenses under Article 173-2 of the Code of Administrative Offenses without requiring the presence of a person prosecuted (offender), if the person was duly notified but failed to appear for the hearing. These changes, once adopted will mean the case can be resolved before the statute of limitations applies even if the perpetrator chooses not to attend the court hearing, facilitating a better criminal justice outcome for the perpetrator's affected family members.

In terms of other intended developments, the Unified State Register of Domestic and Gender-Based Violence Cases had not been launched in electronic format as of May 1, 2020. Further, the Regulation of the Ministry of Social Policy of Ukraine on the State Institution Call Centre for Combating Trafficking in Human Beings, Preventing and Combatting Domestic and Sexual Violence and Violence against Children ("the Call Centre") was approved by the Order # 1852 of the Ministry of Social Policy of Ukraine on December 11, 2018.

As the Call Center was not created by the end of 2019, on December 27, 2019 the Cabinet of Ministers of Ukraine enacted Resolution #1145 to create a "single portal" to process public complaints and requests for public information about/or received from the victims of human trafficking, domestic and gender-based violence, violence against children, or the threat of such violence. As a pilot project, Resolution #1145 marks a change in governmental approach to the establishment and operation of the Call Centre compared to the above-mentioned order of the Ministry of Social Policy # 1852. The Cabinet of Ministers Resolution empowers the State institution "Government Contact Centre" ("the Contact Centre") to receive complaints and reports about/or from victims of human trafficking, domestic and gender-based violence, violence against children, or the threat of such violence. The Contact Centre was also entrusted with the rights and responsibilities of the Call Centre. However, the Resolution #1145 does not significantly mitigate the risks mentioned earlier concerning the work of the Call Center, since in fact "the Contact Centre" wholly integrated the functions and operational procedures of the Call Centre. The 2018 Monitoring Report details the risks involved in organizing the Call Centre concerning confidentiality and duplication of existing services.[4] In 2019 the work began on the preparation of a Scientific and Practical Commentary to the Law On Preventing and Combatting Domestic Violence, which was initiated by the Ministry of Internal Affairs, the National Academy of Internal Affairs of Ukraine, the Government Commissioner for Gender Policy with the contribution of the experts from the National Prosecution Academy, La Strada-Ukraine CSO, the EU Advisory Mission, as well as researchers and practitioners working to prevent and combat domestic and gender-based violence.

4 2018 Monitoring report, p. 11

3. Review of statistic data on combatting domestic and gender-based violence

National Police of Ukraine

According to the statistics of the National Police, the institutions of the National Police of Ukraine:

	2019	2018
Registered complaints and reports on offences and incidents related to domestic violence	141 814	115473
Received reports filed by adults	139 933 (113403 reported by women)	114055 (89498 reported by women)
Drew administrative protocols for administrative offenses under Article 173-2 of the Code of Administrative Offenses	106721	99531
Initiated pre-trial investigation in the case	2776	2628
Entered offenders into the Perpetrator Register	72834 (65720 men and 7002 women)	69290 (63332 men and 5857 women)
Served domestic violence emergency barring orders on	15878 (15259 men and 616 women)	-

The year 2019 saw an increase in the number of registered complaints and reports of offenses related to domestic violence. The growth may be partially attributable to increasing public attention on the problem of domestic violence, adopted legislative changes, introduction of new rules and their widespread discussion in society, mass media and social networks. The increasing number of applications may also indicate improved ability to identify domestic violence cases (including self-identification) and a readiness to bring this problem into the open.

There were more persons who committed administrative offenses under Art. 173-2 of the Code of Administrative Offenses in 2019 compared to 2018, according to the statistical data. Men make up the vast majority of the offenders:

	2019	2018
Administrative offenses under Art. 173-2 Code of Administrative Offences, including	76186 (67878 men, 8308 women)	73261 (65748 men, 7513 women)
• **committing domestic violence**	74975 (66788 men, 8187 women)	55433 (49816, 5617 women)
• **committing gender-based violence**	1513 (1381 men, 132 women)	1056 (978 men, 78 women)
• **non-compliance with the domestic violence emergency barring orders**	335 (316 men, 19 women)	4 (men)
• **failure to notify the place of temporary stay**	26 (men)	1 (men)

Psychological violence prevails among the domestic violence cases recorded by the National Police in 2019, similar to 2018 (see the table below). The same distribution is also confirmed by complaints to the National Hotline for the Prevention of Domestic Violence, Human Trafficking and Gender Discrimination. At the same time, the officers of the justice system experience greater challenges in identifying and proving psychological violence cases.

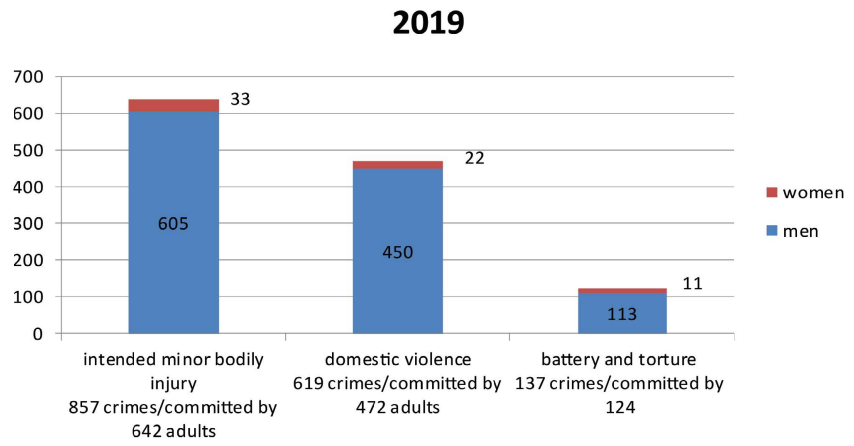
	Committing domestic violence		Committing gender-based violence		Non-compliance with emergency barring order		Failure to notify the place of temporary stay		Total	
	2019	2018	2019	2018	2019	2018	2019	2018	2019	2018
Physical	8597	6135	306	147	4	0	0	0	8862	6260
Psychological	101325	70562	1488	1015	17	0	1	0	102740	71498
Economic	717	324	29	28	0	0	0	0	728	345
Total number of offences under Art. 173-2 Code of Admin. Offences	107221	75280	1762	1155	436	4	31	1		

The analysis of the results of the review of administrative offenses indicated that in practice a fine is the most commonly applied sanction in the cases under Art. 173.2, followed by an administrative arrest of offenders. This trend is true of both 2018 and 2019. However, the practice indicates that fines are not an effective administrative penalty, as the burden of paying the fines often falls on the victim or the fine is paid from the shared family budget. Therefore, fines do not serve as a deterrent to the perpetrator nor do they strengthen the overall effectiveness of the justice system response to domestic violence.

Results of hearing administrative offenses under Art. 173-2 of the Code of Administrative Offenses:

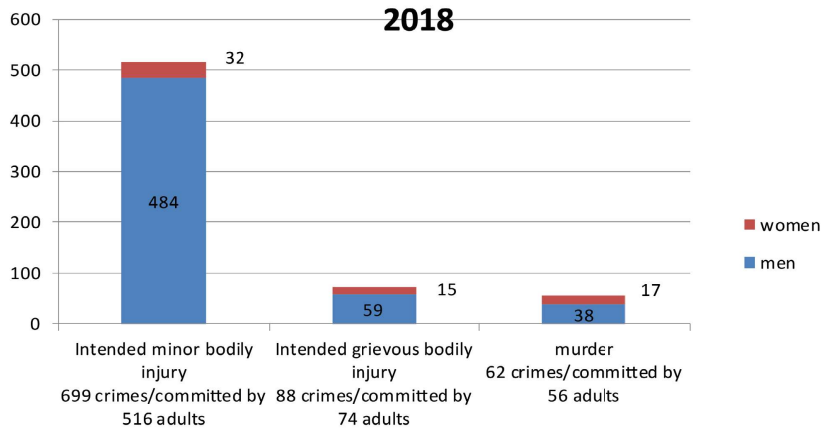
	Committing domestic violence		Committing gender-based violence		Non-compliance with the emergency barring order		Failure to notify the place of temporary stay		Total	
	2019	2018	2019	2018	2019	2018	2019	2018	2019	2018
Number of persons fined	30206	20958	739	453	155	1	16	0	30760	27352
Number of persons sentenced to community service	0	1	0	0	0	0	0	0	0	1
Number of persons placed under administrative arrest	1026	957	36	30	19	3	3	0	1041	1227
Administrative proceeding closed and case transferred to the prosecution or pre-trial investigation agency under Art. 253 of the Code of Admin. Offences	46	30	1	1	1	0	0	0	48	39
Released from liability under Art. 21, 22 Code of Admin. Offences	7430	5775	144	79	5	1	3	0	7578	8066

The most common criminal offenses related to domestic violence in 2019 included*:



* Criminal offense under Art. 126-1 Domestic Violence is presented separately in the statistics.

Prior to the enactment of amendments to the Criminal Code of Ukraine and the inclusion of Article 126-1 Domestic Violence, the most common criminal offenses related to domestic violence in 2018 were:



A total of 1,861 people were victims of criminal offenses related to domestic violence (including 300 men and 1,450 women) in 2019. This is a much higher statistic than the figure for 2018 - 989 people (173 men, 725women). This may also be due to the entry into force of the amendments to the Criminal Code of Ukraine, in particular, Art. 126-1 of the Criminal Code, increasing the practice and ability to identify this type of criminal offense. Pursuant to Art. 126-1 of the Criminal Code, 588 people were recognized as victims (534 women, 49 men) in 2019, including victims of physical violence — 145 (132 women, 12 men), psychological violence - 412 (376 women, 33 men) and economic violence - 7 women.

As in previous years, women predominated among victims of domestic violence, as well as criminal offenses related to domestic violence in 2019. This confirms the fact that domestic violence and gender-based violence affect women disproportionately.

Coordination Centre for Legal Aid

According to the data of the Coordination Centre for Legal Aid, local centres for secondary Free Legal Aid (who are important stakeholders in preventing and combatting domestic violence) registered 790 applications for free secondary legal aid for victims of domestic violence or gender-based violence (758 women, 32 men) in 2019. In 2018, free secondary legal aid lawyers represented 92 cases for issuing a restraining order[5] in accordance with the Law of Ukraine On Preventing and Combatting Domestic Violence[6].

Office of the Prosecutor General of Ukraine

The Office of the Prosecutor General of Ukraine (PGO) publishes statistics on the basis of the Unified Register of Pre-Trial Investigations on its website. The PGO keeps the Register and is responsible for its organizational, methodological and technical maintenance.

Despite the recent legislative changes, the reporting of offenses under Sexual Violence Article 153 of the Criminal Code is reflected in the outdated version of the article as “Violent gratification of sexual passion in an unnatural way” in the statistical reporting on the website of the Office of the Prosecutor General of Ukraine.

To raise this issue, the CSO La Strada-Ukraine appealed to the Prosecutor General's Office of Ukraine with a proposal to update the state statistics in line with the current legislation of Ukraine and change of title and disposition of Art. 153 of the Criminal Code from "violent gratification of sexual passion in an unnatural way" to "sexual violence” in 2019. However, as of January 1, 2020, no relevant changes had been made and statistics were still published on the official website of the Prosecutor General's Office disregarding the legislative changes. From January 2020, a year after the respective legislative changes entered into force, the PGO started to use the correct name of Article 153 of the Criminal Code (“Sexual Violence”) in the statistical reports on its website.

