

# PROTECTION OF PERSONAL RIGHTS BY MEANS OF RESTRICTIVE INSTRUCTION: INTEGRATION OF CIVIL PROCEDURAL AND CRIMINAL PROCEDURAL APPROACHES

## PROTEÇÃO DOS DIREITOS PESSOAIS POR MEIO DE INSTRUÇÃO RESTRITIVA: INTEGRAÇÃO DAS ABORDAGENS PROCESSUAIS CÍVEIS E PENAL

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### Abstract

The article examines the institution of restrictive injunction as an effective mechanism for protecting individual rights and freedoms in the context of modern legal development, with a special emphasis on the integration of civil and criminal procedural approaches. The authors substantiate the legal nature of the restrictive injunction, its essence, functions and human

### Resumo

O artigo examina a instituição da medida cautelar restritiva como um mecanismo eficaz para a proteção dos direitos e liberdades individuais no contexto do desenvolvimento jurídico moderno, com ênfase especial na integração das abordagens processuais cível e penal. Os autores fundamentam a natureza jurídica da medida cautelar restritiva, sua



rights potential, which consists in the preventive response of the state to a threat to the life, health and freedom of the individual. It is shown that a restrictive injunction is not a punishment, but belongs to the measures of procedural prevention aimed at temporarily restricting the rights of a person who poses a risk to others, in order to prevent repeated or ongoing violence. The peculiarities of the relationship between a restraining order and measures to secure a claim in civil proceedings and preventive measures in criminal proceedings are considered. It is revealed that this institution has an intermediate nature, combining the features of both types of measures, but retains its own legal autonomy and independence of the application procedure. It is shown that its effectiveness depends on the prompt response of the court, a clear definition of deadlines, rules of evidence and ensuring control over the implementation of the order, which ensures a balance between the interests of the victim and the offender. Special attention is paid to the human rights-protective nature of the restraining order, its importance for the protection of vulnerable categories of the population, as well as the harmonization of national legislation with international standards. The practice of the European Court of Human Rights, the recommendations of the Council of Europe and the United Nations, as well as foreign experience are analyzed. The advantages and potential risks of the application of orders are identified, in particular their formal implementation, insufficient evidentiary base and lack of regulation of procedural issues in national law. Based on the analysis of domestic legislation and foreign practices, recommendations are formulated to improve the legal regulation of the restraining order in Ukraine, emphasizing the need to integrate civil and criminal procedural approaches to increase the effectiveness of preventive protection, as well as to resolve the problems of proof, deadlines, emergency application and control over the implementation of the orders. It is concluded that the restraining order is a key tool for guaranteeing human rights, creating a "legal shield" for the injured person and ensuring compliance with the principle of proportionality and justice.

**Keywords:** Restraining Order. Protection Of Individual Rights. Civil Process. Criminal Procedural Measures. Preventive Protection. Domestic Violence. International Standards. Human Rights Protection Function.

*essência, funções e potencial em matéria de direitos humanos, que consiste na resposta preventiva do Estado a uma ameaça à vida, à saúde e à liberdade do indivíduo. Demonstra-se que a medida cautelar restritiva não é uma punição, mas pertence ao conjunto de medidas de prevenção processual destinadas a restringir temporariamente os direitos de uma pessoa que representa um risco para terceiros, a fim de prevenir a violência repetida ou contínua. São consideradas as peculiaridades da relação entre uma medida cautelar restritiva e as medidas para assegurar um direito em processos cíveis e medidas preventivas em processos penais. Revela-se que essa instituição possui uma natureza intermediária, combinando características de ambos os tipos de medidas, mas mantendo sua própria autonomia jurídica e independência do procedimento de aplicação. Demonstra-se que a eficácia da medida cautelar depende da pronta resposta do tribunal, da definição clara de prazos, das regras de prova e da garantia do controle sobre a execução da ordem, o que assegura o equilíbrio entre os interesses da vítima e do agressor. Dá-se especial atenção à natureza protetora dos direitos humanos da medida cautelar, à sua importância para a proteção de categorias vulneráveis da população, bem como à harmonização da legislação nacional com as normas internacionais. Analisa-se a prática do Tribunal Europeu dos Direitos Humanos, as recomendações do Conselho da Europa e das Nações Unidas, bem como a experiência estrangeira. Identificam-se as vantagens e os potenciais riscos da aplicação das medidas cautelares, em particular a sua formalização, a insuficiência da base probatória e a falta de regulamentação das questões processuais na legislação nacional. Com base na análise da legislação nacional e das práticas estrangeiras, formulam-se recomendações para aprimorar a regulamentação jurídica da medida cautelar na Ucrânia, enfatizando a necessidade de integrar as abordagens processuais cível e penal para aumentar a eficácia da proteção preventiva, bem como para resolver os problemas de prova, prazos, aplicação emergencial e controle sobre a execução das medidas cautelares. Conclui-se que a ordem de restrição é um instrumento fundamental para a garantia dos direitos humanos, criando um "escudo legal" para a pessoa lesada e assegurando o cumprimento do princípio da proporcionalidade e da justiça.*