The statistics of the Prosecutor General Office of Ukraine on criminal offenses for 2019:

	Criminal offenses recorded in the reporting period	Criminal offenses where a notice of suspicion was served on the suspect	Criminal offences where a case went to trial	Criminal offenses where cases were closed	Criminal offences with no court decision made by the end of the reporting period (resolving or closing the case)
Domestic violence (Art. 126.1 Criminal Code of Ukraine)	1068	778	755	496	308
Rape (Art. 152 CCU)	352	308	200	266	260
Violent gratification of sexual passion in an unnatural way (At. 153 CCU) (as formulated on the statistic form on the PGO website)	69	46	35	16	16

5 A restraining order is a special measure to combat domestic violence, which temporarily limits rights and imposes obligations on the domestic violence offender in order to ensure safety of the victim. It was introduced by Art. 26 of the Domestic Violence Law. It can be obtained by the victim by applying to the civil court. It is issued for up to 6 months, but can be prolonged for a maximum of another 6 months. This measure reflects Art. 53 of the Istanbul Convention. Restraining orders are legally distinct from the emergency barring orders (described in footnote 3 above).

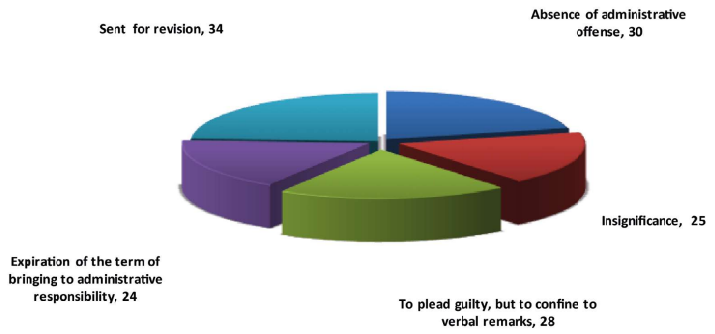
6 2018 Monitoring report, p.20.

4. Analysis of court decisions under art. 173-2 of the Code of Administrative Offenses on committing domestic violence, gender-based violence, failure to comply with an emergency barring order or failure to notify the place of temporary stay

It is essential to analyse court decisions to understand the governmental response to domestic violence cases, to identify problems and solutions, and to develop a consistent response to these cases. Therefore, the analysis of court decisions under Article 173-2 of the Code of Administrative Offenses is a crucial component of this monitoring report. 300 decisions from the Unified Register of Court Decisions,[7] equally distributed by month and region of Ukraine, for the period from 01.01.2019 to 31.12.2019 were randomly selected for analysis.

Of the total 300 selected court decisions, all cases concerned domestic violence. None of the selected decisions related to gender-based violence, non-compliance with an emergency barring order or failure notify the place of temporary stay.

The distribution of reasons why the offender was not punished was the following:



7 http://www.reyestr.court.gov.ua

Out of 300 court decisions, in 137 cases the perpetrator of domestic violence received an administrative penalty, and in 141 cases the offender evaded administrative responsibility for one reason or another.

The types of court decisions in the 300 cases were as follows:

Administrative penalty imposed	Administrative charges withdrawn	Other resolutions of the case (judge's self-recusal, offence re-qualified as a criminal offence, etc.)
137	141	22

It should be noted that the analysis of the same number of decisions in 2018 indicates that the offenders were not prosecuted in 204 cases, therefore the year 2019 shows an increase in the number perpetrators of domestic violence who were prosecuted and against whom administrative protocols were drawn up.

Exemption from administrative liability

Compared to 2018, the year 2019 demonstrated a general trend away from exempting an offender from punishment where the court only issues a verbal reprimand. The judges issued verbal reprimands in 28 cases[8] in 2019 in contrast to 2018, when there were 55 such court rulings.

In such cases, the court takes the following circumstances into account: difficult financial situation, admission of guilt, sincere remorse, committing an administrative offense for the first time, conciliation with the victim, absence of harmful consequences, no significant harm caused to public or state interests.

There is a significant number of decisions remanding the protocols on the commission of an administrative offense for revision. Of the 300 court decisions analysed, 34 court decisions remanded the materials of administrative cases for revision[9]. This fact highlights significant shortcomings in the work of the police in drawing up the protocols, which in reality means that the perpetrators will not be brought to justice. This issue can be addressed by providing police officers with further training in documenting administrative offenses.

8 Cases 132/76/19, 195/130/19, 505/3817/19 , 752/3080/19, 723/1761/19, 658/1611/19, 721/444/19, 723/1903/19, 723/2361/19, 723/2260/19, 723/2255/19, 723/5151/19, 723/2458/19, 522/21187/19, 723/4208/19, 505/3191/19, 652/918/19, 3/521/8616/19, 314/5516/19, 946/8650/19, 946/8649/19, 235/8212/19, 180/2178/19, 759/21694/19, 759/21695/19, 127/31446/19, 650/1947/19, 523/17785/19.

9 Cases 3/543/9/19, 414/9/19, 726/147/19, 759/1496/19, 753/1927/19, 442/803/19, 306/228/19, 705/344/19, 533/211/19, 592/4827/19, 645/1851/19, 203/943/19, 211/6165/18, 615/648/19, 610/3710/18, 642/4204/19, 606/1591/19, 615/646/19, 635/1170/19, 642/5929/19, 452/2081/19, 642/4757/19, 475/1525/19, 661/5666/19, 642/4769/19, 753/21646/19, 204/8149/19, 204/7419/19, 642/4756/19, 642/8042/19, 522/20021/19, 522/16609/19, 652/919/19, 635/7453/19.

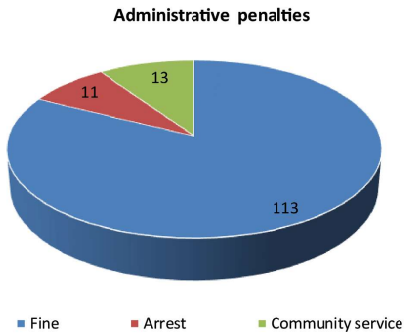
The judges noted the following grounds for remanding the administrative protocols for revision:

- no circumstances of the administrative offense are specified;
- no information about the officer who drew up the protocol;
- no information about the victim;
- no evidence is attached to the protocol, therefore the information necessary for the due resolution of the case was missing;
- no date when the protocol was drawn;
- no confirmation of the recurrence of the offense;
- no statement as to whether the actions of the offender could or have caused harm to the physical or mental health of the victim;
- incorrect information about the place of residence of the offender;
- no specific details about the place where the offense was committed.

Administrative prosecution

In the majority of resolved administrative cases (109) the perpetrators were men. In 28 cases (all involving psychological violence) women offenders were prosecuted.[10]

Of the 300 court decisions analysed, 137 administrative penalties imposed were distributed as follows:



It should be noted that the number of cases when administrative penalties were imposed has increased compared to 2018, when the offender was prosecuted in 88 of 300 analysed court decisions and the following administrative penalties were imposed: administrative arrest – 5; community service – 19; and fine — 64.

10 Cases 596/1/19, 721/258/19, 723/1761/19, 522/21187/19, 495/10003/19, 199/9617/19, 523/18905/19, 652/907/19, 509/6799/19, 496/4505/19, 652/907/19, 204/7314/19, 523/14568/19, 606/2927/19, 127/31617/19, 754/11603/19, 263/7323/19, 452/708/19, 754/16325/19, 754/11596/19, 581/702/19, 607/25108/19, 740/2885/19, 294/1654/19, 395/88/19, 456/4132/19, 754/15584/19, 645/8098/19.

At the same time, it should be noted that the courts imposed fewer community service penalties in domestic violence cases compared to the previous year. The most frequent manifestations of violence, which were mentioned in court decisions and served as grounds for administrative prosecution, were as follows:

- swearing
- insults
- threats of physical violence / threats of violence and use of force
- psychological and moral pressure
- property damage
- denial of use of property
- provoking a fight
- yelling
- shoving
- starting a fight that did not result in bodily damage or injuries
- extortion of money for alcohol
- hair pulling
- slapping on the face.

In cases when women were prosecuted, such manifestations included: verbal insults, threats, intimidation, moral and psychological pressure, threats of physical violence and obscene language.

In some cases, domestic violence as a legally defined term is misnamed in court decisions (e.g. “violence in the family” is used instead).

5. Analysis of court decisions in proceedings under Art. 126-1 of the Criminal Code of Ukraine

Domestic Violence Art.126-1 was incorporated into the Criminal Code of Ukraine by the Law of Ukraine 2227-VIII on Amendments to the Criminal and Criminal Procedure Codes of Ukraine to Implement the Provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence as of December 6, 2017, which came into force on January 11, 2019.

Although the number of completed proceedings under Art. 126-1 of the Criminal Code, given a relatively short period of time that has elapsed since the introduction of this provision into the criminal legislation of Ukraine, is quite insignificant, still a large number of criminal proceedings were at the stage of pre-trial investigation[11] at the turn of the year 2019. At present, the judicial practice reflected in the sentences still manifests some weaknesses. This situation needs to be addressed through the review of higher courts and the Supreme Court of Ukraine taking a stance on the most problematic issues.

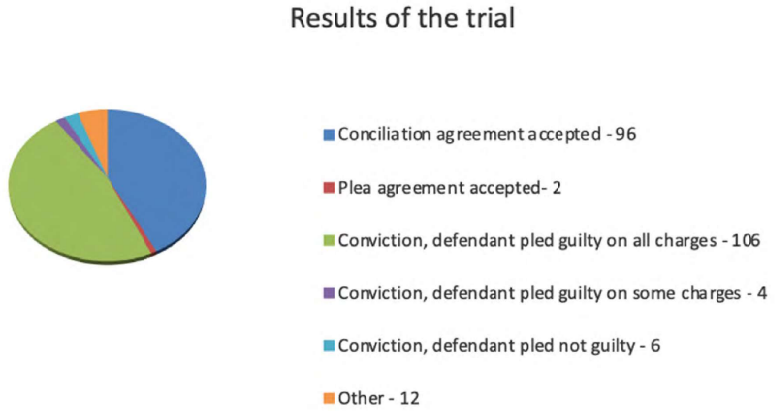
a. General overview of court judgements in proceedings under Art. 126-1 CCU

Monitoring of court decisions under Art. 126-1 of the Criminal Code in 2019[12] demonstrated that 626 criminal proceedings were pending in first instance courts and 319 cases had been resolved (including 77 cases where charges were dropped, 7 cases were remanded to the prosecutor, 226 judgements were delivered, all judgements were convictions).

In the vast majority of the judgements analysed, the defendant did not contest the charges and pleaded guilty on all charges. In almost half of the cases (96 judgements) a conciliation agreement was approved, in about 100 more cases the court used the provisions of Part 3 of Art. 349 of the CPC and did not examine the evidence, as the defendant pleaded guilty as charged and did not contest the circumstances of the case.

On one hand, this trend is a positive one, as it significantly simplifies the work for the courts. On the other hand, criminal domestic violence cases are novel and the practice of administering justice in these cases is evolving. Therefore, the judges miss an opportunity to gain an understanding of domestic violence, learn to distinguish it from mere conflicts or other crimes, such as threat of murder[13], endangerment, torture and unlawful deprivation of liberty.

11 According to the GPO data for 2019, 1,068 criminal offenses were registered under Art. 126-1 of the Criminal Code, of which: 755 proceedings went to trial with an indictment, 4 - went to court with a request for the application of compulsory medical treatment.
12 According to State Judicial Administration data (https://court.gov.ua/inshe/sudova_statystyka/rik_2019)
13 See case # 281/308/19 (http://reyestr.court.gov.ua/Review/8210647.3).



Thus, in the vast majority of cases, the courts determine that only psychological domestic violence has occurred. Since the trial evidence does not explore the impact of specific acts of violence on the victim, the judgements do not adequately describe how psychological violence goes beyond a mere quarrel. For instance:

> *"The defendant, being intoxicated by alcohol at the place of residence, during the quarrel which has arisen for insignificant reasons, intentionally swore at the victim obscenely. These intentional actions caused damage to her mental health, which led to the psychological suffering of the victim."*[14]

Since the court did not examine the evidence, the victim's relevant experience was not adequately substantiated. Also, specific situations of domestic violence are not described in detail in the court decisions.