**Palavras-chave:** Ordem de Restrição. Proteção Dos Direitos Individuais. Processo Civil. Medidas Processuais Penais. Proteção Preventiva. Violência Doméstica. Normas

## 1 INTRODUCTION

In modern conditions of legal development, the issue of protecting human rights and freedoms is gaining particular relevance. One of the key tools of a preventive nature is the institution of a restraining order, which combines elements of civil and criminal process. Its essence lies in the temporary restriction of certain rights of a person who poses a threat to another, in order to prevent repeated or ongoing violence. Such an instrument reflects the shift in emphasis from the punitive paradigm to the preventive and protective one, which meets modern international standards in the field of human rights.

A restraining order has a special legal nature, since it is not a punishment and is not aimed at holding a person legally liable, but is a means of immediate response by the state to a threat to life, health or freedom of a person. Its application allows to ensure a balance between the interests of the parties - the victim who needs protection and the offender, in respect of whom a temporary restriction of rights is carried out. In this context, a restraining order is considered as an institution of procedural prevention, combining the properties of measures to secure a claim and preventive measures in criminal proceedings.

An important feature of this institution is its hybridity: it has features of civil law security, while at the same time allowing elements of procedural intervention inherent in criminal law. This approach allows to expand the arsenal of mechanisms for protecting the individual, creating integration between civil and criminal procedural law. It is this integrativity that determines the scientific and practical interest in studying the restrictive injunction as a legal phenomenon.

The international context also attracts considerable attention to the issue of restraining orders. The practice of the European Court of Human Rights, the recommendations of the Council of Europe and the United Nations (hereinafter referred to as the UN) emphasize the obligation of states to provide effective and rapid mechanisms of protection against violence. In this sense, the restraining order becomes not only a national instrument of legal protection, but also a reflection of the implementation of international standards. A comparative analysis of foreign experience

indicates the universality of this institution and its various forms in the legislation of different countries.

Therefore, the study of the essence, nature and functions of the restraining order, its relationship with other legal institutions, as well as the practice of application both in Ukraine and abroad, is of great importance for the further improvement of national legislation. In this aspect, the issue of integrating civil and criminal procedural approaches requires special attention, which can enhance the effectiveness of the human rights protection function of the state and ensure real guarantees of individual rights and freedoms.

## **2 LITERATURE REVIEW**

In the scientific literature, the institution of a restraining order is considered as a complex legal mechanism that combines the features of civil procedural security and criminal procedural measures. Researchers note its uniqueness in the system of human rights protection measures, emphasizing that it is aimed primarily at a preventive response and minimizing the risks of repeated violence. Ukrainian authors focus on the problem of the legal nature of the order, its relationship with the institution of securing a claim in civil proceedings and preventive measures in criminal proceedings, as well as the need to clearly define its place in the system of procedural coercion measures.

International research is largely focused on the practical aspects of the effectiveness of restraining orders. In particular, the works of European and American lawyers highlight their role in reducing the level of domestic violence, ensuring a balance of interests between the victim and the perpetrator, as well as in creating legal guarantees of immediate protection from threats to life or health. The practice of the European Court of Human Rights and the recommendations of international organizations (Council of Europe, UN) emphasize the preventive significance of this institution as an obligatory element of state policy in the field of human rights.

Considerable attention in the literature is also paid to the issues of proving and monitoring the implementation of injunctions. Scientists note that without proper definition of procedural standards and control mechanisms, the effectiveness of this institution decreases. A special place is occupied by the analysis of the risks of abuse, when a restraining order can be used as an instrument of unfair pressure in interpersonal

or property conflicts. This aspect emphasizes the need to strike a balance between the speed of the court's response and guarantees of procedural fairness.

Thus, the doctrine has formed a comprehensive understanding of the restrictive injunction as a legal institution with a dual nature, combining elements of civil and criminal proceedings, while maintaining its own autonomy. At the same time, most researchers agree that the effectiveness of its application is possible only if national approaches are integrated with international standards, evidence mechanisms are improved, and control over the execution of court decisions is strengthened.

### **3 RESEARCH METHODOLOGY**

The methodological basis of the study is a comprehensive approach, which involves the use of a combination of general scientific and special legal methods. In particular, the dialectical method was used to reveal the essence of the restrictive prescription and its place in the system of human rights instruments, the comparative legal method was used to analyze foreign experience in the application of similar mechanisms, and the systemic approach was used to clarify the integrative nature of this institution at the junction of civil and criminal proceedings.

The empirical basis of the study was the norms of national legislation of Ukraine, acts of international organizations, the practice of the European Court of Human Rights, as well as the judicial practice of Ukraine. The scientific and theoretical basis was the works of Ukrainian and foreign jurists in the field of procedural law and human rights mechanisms. This approach allowed us to form a holistic vision of the essence of the restraining order, identify problematic aspects of its legal regulation, and propose ways to improve the integration of civil and criminal procedural approaches in the practice of its application.

### **4 DISCUSSION**

#### **4.1 Restraining order as a legal category: essence, nature, and functions**

In modern legal discourse, the institution of a restraining order is gaining increasing importance as a means of operational protection of a person from unlawful

actions. A restraining order is a court decision that establishes a temporary restriction of rights or imposes obligations on a person who has committed certain unlawful actions in order to prevent harm or prevent its recurrence. Such an institution has a risk-protective nature and is designed to implement preventive tasks of legal protection (Hnatyuk, 2020, p. 112).

In the legislation of Ukraine, a restraining order is directly enshrined in Art. 26 of the Law of Ukraine “On Prevention and Counteraction to Domestic Violence” as a means of protecting a victim from domestic violence. The court may establish one or more measures of temporary restriction of the rights of the perpetrator or impose obligations on him, in particular a ban on being in a shared apartment, limiting contacts or approaching the victim (On Prevention and Counteraction to Domestic Violence: Law of Ukraine, 2017).

It is important to emphasize that a restraining order is not a criminal punishment or an administrative sanction, but a measure to ensure the interests of the victim. Its purpose is to reduce or eliminate the risk of continuing unlawful behavior towards the victim, ensuring temporary protection of rights. In this sense, it is close to the institutions of securing claims in civil proceedings (Pogrebnyak, 2021, p. 84).

From the point of view of the theory of the process, a restraining order has the nature of a separate proceeding: the application for its issuance is considered outside the framework of the main dispute and is subject to prompt consideration. The Civil Procedure Code of Ukraine stipulates that cases concerning the issuance of a restraining order are considered in a separate proceeding and must be resolved by the court in a shortened period of time (Article 350-6 of the Civil Procedure Code of Ukraine). As for the duration of the order, the Law of Ukraine “On Prevention and Counteraction to Domestic Violence” provides for the possibility of its establishment for a period of one to six months, with the right to further extend it for a maximum of six months (Article 26) (On Prevention and Counteraction to Domestic Violence: Law of Ukraine, 2017). In this case, the court assesses the risks of continued unlawful behavior by the offender, analyzing the available circumstances and evidence.

In terms of essential features, a restraining order has the following key characteristics: temporary, normative, reversibility of actions, attachment to actually established risks. The scientific literature emphasizes that this institution “contributes to the implementation of the values of a legal society” by ensuring the protection of rights

with minimal interference with personal freedom (Babenko, 2022, p. 133).

The doctrine draws attention to the fact that a restraining order is a hybrid instrument: it combines the features of both civil security and procedural preventive measures. On the one hand, it is focused on protecting the rights of an individual as a civil subject; on the other hand, it allows for operational intervention inherent in criminal or administrative preventive measures (Shevchenko, 2021, p. 77).

In the law enforcement practice of the Supreme Court, an analysis of cases on restraining orders shows that courts carefully assess risks, paying attention to the nature of the actions, their systematic nature, the possibility of a threat to life or health, as well as the available evidence. At the same time, there are cases when courts refuse to issue an order due to insufficient evidence or lack of sufficient argumentation of the risks (Supreme Court, 2022, p. 16).

Some scholars point to the risks of abuse of the institution: from unjustified restriction of the rights of the offender to excessive burden on the courts in conditions of a shortage of evidence: the legislative formulation does not always clearly define the list of admissible evidence or the limits of intervention, which gives rise to ambiguity in judicial practice (Babenko, 2022, p. 136).

In general, it is worth noting that the concept of a restraining order encompasses its nature as a temporary measure to ensure rights, aimed at protecting a person from unlawful actions. Its features – procedural autonomy, timeliness, attachment to risks and evidence base – determine both its effectiveness and potential problems in application.