In addition to psychological violence, which was found in almost all the judgements, a significant number of court decisions also found physical abuse as a form of domestic violence had occurred. The economic violence was charged in only a scant number of cases, even though it was in fact present in many cases. The most common economic violence scenario was when the perpetrator expelled or evicted the victim, alone or with their children, from their home. In such cases, the victim was forced to stay with neighbours or friends because s/he had no means to rent a place. At times the abuse is misinterpreted as psychological rather than economic violence. For example:

> *"Perpetrating his intentional criminal acts aimed at committing domestic violence, the defendant, with direct intent to commit domestic violence, swore at his ex-wife with obscene insults, which led to psycho-*

14 http://reyestr.court.gov.ua/Review/83095342.

logical violence against the latter. At the same time, she was forced to flee her home with her six minor children and move to her father's house and live there for 3 months. As a result of such actions by the defendant, the victim suffered psychological suffering and a deterioration in her quality of life, which resulted in her being forced to move to another place of residence with her minor children. As a result of such actions by the accused, the victim suffered psychological suffering."[15]

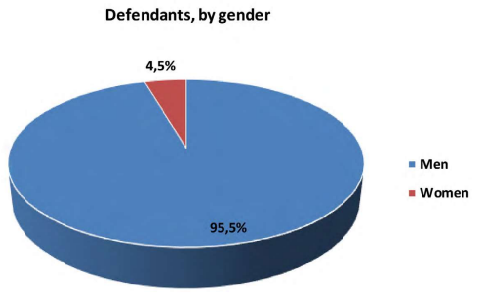
Another common scenario of economic violence was when, through repetitive psychological violence against the persons with whom the perpetrator was in a family relationship, he continued to live in their apartment and at their expense, demand money for his/her needs[16], take things out of the house and so on. Only in one case did the court classify the situation as economic and not psychological violence:

«In the period from March to May 2019, the defendant, being an able-bodied person, not having a permanent job, living in the same apartment with his mother, taking advantage of her emotional dependence, systematically committed economic violence against the latter, manifest in free usage of utilities, consumption of food purchased at the expense of the victim, as well as failure to provide of financial support for his mother and living entirely at her expense.»[17]

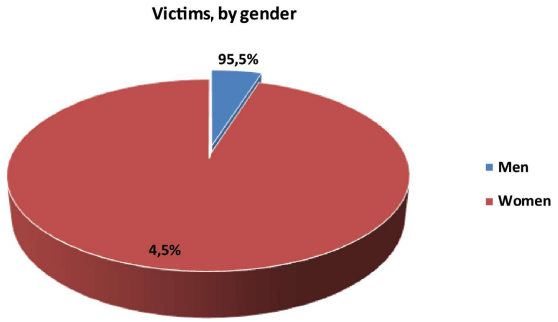
15 http://www.reyestr.court.gov.ua/Review/85188416.
16 See for example: http://reyestr.court.gov.ua/Review/85751672, http://reyestr.court.gov.ua/Review/85813656.
17 http://www.reyestr.court.gov.ua/Review/86390623.

b. Defendants and victims in cases under Art. 126-1 CCU

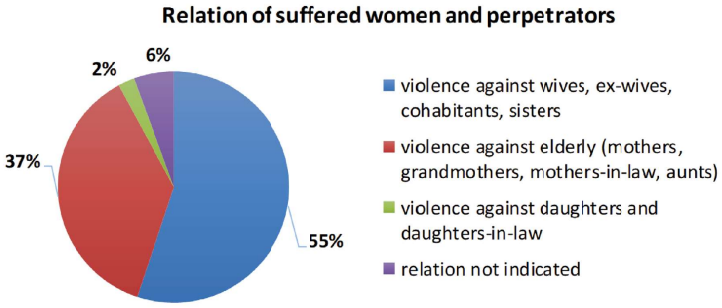
The courts convicted a total of 224 defendants for committing a crime under Art. 126-1 of the Criminal Code in 2019, including: 214 (or 95.5%) men, 10 (or 4.5%) women; all adults. More often, the crimes of domestic violence under Art. 126-1 of the Criminal Code were committed in a state of alcohol intoxication by able-bodied persons aged 30-50 years, who did not have a job or place of study at the time of the crime[18].



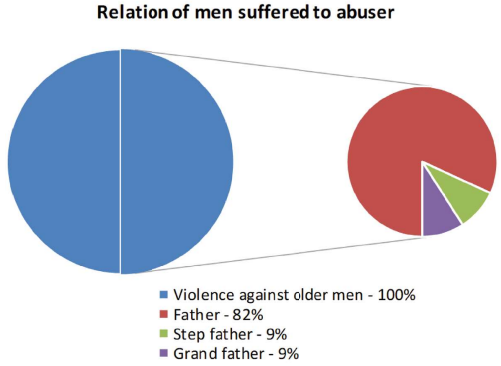
Among victims above 18, women constituted the majority (216 people, or 95,5% adult victims). Men were victims only in one case out of twenty (11 people, or 4,5% adult victims).



18 According to State Judicial Administration statistics for 2019.



In all cases of domestic violence against men (100%) the victims were elderly persons (fathers, grandfathers, stepfathers)[19]. As for violence against women, in 80 cases (37%) violence was inflicted on the elderly (mothers, grandmothers, mothers-in-law, aunts); in 119 cases (55%) violence was directed against wives, ex-wives, cohabitants, sisters; and in 5 cases (2%) against daughters and daughters-in-law.



The analysis of the collected data enables us to draw a number of conclusions that dispel the established stereotypes about domestic violence, and in particular the balance of power between family members and the dynamics of family relationships that lead to domestic violence.

19 In one case (419/2356/19) violence was perpetrated by father and stepmother against a minor child (a boy), but this case is included separately in the statistics on child victims.

Firstly, one in three cases of violence against women involved abuse of older relatives (mothers, grandmothers, mothers-in-law, mothers-in-law, aunts), and violence against wives / cohabitants was recorded in only about half of the cases.

Secondly, violence against older relatives was 12 times more likely to affect close relatives (mothers (68 cases) and grandmothers (5 cases) than distant relatives (wife's mother (5 cases) or husband's mother (1 case)). In this case, a common scenario was when the mother was abused by her son who had a previous criminal conviction. This may indicate not only that such individuals are more prone to domestic violence, but also that courts and law enforcement agencies take such cases more seriously and respond more effectively.

Thirdly, all cases of domestic violence against men were committed by men and only against older relatives, which means that there wasn't a single sentence where a woman committed violence against a husband/cohabitant or a grown-up son. The fact that there are no convictions of women perpetrating domestic violence against their husbands or cohabitants, on the one hand, could reflect the imbalance of power between women and men in Ukrainian society. On the other hand, it is possible that victimized men do not report such cases for a variety of reasons, such as shame or fear of condemnation due to prevailing social gender stereotypes.

An analysis of 226 judgements found that at least 58 children had in fact suffered from domestic violence. However, only 4 children were officially recognized as victims in the judgement. In addition, the details of the case provided in the reasoning section of judgements identified at least 6 children (1 boy, 5 girls) who were directly victimized by domestic violence (physical or psychological) along with their mothers, who were officially recognized as victims. Also, at least 48 children witnessed domestic violence against their parents (mostly mothers). However, most judgements did not reflect the fact that the children who witnessed domestic violence were also victims of domestic violence.

In some judgements (e.g. cases # 266/5438/19, 647/2611/19 excerpted below) the court qualified physical violence against a child as proof of psychological violence against her mother:

> *"647/2611/19: Continuing his repetitive actions, on July 21, 2019, at about 6 p.m. 00 min., the defendant, being at his actual place of residence, being in a state of alcohol intoxication, committed acts of psychological violence against his former cohabitant, which was expressed in the commission of physical violence against her minor son, namely - the accused pushed the child and inflicted at least two blows with a belt on his buttocks, which made the victim fear for the safety of her son, as a result of which police officers were called, who on arrival stopped the accused's illegal actions and drew up a protocol against him for committing an administrative offense under Part 2 of Art. 173-2 of the Code of Administrative Offences. The defendant was found guilty and brought to administrative responsibility under Part 2 of Art. 173-2 Code of Administrative Offences for commission of psychological violence in the*

family and sentenced to community service by the decision of the Beryslav district court of Kherson region as of 24.07.2019. The defendant was found guilty and brought to administrative responsibility under Part 2 of Art. 173-2 Code of Administrative Offences for commission of psychological violence in the family and sentenced to community service."[20]

"266/5438/19: . . . the defendant continued to repeat insults, threats, obscene language against the victim and her minor daughter, shoving the victim's minor daughter, which inflicted psychological suffering to the victim and degraded her quality of life, which was manifest in the loss of energy, fatigue, physical discomfort, loss of sleep and rest, including loss of self-esteem and positive emotions, caused negative experience, which impelled the victim to report to the police."[21]

The court classified violence in the presence of minors as an aggravating circumstance in only a handful of cases (e.g. cases # 344/17099/19, 736/1359/19). Many judgements contained evidence that children witnessed domestic violence, and therefore belong to the category of domestic violence victims in accordance with Article 1 of the Domestic Violence Law. Yet, this fact was not reflected in the reasoning nor the sentencing sections of the court decision. There is also every reason to believe that children may have witnessed domestic violence on a much larger scale, given overall numbers of incidents. However, in cases where defendants did not contest domestic violence charge, the evidence was not examined in court and therefore no record was made. Therefore, the analysis of court decisions does not shed any light on the true number of children who have suffered from domestic violence.

Compared to 227 adults, only 4 children received official status as victims of domestic violence. Obviously, this number is not indicative, as domestic violence against children occurs on a much larger scale, including cases where the child was not directly abused but witnessed domestic violence. In none of the judgments analysed was a child witnessing violence recognized as a victim. The reason for this is the lack of understanding of the concept of "victim of domestic violence" as well as necessary interaction between judiciary and law enforcement systems. Thus, the police do not usually record a child witness of domestic violence as a separate victim in an administrative offense under Art. 173-2 of the Code of Administrative Offenses in their administrative offense protocols.

Apart from this, the proceedings on domestic of violence under Art. 126-1 of the CCU are criminal proceedings in the form of a private accusation. According to Part 1 of Art. 477 of the CPC, private criminal proceedings may be initiated only based on the victim's application regarding a criminal offence. Thus, even if the criminal proceedings were initiated by one of the parents who suffered from domestic violence, for a child who witnessed it to be recognized as a victim a separate criminal proceeding must be initiated by the application of a parent acting as a legal representative of the child. Such a procedure is unnecessarily complex

20 http://www.reyestr.court.gov.ua/Review/84966064.
21 http://www.reyestr.court.gov.ua/Review/84806825.

at a formal level, but can nevertheless be achieved in practice through more active engagement of investigators, prosecutors and judges. These authorities could explain to adult victims that they need to initiate a separate criminal proceeding for their child to also be recognized as a victim of domestic violence.

In addition, criminal proceedings in the form of private accusation also hinders children`s access to justice. This is because when parents, adoptive parents or other legal representatives of children are abusers, or are subject other reasons and pressures, their choice not to report domestic violence precludes criminal responsibility of the perpetrator/s. In this context, it should also be noted that there is a direct link between violence against children, including cases where children witnessed violence, and domestic violence perpetrated and suffered by adults. This connection exists both in spatial (within one family) and in temporal (between two generations) dimensions. According to a study conducted by UNFPA and UNICEF in seven countries of Central Asia and Eastern Europe, including Ukraine in 2018, if domestic violence is committed between parents, children are more likely to suffer from physical violence committed by their parents, to live in fear of violence, and suffer negative psychological consequences[22].

Children who have witnessed violence between their parents are at greater risk of experiencing or perpetrating domestic violence themselves in the future[23]. For example, in Kazakhstan, women whose mothers were physically or psychologically abused by their fathers were 3.43 times more likely to suffer from physical/sexual abuse from their intimate partners. In Turkey, 51% of women who were abused by an intimate partner reported that their mothers had also been abused; and 51% of male offenders reported that their mothers had suffered from domestic violence[24].

This pattern of domestic violence is perpetrated not just as violence against/by an intimate partner, but also with respect to younger generations. For example, parents who suffered from domestic violence as children are more likely to commit domestic violence against their children[25]. Therefore, it is extremely important that the authorized state entities improve their detection of and response to domestic violence against children when implementing the Domestic Violence Law and related enforcement laws.

22 UNFPA, UNICEF, Making the Connection: Intimate partner violence and violence against children in Eastern Europe and Central Asia (Executive Summary), 2018. URL: https://www.unicef.org/eca/media/3321/file/Making%20the%20connection%20exec%20summary.pdf, p. 15
23 UNFPA, UNICEF, Making the Connection: Intimate partner violence and violence against children in Eastern Europe and Central Asia (Executive Summary), 2018. URL: https://www.unicef.org/eca/media/3321/file/Making%20the%20connection%20exec%20summary.pdf, p. 16
24 UNFPA, UNICEF, Making the Connection: Intimate partner violence and violence against children in Eastern Europe and Central Asia (Executive Summary), 2018. URL: https://www.unicef.org/eca/media/3321/file/Making%20the%20connection%20exec%20summary.pdf, p. 16
25 UNFPA, UNICEF, Making the Connection: Intimate partner violence and violence against children in Eastern Europe and Central Asia (Executive Summary), 2018. URL: https://www.unicef.org/eca/media/3321/file/Making%20the%20connection%20exec%20summary.pdf, p. 15

c. Evidence in cases under Art. 126-1 CCU

The most common sources of evidence used to prove the facts of domestic violence in the court decisions analysed included the following:

- resolutions on bringing the offender to administrative responsibility;
- protocols of administrative offenses;
- protocols on acceptance of the victim complaint concerning a crime according to Art. 126-1 CCU;
- data contained in the extract from the Unified Register of Pre-Trial Investigations on the notification of the victim about the commission of a crime against them under Art. 126-1 CCU;
- data contained in the report of the duty officer on the receipt of the victim complaint;
- testimony of the victim/s and witnesses;
- findings of forensic medical examination;
- certificates from hospitals about the treatment provided to the victim with a statement of injuries;
- findings of forensic psychiatric examination;
- findings of the psychologist / letters / information certificates from the centres of social services for families, children and youth describing the psychological state of the victim;
- protocols of the investigative experiment;
- audio and video recordings, etc.

In general, when examining evidence, courts most often relied on protocols of administrative offenses, the testimony of the victim and witnesses, as well as expert opinions and relevant certificates. Audio and video recordings were rarely examined as sources of evidence, particularly when compared to administrative proceedings concerning domestic violence under Art. 173-2 of the Code of Administrative Offences. This can be explained by the fact that the standards of admissibility of evidence are set higher in criminal proceedings than in administrative proceedings. Accordingly, a covert recording of the offender's criminal actions made by the victim without previous consent might be declared inadmissible in a criminal case, but not an administrative case. This reflects an overall higher standard of proof for criminal proceedings compared to similar administrative cases.

Thus, any failure in administrative proceedings can ultimately result in impunity. Thus, it is essential that judiciary and law enforcement should focus more on increasing the efficiency of administrative proceedings. Furthermore, the systems of administrative and criminal justice for domestic violence should function as complementary and result-oriented: if the administrative responsibility of the abuser for domestic violence was not enough to prevent him/her from committing further violence, s/he should be surely held criminally responsible. In this case the quality of administrative justice will ease the proof and become the basis for effective criminal justice.

d. Some of the challenges experienced when hearing cases under Art. 126-1 CCU

Violation of temporal jurisdiction for domestic violence crime

In addition to recent episodes of domestic violence, the vast majority of judgements mention episodes that occurred before the relevant amendments to criminal law entered into force (11.01.2019) in order to prove recurrence of domestic abuse.

The problem is not the mere fact that such episodes are referenced in the judgement, but that they are taken into account when establishing the repetitive nature of violence (meeting the requirement of 3 or more episodes), as this may violate the principle of non-retroactivity of criminal law. Thus, it would not be possible to establish the regularity of domestic violence without taking into account the episodes that occurred prior to 2019 in 18 of the examined cases[26]. In two other cases[27] all the episodes referenced by the court occurred before January 11, 2019.

The court referenced only two (instead of three) incidents of domestic violence (one in 2018 and one in 2019) in case # 473/888/19. In case # 346/2436/19, the judge referred to two specific episodes of domestic violence committed before the amendments entered into force and then mentioned in the judgement without giving specific details of time, method or circumstances of the crime:

> *"Continuing his illegal conduct since June 2018 until now, the defendant, when at the place of residence of his ex-wife, has been deliberately and repetitively inflicting psychological violence, which led to psychological suffering and deterioration of the quality of life of the victim."*[28]

Insufficient specific data about circumstances, place, time, method of committing the crime and non-compliance with the requirement of recurrence

In cases when defendants did not contest charges against them, the evidence was not examined during the trial and the circumstances, place, time, manner of committing the crime were not established. In some cases, individual episodes of criminal behaviour were not distinguished. Thus, in cases #937/6995/19, 133/2918/19 the judges referred only to the time period of domestic violence ("from August 2, 2018 to June 28, 2019", "from April 7, 2019 to October 18, 2019"), without specifying any particular episode of violence committed during this time interval.

A failure to review and clearly assess the circumstances of the case results in court decisions not assessing all the required elements of a crime, and in particu-

26 Cases # 523/3115/19, 326/842/19, 276/695/19, 581/668/19, 584/773/19, 483/1561/19, 377/813/19, 657/1021 / 19,243 / 12901/19, 185/9433/19, 643/10183/19, 936/841/19, 591/4557/19, 194/1870/19, 202/5312/19, 485/1577/19, 351 / 2672/19, 346/2622/19.
27 Cases # 346/2622/19, 202/5312/19.
28 http://reyestr.court.gov.ua/Review/82454294.

lar the requirement of systematic nature of domestic abuse[29]. Thus, in cases # 459/1773/19, 466/5939/19, 290/884/19 the court referred to only one incident of domestic violence when qualifying the case under Art. 126-1 of the Criminal Code, while in cases # 445/1107/19, 674/1176/19 - only to two episodes, failing to meet the requirement of systematic nature under the Criminal Code.

In this context, it should be stressed that the systematic nature of violence is the main distinguishing feature of domestic violence as a criminal offence, because it poses a greater danger to society, compared to domestic violence as an administrative offense. Recent scientific research suggests that domestic violence is usually committed cyclically[30]. Cycles of violence are repeated, but the aggression escalates more quickly over time. In the context of this escalating violence, and the fear it creates, many women's survival strategy is to be excessively passive (they deny violence, refuse help and protect the perpetrator)[31]. Thus, when the courts disregard repetitive nature of the violence, it indicates a lack of their understanding of its importance. As a result, risks to the victim are not adequately identified and when previous incidents of violence are not responded to adequately by the State, the violence continues to escalate.

Sentencing on multiple charges

In some cases[32], the courts handed down judgements on multiple charges under Art. 126-1 (Domestic Violence) and part 1, 2 of Art. 125 (Intentional Minor Bodily Damage) of the Criminal Code[33]. In all other cases, the commission of physical violence was covered by the qualification under Art. 126-1 CCU. At the same time, in some judgements the court explicitly noted the fact that minor bodily injuries had been inflicted, without qualifying an additional charge under Art. 125 CCU[34]. In the rest of the judgements, when the court concluded that physical violence had been inflicted, it was not possible to clearly identify the kind and severity of injuries inflicted on the victim in the absence of forensic examination findings and in-depth examination of evidence during the trial. Consequently, the new case law for specific manifestations of violence under Art. 126-1 of the Criminal Code is not developing, which hampers the communicative function of the judiciary.

Violation of the Non bis in idem principle

The violation of the procedural rights of the defendant, and in particular the principle of non bis in idem (the right not to be tried twice for the same offense) is another problem present in a high number of proceedings, in particular when the defendant is held twice responsible for the very same acts as both administrative and a criminal offence. This principle is enshrined in Art. 61 of the Constitution of Ukraine, Art. 19 of the CPC, as well as Art. 4 of Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms. Thus, when assessing the regularity of committing domestic violence, the courts referred to three or more incidents of domestic violence, and for each of these episodes the defendant had already been brought to administrative responsibility under Art. 173-2 of the Code of Administrative Offenses[35]:

> *"Thus, the defendant, living as a family with his grandmother, during the year was prosecuted three times under Part 2 of Article 173-2 of the Code of Administrative Offenses, which indicates that the latter had committed domestic violence, i.e. intentional repetitive psychological violence against his grandmother with whom the defendant lives as a family, which led to psychological suffering and deterioration of the victim's quality of life."*[36]

Although formally the liability for administrative offenses and criminal offenses are different, according to the case law of the ECHR, it is the nature of such liability (and in particular the nature of the offense and severity of punishment) that is important, not just the formal classification of the offense under national law[37]. The analysis of the content of Art. 173-2 of the Code of Administrative Offenses shows that administrative liability for domestic violence is commensurate with criminal liability for domestic violence, both in terms of the nature of violation (it covers the same actions as Article 126-1 of the Criminal Code, only without requiring them to be systematic), and the severity of the upper limit of the sanction (an offender can be subjected to arrest). Therefore, it is highly likely that ECHR may recognize a violation of Art. 4 of Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms in such decisions of the Ukrainian courts.

The solution to this problem may lie so not much in amending the law (e.g. reducing the upper limit of punishment under Article 173-2 of the Code of Administrative Offenses and increasing the lower limit of punishment under Article 126-1 of the Criminal Code, or changing the disposition of these articles). Rather it should lie in raising awareness of the law enforcement agencies and judges to the application, relationship and correlation of Art. 173-2 of the Code of Administrative Offenses and Art. 126-1 of the Criminal Code. In particular, if at least two previous episodes of domestic violence have occurred before the current incident, the person should be subjected to criminal, not administrative liability.

29 The term "systematic" in Ukrainian criminal law is usually understood as "three and more times".
30 The model of "cycles of violence" was introduced and described in detail by American psychologist Leonore E. Walker in 1979.
31 UNFPA, WAVE, Strengthening Health System Responses to Gender- based Violence in Eastern Europe and Central Asia: A Resource Package, 2014. URL: https://eeca.unfpa.org/sites/default/files/pub-pdf/WAVE-UNFPA-Report-EN.pdf, p. 34.
32 E.g. cases # 532/1246/19, 419/2356/19, 591/4557/19, 292/1405/19.
33 Among all the verdicts under Art. 126-1 CCU that were analysed, none concerned the infliction of bodily injury of medium gravity or grievous bodily injury. Thus, it might be assumed that the courts tend to qualify such cases only under the respective provisions on bodily injuries, without applying Art. 126-1 of the CCU.
34 E.g. cases # 466/5939/19, 505/2062/19, 718/2264/19, 475/902/19, 753/20385/19.
35 E.g. cases # 659/531/19, 206/6086/19, 133/2808/19, 736/1359/19, 194/1870/19, 396/1364/19, 567/820/19, 439/1474/19
36 http://www.reyestr.court.gov.ua/Review/86146165.
37 See cases A and B v. Norway, Engel and Others v. The Netherlands; Ruotsalainen v. Finland, Mihalache v. Romania e.g.