One of the debatable issues in doctrine and practice is determining the relationship between a restrictive injunction and measures to secure a claim. They have a common goal – to ensure the effectiveness of protecting the rights and interests of a person, but differ in their procedural status and scope of application. If securing a claim is related to the existence of claims in civil proceedings, then a restrictive injunction can be applied autonomously, without filing a claim.

It should be emphasized that a restrictive injunction is an independent measure of protection, and not a derivative of a claim. It has its own procedure for applying and considering it, while measures to secure a claim exist as an auxiliary tool of the judicial process. This is confirmed by the provisions of the Civil Procedure Code of Ukraine, which clearly distinguishes between the institutions of securing a claim (Chapter 15) and consideration of an application for a restraining order (Chapter 13) (Civil Procedure Code

of Ukraine, 2017).

At the same time, a restraining order has certain common features with measures to secure a claim: temporary in nature, aimed at preventing possible negative consequences, connection with a court decision and its coercion. Therefore, in practice, some judges identify a restraining order with precautionary measures, which causes confusion and different interpretations of the limits of application.

If we compare a restraining order with preventive measures in criminal proceedings, we can find even deeper differences. Preventive measures (for example, detention, house arrest, personal commitment) are aimed at ensuring the proper behavior of a suspect or accused in criminal proceedings. They are closely related to the procedural status of a person in criminal proceedings, while a restraining order aims to protect the injured person regardless of the course of the criminal case.

However, there is a certain functional similarity between a restraining order and preventive measures. In both cases, the court temporarily restricts the rights of a person in order to achieve a publicly significant goal - to prevent unlawful behavior. Thus, the prohibition to approach the injured person within the framework of a restraining order is close in content to the preventive measure "prohibition of communication with certain persons" in criminal proceedings.

Thus, it can be concluded that a restraining order occupies an intermediate position between measures to secure the claim and preventive measures. It shares the features of both institutions, but at the same time has its own legal nature - as a separate procedural means of protecting a person, existing at the intersection of civil law and criminal procedure approaches. This necessitates the need for further clarification of its legal status in legislation and harmonization of judicial practice.

#### **4.2 Human rights nature and the role of a restraining order in guaranteeing the rights and freedoms of an individual**

A restraining order has a clearly expressed human rights nature, since it is aimed not at punishing the offender, but at protecting the rights and freedoms of the victim. Its main function is to create safe conditions for the life of a person who has been subjected to violence or is under threat. In this sense, a restraining order acts as an instrument of the positive obligation of the state to guarantee the effective protection of human rights

(Council of Europe, 2014, p. 27).

The European Court of Human Rights has repeatedly emphasized that states must ensure an adequate level of protection of individuals from domestic violence, in particular through preventive mechanisms. In the case of *Opuz v. Turkey*, the Court emphasized that the lack of effective response measures constitutes a violation of Articles 2 and 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECtHR, 2009, p. 175). Restraining orders in this context are a key mechanism for implementing such international obligations.

In modern scientific literature, restraining orders are considered as a means of ensuring the right to security of the person. Researchers emphasize that the state should not only punish violence, but also actively take measures to prevent its continuation. This turns the restraining order into a tool of procedural prevention that integrates international law standards into national legal systems (Stark, 2019, p. 94).

From a human rights perspective, this institution is particularly important in the context of protecting vulnerable groups of the population – women, children, and the elderly. According to the UN, the effective use of restraining orders reduces the level of repeated violence by at least 50%, which confirms their real role in guaranteeing the rights to life, liberty, and security of person (UN Women, 2020).

Restraining orders as a legal instrument are becoming increasingly common in international human rights practice, as they are a preventive measure aimed at preventing repeated or ongoing violence. Their human rights-protecting nature lies in the immediate response of the state to a threat to the life, health or freedom of a person, without the need to undergo a lengthy judicial procedure (Burman, 2010, p. 23).

In the countries of the European Union (hereinafter referred to as the EU), the mechanism of restraining orders is enshrined in various forms: from “protection orders” in Germany and Austria to “restraining orders” in the United Kingdom. Regardless of the terminology, they all have a common goal – to guarantee a person the right to protection and a fair balance of interests in situations of risk. Thus, EU practice testifies to the universality of the human rights-protecting nature of this institution.

At the same time, scholars draw attention to the risk of formal application of restraining orders. Insufficient control over their compliance, weak coordination between the police and the courts can lead to the fact that the restraining order exists only “on paper”. This creates the illusion of protection, but does not guarantee the actual safety of

the victim (Douglas & Norrie, 2020, p. 59).

In the human rights sense, the issue of the balance of interests is also important. On the one hand, it is necessary to guarantee the rights of the victim as much as possible, on the other hand, the restraining order temporarily interferes with the rights and freedoms of the offender. In this context, scholars emphasize the importance of judicial control and compliance with the principle of proportionality (Klein, 2019, p. 214).