Dual consideration of an aggravating circumstance

In a number of sentences, the courts considered as an aggravating circumstance that the crime was committed against a spouse or former spouse or another person with whom the perpetrator is currently or formerly in a familial or close relationship (according to paragraph 6, Part 1 of Article 67 of the Criminal Code). These cases include #755/10340/19, 354/927/19, 663/3510/19, 618/1500/19, 296/2942/19, 598/1552/19, 736/1359/19, 558/373/19, 676/5596/19, 598/2195/19. However, the latter circumstance is incorporated into the disposition of Article 126-1 of the Criminal Code as an element of a crime that defines its qualification. In cases # 354/927/19, 663/3510/19 the relevant aggravating circumstances were excluded through appellate review, while cases #296/2942/19, 598/2195/19 are currently pending appeal proceedings. The remaining court decisions mentioned above, where the courts applied the same aggravating circumstance twice, have already entered into force unchanged.

e. Conciliation and plea agreements in judicial practice under Art. 126-1 CCU

As was mentioned previously, a conciliation agreement between the victim and the defendant was approved by the court in almost half of the sentences under Art. 126-1 of the Criminal Code. However, in almost all of these sentences, the courts do not directly reference nor take into account the provisions of paragraph 2 of Part 1 of Art. 469 of the CCP. Amendments to the relevant provision came into force on January 11, 2019, and stipulate an exception to the provision of paragraph 1, part 1 of Art. 469 of the CCP. Thus, the previous provision that a conciliation agreement may be initiated by the victim, suspect, or defendant (as a general rule) was amended and the initiative was limited only to the victim, their representative, or legal counsel in criminal domestic violence cases[38]. Thus, in a number of cases courts directly refer to the general rule of paragraph 1 of Part 1 of Art. 469 of the CPC, without mentioning the exclusivity of domestic violence proceedings in this regard:

> *"Thus, according to the requirements of Part 1, 3, 5 of Art. 469 of the CPC of Ukraine, a conciliation agreement may be concluded on the initiative of the victim, suspect or defendant."*[39]

Other judgements make no mention at all of the party who is empowered to initiate a conciliation agreement. Consequently, when approving a conciliation agreement, the courts only examine whether the victim agrees to enter the agreement and whether they are aware of the consequences arising from the approval of such an agreement, disregarding the special provisions of paragraph 2 of Part 1 of Art. 469 of the CPC. At the same time, the question of whether the victim initiated the agreement is not raised at all.

Obviously, the special exception introduced for the category of domestic violence cases in paragraph 2 of Part 1 of Art. 469 of the CPC was incorporated into the code with a particular intent. It means to draw attention to the special sensitivity of domestic violence cases and encourage the judges to examine with greater care whether it was truly the victim's preference as indicated by initiating a conciliation agreement, and whether any pressure was levied on the victim to do so.

The courts referred to the provisions of paragraph 2 part 1 of Art. 469 of the CPC and examined whether the agreement was concluded on the initiative of the victim before approving the conciliation agreement in only 5 judgements[40] (out of 96 judgements approving the conciliation agreement), as in:

> *"A conciliation agreement in criminal proceedings for crimes related to domestic violence may be concluded only at the initiative of the victim, their representative or legal council. The victim also fully understands the rights which she is endowed with under the provisions of the CPC of Ukraine. The victim additionally confirmed in court that the given conciliation agreement is concluded on her initiative according to Part 1 of Article 469 of the CPC of Ukraine."*[41]

Plea agreements were approved by the court in 2 cases of the 226 judgements analysed (cases # 449/749/19, 439/1474/19). A plea agreement between a prosecutor and a suspect or defendant may be concluded in respect of criminal offenses, as a result of which damage was inflicted only to state or public interests according to Part 4 of Art. 469 of the CPC. It requires all the victims in the case to give the prosecutor their written consent to conclude the agreement. The two judgements above contain no mention of whether the victims had given the prosecutor their written consent to conclude such an agreement, whether the court had examined the victims' understanding of the circumstances and legal consequences, and whether consent to enter into the agreement was given voluntarily. Instead, they contain only a brief mention that "Victim Person_2 did not object to the approval of the plea agreement in trial"[42] and "Victim Person_2 in court did not object to the approval of the agreement"[43].

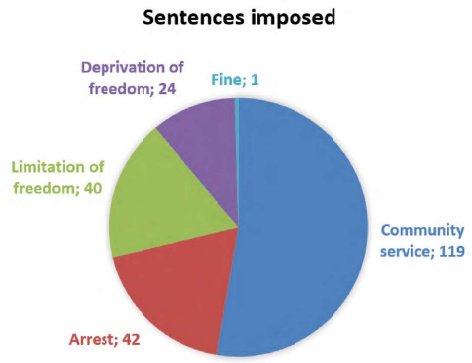
In this context, it should be noted that the current legislation does not directly prohibit the plea agreements in domestic violence cases, provided the prosecutor received the prior written consent of the victim. However, plea agreements are less favourable for the victim compared to conciliation agreements. This is because in addition to the victim's exclusive right to initiate a conciliation agreement in cases of domestic violence, according to Art. 474 of the CPC, during the trial the court must ensure that the victim fully understands the consequences of approval of the agreement and whether the agreement is voluntary, i.e. does not result from violence, coercion, threats or promises, actions or any circumstances other than those stipulated in the agreement. Contrarily, when a plea agreement is concluded, the victim is deprived of all the above-mentioned criminal procedural safeguards during the trial.

38 E.g. cases # 275/1096/19, 282/560/19, 321/1533/19, 428/12464/19, 286/3872/19, 275/1337/19, 676/5596/19.
39 http://www.reyestr.court.gov.ua/Review/85188416.
40 Cases # 445/1107/19, 326/842/19, 445/1591/19, 716/1191/19, 243/12901/19.
41 http://reyestr.court.gov.ua/Review/82900654.
42 http://www.reyestr.court.gov.ua/Review/86232761.
43 http://www.reyestr.court.gov.ua/Review/85339877.

Therefore, even though this oversight is of legislative nature, in practice it can lead to the violation of the legal rights and interests of victims of domestic violence. Consequently, in practice, the courts should pay special attention when reviewing plea agreements in domestic violence cases and ensure that the rights of the victim are not violated and their opinion is heard and taken into account.

f. Sentencing in judicial practice under Art. 126-1 CCU

The courts imposed all types of sanctions under Art. 126-1 of the Criminal Code (community service, arrest, restriction of liberty, imprisonment) in the analysed cases. The defendant was sentenced to community service in more than half of the sentences (119 sentences, or 52.7%). Approximately the same number of judgements were handed down with a sentence of arrest (42 sentences, or 18.6%) and restraint of liberty (40 sentences, or 17.7%). Imprisonment was applied in only 24 sentences (10.6%).



The predominant use of milder sanctions can be explained by the fact that in most cases the defendant pleads guilty as charged, and the victim usually does not insist on the application of a more severe punishment associated with restraint or deprivation of liberty. However, in the absence of thorough assessment of the evidence (consideration of proceedings under Article 349 of the CPC or approval of a conciliation agreement), the court may not always objectively assess the public danger of the act and the degree of harm caused to the victim. Therefore, the sanctions applied may not always be justified and proportionate.

In one case (case # 587/1126/19) the court, applying Art. 69 of the Criminal Code (the imposition of a milder punishment than provided by law), imposed a penalty in the form of a fine of 100 non-taxable minimum incomes (1,700 UAH). In another case (case # 523/315/19) the court applied a sentence lower than the minimum limit set in the sanction of Art. 126-1 of the Criminal Code, namely 100 hours of community service. However, when choosing this measure of punishment, the court failed to refer to Art. 69 of the Criminal Code and to cite circumstances that would warrant the application of a milder sentence:

> *"When sentencing the accused, the court states the absence of mitigating circumstances; the commission of a crime in a state of alcohol intoxication and in respect of an elderly person - as aggravating circumstances.*
>
> *The court also takes into account the facts of the first criminal conviction of the defendant, negative background check findings from his place of residence, the testimony obtained in court about his employment, as well as the position of the victim, who did not insist on a severe punishment".*

This sentence has not yet entered into force and is being considered on appeal as of July 2020.

g. Application of restrictive measures in proceedings under Art. 126-1 CCU

The courts can apply restrictive measures in domestic violence criminal proceedings pursuant to the Law of Ukraine 2227-VIII, "On Amendments to the Criminal and Criminal Procedure Codes of Ukraine to Implement the Provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence" as of 6 December 2017, which amended the CCU and the CPC.

Restrictive measures in accordance with Part 6 of Art. 194 of the CPC[44] may be applied by the court to a suspect or accused when imposing a non-custodial measure of restraint. Such measures are imposed by the court only in the interests of the victim of a crime related to domestic violence.

In addition to restrictive measures that may be applied by the curt against the offender before the court decision enters into force in accordance with Part 6 of Art. 194 of the CPC, the court may also apply such restrictive measures of Art. 91-1 CCU to defendants convicted of crimes related to domestic violence, when

44 According to Part 6 of the Art. 194 CPC:
"In the interests of a victim of the crime connected with domestic violence, apart from the obligations listed in the Part 5 of this Article, the court may apply to the person who is suspected in the commission of such criminal violation, one or more of such restrictive measures:
1) restraint from being in the place of common residence with a person, who suffered from domestic violence;
2) limitation from communication with a child in case when domestic violence was committed against a child or in the presence of a child;
3) restraint from approaching at a certain distance to the place where a person, who suffered from domestic violence, might reside permanently or temporarily, temporarily or regularly visit due to work, study, medical treatment or other reasons;
4) restraint from correspondence, phone calls with a person, who suffered from domestic violence, contacts through other means of communication or through electronic communication channels personally or through the third persons;
5) referral to treatment from alcohol, drug or other addiction, from diseases that can threaten other people, referral to the program for abusers".

imposing a non-custodial sentence, or when releasing them from criminal liability or punishment[45].

Restrictive measures applied in criminal proceedings must be distinguished from the restraining orders that were introduced into Ukrainian legislation with the adoption of the Law of Ukraine On Preventing and Combatting Domestic Violence 2229-VIII as of 07.12.2017. The difference between them is not only in the range of measures they offer, but also in the scope of their application (restrictive measures are applied in criminal proceedings, while restraining orders can be obtained through civil proceedings). Further, restraining orders are only issued at the initiative of the victim (they have to specifically request them by filing an application to the court).

Importantly, and in contrast, restrictive measures may be applied by the court ex officio in the interests of the victim, therefore the application of the victim is not mandatory. This is critical to ensure victims of criminal domestic violence are adequate protected from further violence, as such persons can often be deprived of the opportunity to apply for a restraining order for a number of objective and subjective reasons, such as geographical distance from the court, inability to leave children unattended for the time required to file an application, lack of access to qualified legal assistance, pressure from the abuser, or a temporary reconciliation with the abuser. In practice, this means the violence against the victim can continue for months or years until the pre-trial investigation and trial are concluded.

The analysis of sentences under Art. 126-1 of the Criminal Code revealed that in practice the courts hardly ever apply restrictive measures against offenders either at the stage of pre-trial investigation, trial or sentencing. For example, first instance courts issued 741 decisions on the issuance or extension of a restraining order in civil proceedings in 2019. At the same time, restrictive measures in accordance with Part 6 of Art. 194 of the CPC were applied to the defendant in only one case (case # 186/1015/19); in another 5 sentences the courts applied a precautionary measure in the form of detention until the sentence came into force. Restrictive measures were applied to defendants in accordance with Art. 91-1 CCU in only 3 cases[46]. In all 3 cases, defendants were referred to the perpetrator program. At the same time, in one of the three sentences, the duration of the program was not specified:

> *"According to Point 5 Part 1 of Art. 91 - 1 of the Criminal Code of Ukraine after serving the main punishment in the form of 1 month of arrest, the defendant shall be referred to complete the program for perpetrators or probation program."*[47]

It may be that restrictive measures are scarcely used in criminal proceedings, since judges and pre-trial investigation agencies are not aware about the availability of such mechanisms and their importance in guaranteeing the safety of victims in criminal proceedings. This means there are no enduring restrictions to lower the chance that convicted perpetrators of crimes under Art. 126-1 of the Criminal Code will commit further domestic violence.

Thus, for example a defendant was prosecuted for domestic violence twice in a year under Art. 126-1 of the Criminal Code in case #445/2025/19, while the defendant in case #281/834/19 was charged for the third time. Moreover, if the Ukrainian courts continue to fail to apply restrictive measures under criminal and criminal procedure law in cases where it is warranted in the interests of criminal domestic violence victims, this may be grounds for applications to the ECHR for non-compliance of the state with its positive obligations to protect victims.

The analysis of sentences under Art. 126-1 of the Criminal Code revealed another alarming trend - that the victims did not file any civil lawsuits in criminal proceedings for the compensation for material and moral damages inflicted on them by domestic violence. According to the State Judicial Administration data the moral and material damages inflicted on the victims of domestic violence under Art. 126-1 of the Criminal Code amounted to mere UAH 1,000 in 2019. In comparison, this figure amounted to UAH 2,045,173 for the crime of minor bodily injury (Article 125 of the Criminal Code). More awareness raising is necessary to ensure victims access compensation, particularly when it will be materially beneficial to other members within the domestic context who are directly or indirectly harmed by the domestic violence.

45 According to Art. 91-1 CCU:
"1. In the interests of a victim of a crime related to domestic violence, concurrently the imposition of a non-custodial sentence or release from criminal liability or punishment on the grounds provided for in this Code, the court may apply one or several restrictive measures on the defendant who committed domestic violence, imposing the following obligations:
1) prohibition to be in the place of cohabitation with a person who has suffered from domestic violence;
2) restriction of communication with the child in the event that domestic violence was committed against the child or in their presence;
3) prohibition of coming within a specified distance of a place where a person who has suffered from domestic violence may permanently or temporarily reside, temporarily or systematically stay in connection with work, study, treatment or for other reasons;
4) prohibition of correspondence, telephone conversations with a person who has suffered from domestic violence, and other contacts through means of communication or electronic communications in person or through third parties;
5) referral for a program for perpetrators or a probation program.
2. The measures provided for in part one of this Article shall apply to a person who has reached the age of 18 at the time of the commission of domestic violence.
3. The measures provided for in part one of this Article may be applied for a period of one to three months and, if necessary, may be extended for a period determined by the court, but for no longer than 12 months.
4. The conduct of defendants, places under restrictive measures, shall be controlled by the probation agency at the place of residence of the convict, and in case of commission of a crime by a serviceman - by the commander of a military unit."

46 Cases #473/888/19, 181/1307/19, 185/9433/19.
47 http://reyestr.court.gov.ua/Review/80863064.

h. Findings

The analysis of court judgements under Art. 126-1 of the Criminal Code showed that the case law regarding domestic violence is evolving quite rapidly in general. The courts mostly correctly applied Art. 126-1 of the Criminal Code in this category of cases even though in most of these proceedings the defendants did not contest the charges and pleaded guilty as charged and therefore the evidence was not examined and the circumstances of the case were not analysed in trial. At the same time, even at this stage, the application of both substantive and procedural laws by courts could be approved in several ways.

A clearer understanding of the distinction between psychological violence and ordinary quarrel/conflict, as well as psychological violence and economic violence needs to be promoted. Incorrect qualification can lead to violations of the rights of both parties: the victims whose experience is not properly reflected and the defendants who may be wrongfully convicted. To address this issue, the courts need to pay closer attention to the circumstances of the case, even when the accused has pleaded guilty on all the charges and does not contest the facts.

It is crucial to recognize children who suffer or witness domestic violence as victims. The problem is further complicated by the fact that while adults can directly report domestic violence against them, children can exercise their right to access justice only through legal representatives, who in practice do not always act in their interests. As a result, the problem remains latent, courts and law enforcement statistics do not reflect the true picture, and therefore it is difficult to assess the real extent of domestic violence against children in Ukraine. Accordingly, this problem remains unnoticed and underestimated in the development and implementation of state policy in the field of preventing and combating domestic violence against children. The solution to this problem could be found in raising public awareness, providing special training to law enforcement officers and judges, and ensuring access to justice for children who have suffered from domestic violence.

It is important to clearly establish the circumstances, place, time of the crime in court judgements and consider systematic nature requirement to correctly qualify the crime. Otherwise judgements may be overturned on appeal, which may not only negatively affect the victim and the defendant, but also undermine the trust in the system of justice overall. In addition, as the public danger of systematic domestic violence as a constituent element of domestic violence crime is underestimated, it can lead to an inappropriate response of authorized agencies and escalations of violence triggered by the appearance of impunity from punishment. Therefore, the courts should closely examine the circumstances of the crime and verify all constituent elements of the crime specified in Art. 126-1 of the Criminal Code and return indictments to the prosecutor should they lack relevant information.

It is important to clearly identify the nature and consequences of violence against the victim. The severity of injuries inflicted on victims of domestic violence often cannot be ascertained from the circumstances set out in the court judgement. This is due to the fact that a forensic medical examination to determine the severity of bodily injuries in physical violence cases or forensic psychological or psychiatric examination to determine the impact of psychological violence on the victim is only required by the court in a few isolated cases. This, in turn, makes it difficult to properly assess victims' medical and psychological needs, which could also inform the development and implementation of public policies and support services to prevent and combat domestic violence. Therefore, pre-trial investigation agencies and courts should place more emphasis on specifying the impact of violence on the victim, appoint all necessary examinations for the purpose, and detail these findings in their judgements.

Another issue to avoid is the violation of the non bis in idem principle, when a person is subjected to criminal prosecution for the same episodes of domestic violence that they had already been prosecuted for in the administrative system of justice. The court decisions containing this violation may in the future be appealed to the ECHR. The solution to this problem lies in strengthening collaboration between judicial and law enforcement agencies. Thus, when the police draw up protocols of administrative offenses and the courts consider administrative offenses under Art. 173-2 of the Code of Administrative Offenses, they should always assess the systematic nature of domestic violence. If there are grounds to believe that the offense is committed three or more times repeatedly, they should transfer case materials to the prosecutor or pre-trial investigative agency in accordance with Art. 253 of the Code of Administrative Offenses.

It is important to prevent dual consideration of the familial relationship between the defendant and the victim as both the qualifying element of the crime and an aggravating circumstance. Although this judicial error was made in a number of court decisions analysed, hopefully corrections by the Court of Appeal mean they will not be made it in the future.

The requirements of paragraph 2 of Part 1 of Art. 469 of the CPC for approving a conciliation agreement must be met to ensure that the rights and interests of domestic violence victims are upheld. In particular, it is important to ensure the victim has not to be pressured by the perpetrator and does not have to be in contact for negotiations of a conciliation agreement, if the perpetrator is initially unwilling to conclude such an agreement. Given the fact that the exception provided for in paragraph 2 of Part 1 of Art. 469 of the CPC applies exclusively to the category of domestic violence cases, this should serve as a clear signal to the judges to make sure that the conciliation agreement was concluded on the victim's initiative without any pressure.

Due regard should be paid to the rights and interests of the victim when approving plea agreements, considering the lack of procedural guarantees for the rights of domestic violence victims in these. Given the particularly sensitive nature of domestic violence cases, the judges should take the initiative to

ensure that the rights of victims are not violated in concluding such an agreement, and their opinion was heard and taken into account.

Another issue is the reluctance of the judges to apply the full range of restrictive measures under Part 6 of Art. 194 of the CPC and Art. 91-1 of the Criminal Code, which were specifically intended to be used in relation to persons who have committed domestic violence. When the judges impose a non-custodial punishment (e.g. community service) without any restrictive measures under Art. 91-1 of the Criminal Code, the threat of continued domestic violence against the victim remains. In at least two out of the 226 judgements considered, the defendant faced prosecution under Art. 126-1 of the Criminal Code for the second time in a year, and in both cases the court imposed a non-custodial sentence (community service) at first sentencing. More vigorous use of restrictive measures at both the pre-trial and trial stages will help reduce the risk of recurrence of domestic violence against the victim and help correct the defendant.

It is important that victims file civil lawsuits for damages in criminal proceedings. Otherwise, the material and moral damage inflicted by domestic violence on the victims personally, as well as the economic losses sustained by society and the state remain underestimated. In order to address this issue, the victims should be informed that they are entitled to a compensation both at the pre-trial stage and during the trial.

6. Analysis of court decisions on the issuance and extension of restraining orders in civil proceedings

The monitoring analysed court decisions in cases on the issuance and extension of restraining orders, adopted in the period from January 2019 to December 2019.

First of all, it should be noted that court decisions are entered incorrectly into the Unified State Register, which makes finding them quite complicated. Thus, court decisions on the issuance and renewal of restraining orders are placed in the following categories: “Civil cases; Other cases”, "Civil cases; Claim proceedings; Disputes arising from housing relations; Disputes arising from housing relations on eviction”, " Civil cases; Separate proceedings; Disputes arising from family law”, "Cases establishing facts of legal significance”, etc.

The courts passed the following rulings in 300 court decisions analysed:

Application for a restraining order granted	Application for a restraining order granted in part	Application for a restraining order denied
14	218	68

The following categories of plaintiffs sought restraining orders:

- wife
- ex-wife
- mother
- female cohabitant
- female ex-cohabitant
- estranged wife in the process of divorce
- other categories.

The vast majority of applicants were women, so of the 300 decisions analysed, the applicants were:

- women – 259;
- men – 41.

The applicants stated the following circumstances, which warranted the application of a special measure in their restraining order application:

Physical abuse	- infliction of bodily injuries (mostly minor); - inflicting blows; - beatings (also in the presence of children); - use of physical force, by pushing, slapping and punching, pulling by hair (also in the presence of children);
Psychological abuse	- instigating quarrels and scandals repeatedly; - pressure, coercion and blackmail, harassment and interference, interference with the privacy of the applicant and her mother; - threats of physical violence; - threats of physical violence, murder; - humiliation and intimidation; - total control, behaviour control, excessive attention to the applicant's life; - manipulations; - repeated intimidation and insults.
Economic abuse	- damage to property; - eviction from the apartment, including replacement of locks; - theft, extortion of money and valuables; - deprivation of food and livelihood
Sexual abuse (against children)	- committing immoral acts of a sexual nature to a child.

The other circumstances stated by the applicants included: offender previously prosecuted administratively under Art. 173-2 of the Code of Administrative Offenses, the offender had a perpetrator record with the police, perpetrator abused alcohol/drugs; the perpetrator had previous convictions.

The following temporary restrictions were applied in cases where the application was granted:

Temporary restrictions	Number
Prohibition to be in the place of joint residence (stay) with the victim	71
Elimination of obstacles in the use of property that is jointly owned or personal private property of the victim	7
Restriction of communication with the affected child	20
Prohibition to approach a certain distance to the place of residence (stay), study, work, other places of frequently visited by the victim	134
Prohibition to search for the victim personally or through third parties, if they are intentionally staying in a place unknown to the perpetrator, to persecute them and communicate with them in any way	61
Prohibition of correspondence, telephone conversations with the victim or contact them through other means of communication in person and through third parties	66

In some cases, courts had taken a rather formal approach to arguing the risks of domestic violence, e.g. "the court considers that the risks of domestic violence are present" or "the court considers that there are reasons to believe that there are risks of domestic violence against the victim."

Similarly, denying a restraining order, the court used a formal approach to argue the absence of risks in some cases, as in: "the court concluded that there were no reasons to believe there are risks of domestic violence."

The monitoring also found that the risk assessment procedure currently used by the courts needs to be standardized and judges would benefit from additional training in this area.

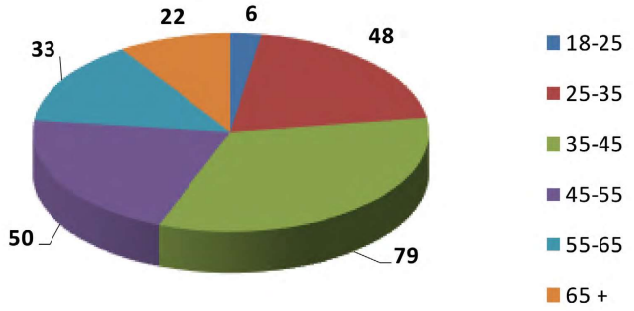
Moreover, in some cases the published court decisions contained data that could serve to identify the victim, e.g. home address, name of educational institution. This problem can be minimized by taking due care when depersonalizing court decisions.

7. Survey of domestic violence victims to assess police response to domestic violence cases

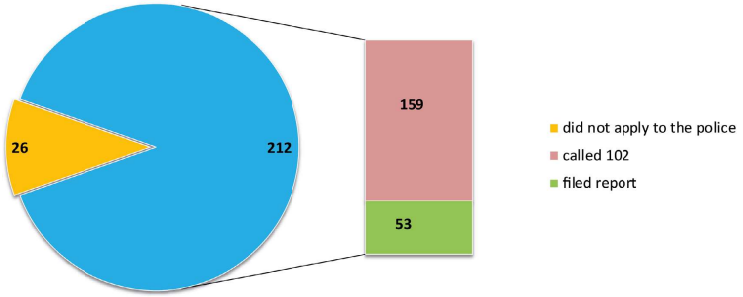
Consultants of the National Hotline for the Prevention of Domestic Violence, Human Trafficking and Gender Discrimination of the CSO La Strada - Ukraine (hereinafter NHL) conducted a survey in March-April 2019 among callers - victims/ witnesses of domestic violence about their experience of interaction with staff of the National Police of Ukraine. The survey was initiated by the European Union Advisory Mission.

A total of 238 callers were interviewed, who belonged to the stated category of persons, of whom 95.4% (227) were women and 4.6% (11) were men. The survey is not representative; however its findings can help to identify problematic issues in the police response to domestic violence cases.

Distribution of surveyed callers by age group:



According to the results of the survey, almost 89% (212 people) of the surveyed callers reported the facts of domestic violence to the police, of which 75% (159 people) called line 102 (as a more convenient and accessible way in a stressful situation the victims of domestic violence find themselves in), and 25% (53 people) filed a written complaint.



The reasons stated by the callers who did not turn to police were as follows: 11.5% did not trust the police, 50% feared that they would make the situation worse, the remaining 38.5% stated other reasons, mainly their reluctance or lack of awareness.

Only 7 respondents (2.94%) knew about the existence of Polina mobile police groups, while the rest of the callers either were unaware of them (222 people, or 93.28%) or could not provide a definite answer (9 people, or 3.78%). The police responded to reports of domestic violence according to 150 persons (71%) out of 212 people who contacted the police. Out of the 88 cases in which the police did not respond to domestic violence: in 26 (10.9%) cases respondents did not contact the police, one victim (0.4%) withdrew the application; in the remaining 61 cases (25.6%) respondents reported that their complaints were ignored. The failure to respond happened at different stages of requesting police assistance: when calling the police, drawing up the protocol and receiving the complaint from the victim as well as taking further procedural actions after registering the victim complaint.

There is also a separate category of cases where domestic violence is perpetrated by police officers, their relatives or acquaintances. In such cases, it is especially common for the police to completely ignore any complaints from victims or witnesses.

> *Questionnaire 119. The caller is hiding from her abusive husband, who used to work in police and is well known in Lviv. No response is taken to the calls placed by the victim. The woman fears for her life and her 4-year old child's life. She hopes to find a shelter.*

> *Questionnaire 229. The caller's ex-husband is a law enforcement officer, who commits domestic violence against her and their minor child. The caller claims that when she approached the law enforcement agencies with a report of domestic violence, the police officers told her that it was their family matter and they should settle it between themselves.*

Out of 150 callers who reported that the police responded to reports of domestic violence, in only 32.7% (49 people) the victim's complaint was accepted and response was taken; 99 people (66%) noted that their application was accepted, but no response was taken. Nearly two-thirds of respondents, although noting that the police responded to their reports of domestic violence, stated that no further action was taken once the complaint was filed.

109 callers (74.7% of cases) confirmed that police officers interviewed them separately from the perpetrator, 37 people (25.3% of cases) gave a negative answer. In many cases, the perpetrator and the victim were questioned in the same room, in some cases the perpetrator was not questioned at all or was questioned in the state of alcohol intoxication.

98 respondents (65.3%) during their interaction with the police felt that police officers took them and their situation seriously. In some of the other reported cases, police officers derided the situation, threatened to impose a fine for making an unjustified call, humiliated or disparaged the victims, tried to dissuade them from filing complaints, misled them about the current law (e.g. by claiming that if the owner allowed the police to enter the premises they privately own, and the registered person - did not, the police would have no right to enter), openly sided with the perpetrator, in particular, telling him how to avoid punishment. This attitude of the police may serve as evidence of the prevalence of stereotypical attitudes among police officers (particularly in cases where domestic violence is equated to a simple "family quarrel") and lack of professional training, particularly in the areas of ethical and gender-sensitive communication with victims of violence and detecting and responding to different manifestations of domestic violence.

> *Questionnaire 44. Police officers said that "slaps are not battery".*
>
> *Questionnaire 215. The caller has been suffering from violence from her brother for over 20 years. At the time when the complaint was filed, the court was considering 4 criminal proceedings for inflicting moderate severity bodily injuries. Cases had been pending for more than two years, while the violence continued. The police officers would only shrug their shoulders at the calls and say that "this is a family matter, sort it out for yourselves" and leave.*
>
> *Questionnaire 332. An ex-husband arrived at the caller's house and smashed all the windows, doors and furniture in the apartment. When the woman called the police, the police told her that: "they don't see the point in writing a complaint because she will spend more money on the trial, it will get even worse and it will not help her" and left the scene.*

Overall, ineffective response to domestic violence cases means that the underlying problem is not addressed. The perpetrators see that even if the police are brought in, they can still evade prosecution and punishment.

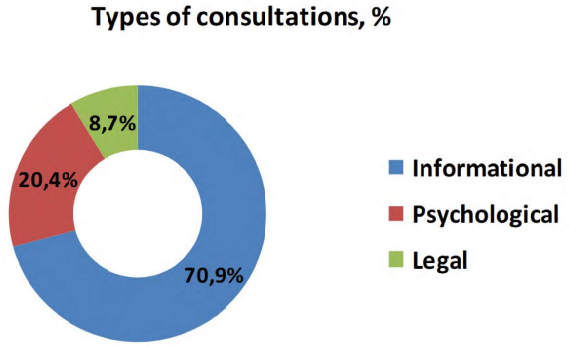
In conclusion, the NHL survey identified the following key challenges pertaining to police response to domestic violence cases:

- Improve cooperation between the National Police and other actors in the field of preventing and combating domestic violence, especially in cases that require an urgent response.
- Strengthen knowledge of police officers in the field of legislation on preventing and combating domestic violence.
- Overcome prejudices and stereotypes towards the victim held by some employees of the National Police
- Enhance the professional training of police officers on dealing with domestic violence victims as vulnerable victims, response to domestic violence incidents, and to provision of initial informational support to victims on legal remedies and special support services available to them.
- Ensure a proper response to complaints in cases where the perpetrator is a police officer or a close acquaintance or relative of a law enforcement officer.

8. Analysis of the data of the National Hotline on Prevention Domestic Violence, Human Trafficking and Gender Discrimination

The NHL is an important tool for service delivery, information and monitoring, as well as one of the components of the national referral and interaction mechanism for agencies serving domestic and gender-based violence victims. The hotline operates 24/7. All consultations are anonymous and confidential.

The NHL received 33,862 complaints in 2019, marking a significant increase compared to 22,242 complaints in 2018. The types of consultations delivered are described below.



Informational and reference consultations constitute a significant share, comprising 70.9% of all calls received in 2019 (68.2% in 2018). This may in part be due to the improvements made to the social protection and assistance in the field of combating domestic violence (new shelters for victims of domestic violence, mobile teams, free secondary legal aid centres, hotlines, etc.). Callers often inquired about the procedure they should follow in case of domestic violence, the mandate of certain government agencies and entities that implement measures to prevent and combat domestic violence, etc.

The number of psychological consultations increased in 2019 (20.4%) compared to 2018 (10.6%). Psychological counselling is distinctive from other types of consultations and takes longer as the callers are often in a state of emotional or mental distress. The hotline consultants noted that callers in need of psychological support inquired about the following: how to identify psychological violence (signs, factors, manifestations); what models of behaviour can the victim of psychological violence adopt in direct contact with the aggressor; and what psychological protection mechanisms can the victim apply for.

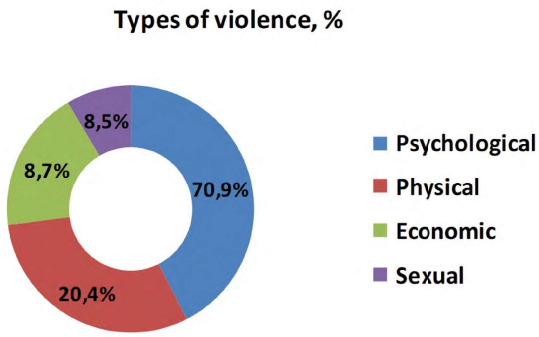
The number of legal consultations in 2019 constituted 8.7%. The most common questions of a legal nature were about the procedure of issuing and the effect of an emergency barring order and a restraining order. In addition, the callers frequently inquired about divorce procedure, division of joint property, filing applications to state agencies in order to protect their violated rights and interests.

NHL received 42.5% of electronic applications in 2019, which is an extremely high figure compared to 4.9% in 2018. In general, such changes are consistent with the growing penetration of information technology in society.

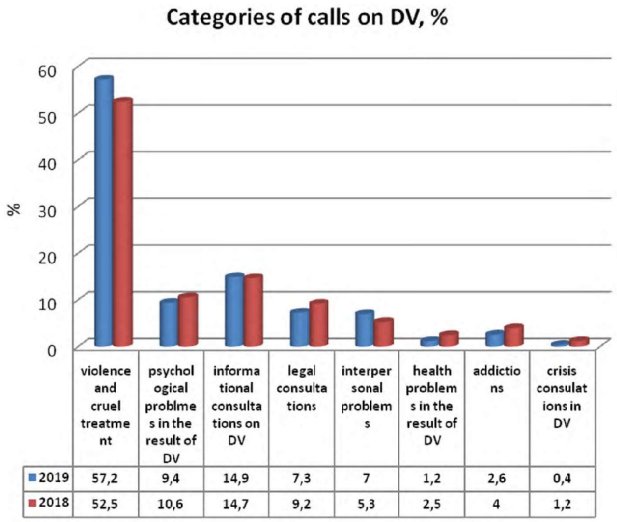
The number of calls about domestic violence comprised 94.9% of the total number of calls placed in 2019.

The distribution of calls by type of violence remains unchanged year on year:

- psychological violence - 42.5%;
- physical violence - 30.4%.
- economic violence - 18.6% (increased compared to 14% in 2018)
- sexual violence - 8.5% (1-2% of calls in 2018)



The distribution of categories of calls for the prevention of domestic violence in 2019 also changed slightly, compared to 2018, which is shown in the chart below.



	violence and cruel treatment	psychological problems in the result of DV	informational consultations on DV	legal consultations	interpersonal problems	health problems in the result of DV	addictions	crisis consultations in DV
2019	57,2	9,4	14,9	7,3	7	1,2	2,6	0,4
2018	52,5	10,6	14,7	9,2	5,3	2,5	4	1,2

Consultations on domestic violence in 2019, as in 2018, were requested by different categories of callers, including in particular such categories as internally displaced persons, servicepersons in the joint forces operation and members of their families, callers living in the temporarily occupied territory of the Autonomous Republic of Crimea and in the Joint Forces Operation area.

Only 0.5% of calls received consultations pertained to other issues related to gender-based violence, gender equality and non-discrimination in 2019 (0.6% in 2018), including:

- sexual harassment - 3.3%
- discrimination in the workplace - 91.4% (15.3% in 2018)
- gender stereotypes - 2% (6.1% in 2018)
- rape - 2% (3.8% in 2018)
- forced marriage -1.3%.

9. Capacity building of the justice system professionals

Regular training of justice professionals on the special nature of domestic and gender-based violence cases remains an important component of an effective judicial response and access to justice[48]. Such specialized training events for justice professionals were actively supported in the recent years by such bodies as the EU project Pravo-Justice, the Council of Europe, the European Union Advisory Mission, the OSCE Project Coordinator in Ukraine, the Canadian-Ukrainian Judicial Reform Support Project, the USAID and others. At the same time, it is critically important to make sure that the training and its outputs are institutionalized.

National School of Judges of Ukraine

The National School of Judges of Ukraine continues to design and institutionalize specialised training courses. The school teaches judges the training course on Special Considerations in Hearing Domestic Violence Cases, developed and tested in 2018 within the framework of the EU project Pravo-Justice.

The training course for judges on Special Considerations in Hearing Gender-Based Crimes was developed and tested in 2019. This activity was also carried out in cooperation with the CSO La Strada-Ukraine and DCAF within the framework of the EU Project Pravo-Justice.

The purpose of this course is to deepen the theoretical knowledge of judges on the special considerations in hearing gender-based crimes cases in accordance with international standards and to exercise practical skills of solving dilemmas that can arise during such proceedings. The approbation of the training course took place in the Lviv Regional Branch of the NSJU (November 28 - 29, 2019). Training for trainers and further roll-out of the course to the regional branches and headquarters of the NSJU is planned for 2020.

The design and approbation of the course demonstrated that although this topic is challenging, it is highly relevant for the judges, especially given the changes to the national legislation and to the Criminal Code of Ukraine, in particular. The case law for this category of proceedings is evolving slowly.

Another initiative to strengthen the institutionalized capacity of the judiciary to respond to domestic violence cases was implemented by the Canadian-Ukrainian Judicial Reform Support Project in conjunction with the National School of Judges of Ukraine in 2019. In particular, the Project organized and conducted a study visit to Canada for the professionals in this field (judges, prosecutors, representatives of the National School of Judges, police, probation service, social workers, etc.). The participants learned about the Canadian experience of combating domestic violence, the integrated approach used there, and explored opportunities

48 2018 Monitoring report, p. 31-33.

for implementing the best practices in Ukraine. Another component of this initiative was aimed at developing a training course for judges, which incorporated the Canadian integrated approach experience and focused on the practicalities of national case law, taking into account the criminalization of domestic violence.

The developers of the training courses for judges on Special Considerations in Hearing Gender-Based Crimes and Special Considerations in Hearing Domestic Violence Cases joined the working group and helped complement the themes of the courses already developed. The application of the findings of the monitoring, conducted within the framework of the EU Project Pravo-Justice in 2018 and the results of the given monitoring for 2019 serve to contribute to the practical use, implementation and sustainability of the Project results.

National Prosecution Academy of Ukraine

The scientific and practical manual Role of the Prosecutor in Preventing and Combating Domestic Violence was prepared and published by the National Prosecution Academy of Ukraine in 2019. This manual examines special procedural activities of the prosecutor in the field of combating domestic violence, overviews the relevant criminal law, administrative procedures and evidence matters in such criminal proceedings, covers special considerations for dealing with victims, and includes analysis of international law and novel national legislation in this field. The publication was prepared within the framework of the EU Pravo-Justice Project. Prosecutors who specialize in these types of cases receive the manual together with a model thematic lecture on the topic, developed and institutionalized under the Project in 2018 when they attend professional training and specialized events at the National Prosecution Academy of Ukraine.

The process of reforming the National Prosecution Academy of Ukraine was launched at the end of 2019 and is continuing. The Training Centre for Prosecutors will be established on the basis of the National Prosecution Academy of Ukraine in accordance with the Law of Ukraine On Amendments to Certain Legislative Acts of Ukraine on Priority Measures to Reform the Prosecutor's Office as of October 17, 2019. Branches of the Training Centre will operate in the largest cities – Kharkiv, Dnipro, Odesa, and Lviv.

National Police of Ukraine

The training on responding to cases of domestic violence and gender-based violence for dispatchers and operators of 102 Service continued in 2019. The experts of the CSO La Strada-Ukraine conducted ten thematic training events in five regions of Ukraine with the support of the Office of the OSCE Project Coordinator in Ukraine. About 250 specialists attended the training. The training events and interactions with the participants highlighted a pressing need to strengthen the capacity to identify domestic violence cases, and to reduce the impact of personal stereotypes about domestic and gender-based violence to effectively respond to such cases.

Training activities for future mobile police teams, district police officers and other police specialists are also supported by the UN Population Fund in Ukraine, the Office of the OSCE Project Coordinator in Ukraine, the European Union Advisory Mission and other institutions.

Free Legal Aid System

Activities continued to build the capacity of the Free Legal Aid system to respond to cases of domestic and gender-based violence in 2019. Such initiatives in 2019 included a series of training events on Special Assistance to Victims of Domestic and Gender-Based Violence, delivered for Free Legal Aid lawyers by La Strada-Ukraine trainers with the support of the UN Population Fund in Ukraine. Thirteen such regional training events were conducted for more than 400 specialists of the Free Legal Aid system in 2019. The relevance of this topic for Free Legal Aid specialists is quite high and there is a high demand for further training and coverage of a wider cohort of Free Legal Aid specialists.

10. Recommendations

The following recommendations are based on: the analysis of the practical application of the legal regulations related to domestic and gender-based violence, court decisions in this category of cases, statistics of relevant agencies, victim complaint calls to the NHL, professional development events for justice professionals as well as thematic initiatives and discussions with experts in this field. Some of these recommendations have already been provided based on monitoring results of previous years, but are still relevant, while others are based on new legislation and emerging practices and challenges in relation domestic and gender-based violence.

The Parliament and Executive Authorities:

- Amend part 1 of Article 15 of the Code of Ukraine on Administrative Offenses to include servicemen, police and other persons covered by disciplinary statutes for responsibility of domestic and gender-based violence to strengthen protection of the rights of family members of these categories of persons.

Justice institutions:

- Higher courts should review restraining orders to promote consistent case law.
- Consider alternative penalties to fines when sentencing administrative offenses. Fines as administrative penalties can be ineffective if significant aggregate factors (e.g. unemployment of the offender, social conditions) are not taken into consideration. Generally, fines do not serve as a deterrent to offenders, and in practice, the victims tend to suffer the financial consequence of a fine.
- Continue institutionalization of professional training for justice system professionals - judges, prosecutors, police officers. Beyond technical information, training programs should incorporate components aimed at overcoming existing stereotypes and prejudices to transform the attitude of justice professionals to the issues of domestic and gender-based violence and victims of these crimes.
- Strengthen the training of law enforcement officials and judges to ensure access to justice for child victims of domestic violence.
- Use restrictive measures more frequently to reduce the risk of recurrence of domestic violence against victims.
- Explain the right to compensation to the victims of domestic and gender-based violence at the pre-trial stage and during the trial.

International and Donor Organisations:

- Continue to support advocacy initiatives to ratify the Istanbul Convention.
- Coordinate initiatives, projects and activities in the field of combating domestic and gender-based violence supported in Ukraine in order to optimize resources, deconflict activities of beneficiaries, ensure complementary outputs and avoid duplication of effort. Institutionalization of training should be prioritized to ensure sustainability of changes, and to promote a cultural shift among professionals.

Civil Society Organizations:

- Analyse court decisions on domestic violence, violence against women and gender-based violence available in open sources to complement the comprehensive monitoring of domestic violence, violence against women and gender-based violence cases.
- Monitor and analyse whether the interests of victims are upheld as state agencies respond to cases of domestic violence, violence against women and gender-based violence and whether the victims are satisfied with the response.

Annex 1

The number of judgements of first instance courts qualified under Art. 126-1 CCU — 226[49].

Number of defendants sentenced — 224[50] (including 214 men, 10 women).

The number of adult victims[51] — 227, including:

- 11 men (9 of them – fathers of abusers, 1 stepfather, 1 grandfather);
- 216 women (68 of them — mothers of abusers, 36 — wives, 74 — cohabitants / ex-cohabitants / ex-wives, 9 sisters, 5 mothers-in-law (wife's mother), 5 grandmothers, 3 daughters, 2 daughters-in-law, 1 mother-in-law (husband's mother), 1 aunt, 13 other with nature of relation not specified in the judgement).

The number of child victims — 58, including:

- children officially recognized as victims — 4 (1 girl, 1 boy, 2 — gender not specified);
- children who were directly subjected to physical or psychological violence[52], but were not officially recognized as victims — 6 (1 boy, 5 girls);
- children who witnessed domestic violence but were not recognized as victims — 48 (5 boys, 3 girls, 40 — gender not specified).

Number of judgements approving a plea agreement — 2.

The number of judgements in which the defendant pleaded guilty on all the charges[53] — 106 (in the vast majority of proceedings were considered in accordance with Part 3 of Article 349 of the CPC[54]), **pleaded guilty on some charges** — 4, **pleaded not guilty** — 6.

49 In the register of court decisions there are 227 verdicts for 2019 under the category of "domestic violence". However, in one of those verdicts (case №296/2942/19, http://www.reyestr.court.gov.ua/Review/86665279) the court qualified the obvious case of domestic violence only under Part. 1 of the Art. 125 of the CCU (intended minor bodily injury). At the moment the case is at the appeal stage, however it is unknown on which ground.

50 In two verdicts the accused was already convicted under Art. 126-1 of the CCU before (in case 281/834/19 twice, in case 445/2025/19 once), In one verdict (case 419/2356/19) there were two accused at once.

51 Throughout the text the English term "victim" was used in two meanings, represented in Ukrainian by two words ("потерпілий" and "постраждалий"). The first meaning of the term is a victim in procedural sense (under Art. 55 of the CPC). The second meaning of the term is victim in sense of the Domestic Violence Law, which is much wider. Here the word is used in its first, procedural, meaning.

52 From the circumstances as they were described in the verdict.

53 This number does not include verdicts, where the accused plead guilty and the conciliation agreement was approved.

54 According to Part 3 of the Art. 349 of the CPC "The court has the right, if the participants in court proceedings do not object thereto, to find that examination of evidence in respect of indisputable circumstances is unnecessary. In so doing, the court ascertains whether said persons understand correctly the contents of such circumstances, whether there are no doubts regarding voluntary nature of their position, as well as explains to them that in such a case they will be deprived of the right to challenge these circumstances by way of appeal".

Number of judgements approving a conciliation agreement — 96.

Number of verdicts appealed — 9 (in 3 of them the decision came into force as of March 2020, in 6 — the decision has not come into force or the case has not yet been considered).

The number of sentences in which the court imposed a sentence in the form of community service — 119, including:

- 57 sentences — 150 hours community service;
- 28 sentences — 200 hours community service;
- 26 sentences — 240 hours community service;
- 4 sentences — 160 hours community service;
- 2 sentences — 180 hours community service;
- 1 sentence — 170 hours community service.

The number of sentences in which the court imposed a sentence in the form of arrest — 42, including:

- 10 sentences — 1 month arrest;
- 10 sentences — 3 months arrest;
- 9 sentences — 4 months arrest;
- 6 sentences — 2 months arrest;
- 5 sentences — 6 months arrest;
- 2 sentences — 5 months arrest.

The number of sentences in which the court imposed a sentence of restraint of liberty — 40. Of these:

- **33 sentences in which the defendant was released on parole and subjected to probation,** including:
  - 19 sentences — 1year restraint of liberty + probation;
  - 9 sentences — 2 years restraint of liberty + probation;
  - 4 sentences — 1.5 years restraint of liberty + probation;
  - 1 sentence — 3 years restraint of liberty + probation.

- **7 sentences in which the defendant was not released on parole from serving the sentence,** including:
  - 5 sentences — 1year restraint of liberty;
  - 1 sentence — 5 years restraint of liberty;
  - 1 sentence — 1 year, 11 months restraint of liberty.

The number of sentences in which the court imposed a sentence of imprisonment — 24. Of these:

- **16 sentences in which the defendant was sentenced to imprisonment and probation,** including:
  - 11 sentences — 1 year of imprisonment + probation;
  - 5 sentences — 2 years of imprisonment + probation.

- **8 sentences in which the defendant was sentenced to imprisonment**:
  - 3 sentences — 1year imprisonment;
  - 2 sentences — 2 years imprisonment;
  - 2 sentences — 1.5 years imprisonment;
  - 1 sentence — 1 year and 9 months imprisonment.

Number of sentences in which the court imposed alternative punishment — 1 (fine of UAH 1,700)

Notes