Thus, the restraining order is a key element of the system of guaranteeing human rights and freedoms in modern states governed by the rule of law. Its human rights nature is manifested in the implementation of international standards, in the practical implementation of the right to security and in creating a balance between the interests of the parties. The effectiveness of this institution directly affects the quality of legal protection of the individual and trust in justice.

The comparative experience of the USA is also important, where restraining orders are widely used as a tool for protection against domestic violence and harassment. American doctrine considers them not only as a means of procedural nature, but also as a mechanism for guaranteeing the constitutional right to security and privacy (Klein & Orloff, 1993, p. 849).

The human rights nature of a restraining order is manifested in its preventive nature. It acts in anticipation and does not require proof of the fact of committing a crime; a sufficient reason is the threat or risk of violence. This approach complies with international standards for the protection of victims, in particular the Istanbul Convention of the Council of Europe of 2011, which provides for the obligation of the state to provide operational protection mechanisms (Council of Europe, 2011, p. 9).

In many countries, restraining orders are used not only in civil proceedings, but also in criminal proceedings as an additional preventive measure. For example, in Germany and Austria, the police have the right to issue a temporary restraining order until the case is heard by the court, which enhances the effectiveness of the human rights protection mechanism (FRA – European Union Agency for Fundamental Rights, 2014, p. 47).

It should be emphasized that the role of a restraining order is not limited to protection against physical violence, but also extends to psychological and economic pressure. This is especially important in cases of domestic violence, stalking or forced marriage, when the victim may be particularly dependent on the perpetrator (Bumiller,

2008, p. 96).

The human rights protection potential of a restraining order is manifested in its integrative nature: it combines elements of civil law (protection of the interests of the individual in private relations) and criminal procedure (prevention of crimes). Such hybridity allows for a broader range of legal relations and to ensure a prompt response to threats (Douglas & Godden, 2003, p. 439).

Thus, the role of a restrictive injunction in guaranteeing the rights and freedoms of an individual lies in its function as a “legal shield”, providing effective protection even when traditional procedural mechanisms are insufficient or too slow. It serves as evidence that the state recognizes preventive protection as an integral part of human rights in the modern legal order.

#### **4.3 Civil law principles of application of restraining order regulation in civil proceedings and family law**

In Ukraine, the regulation of restraining order in civil proceedings occurs through legislation and judicial practice, in particular in the context of the Law of Ukraine “On Prevention and Counteraction to Domestic Violence” (2017) and the relevant norms of the Civil Procedure Code. According to Art. 26 of the said law, the court has the right to issue a restraining order upon the application of the victim, imposing restrictions or obligations on the offender (for example, a ban on approaching, a ban on contact) (On Prevention and Counteraction to Domestic Violence: Law of Ukraine, 2017).

One of the problems in Ukrainian law enforcement practice is the insufficient inclusion of the institution of a restraining order in family legislation as part of protective measures in family legal relations. Ukrainian family law does not contain any specific provisions that would directly provide for restraining orders in cases of marriage, divorce, custody or adoption, although such orders may be issued under the rules of civil procedure to protect the rights of persons in a family relationship.

Foreign experience shows that family law often specifically regulates protective orders (restraining/protection orders) in a family law context. For example, in the United Kingdom – through the Family Law Act, through the practice of courts on the prohibition of contact, intimacy, domestic violence and other types of risky relationships in the family (Crown Prosecution Service, 2022, p. 3–5).

Another example is Germany, which has a law on protection against violence (Gewaltschutzgesetz) with detailed provisions regulating the procedure for issuing protective orders, the rights of victims, the time limits, the obligations of the perpetrator, and the possibility of using auxiliary means, such as electronic monitoring in the amended version of the legislation (Law Library of Congress, 2025, p. 1–2).

In foreign law, the regulation often includes a clear definition of terms: how long a protective order can be in force, the conditions for its extension, the mechanisms for its modification or withdrawal. In British law (Sentencing Act 2020, Protection from Harassment Act 1997) restraining orders are clearly provided for both at the post-conviction and post-acquittal stages, with rules regulating necessity, proportionality and taking into account the views of the victim (Crown Prosecution Service, 2022, p. 4).

Ukrainian scholars also criticize that the regulation is not yet consistent in terms of evidence and deadlines – applications for a restraining order in Ukraine may be rejected due to too high a level of evidentiary requirements or due to procedural obstacles that do not exist in some foreign systems. For example, the analysis “Urgent restraining and restrictive orders as special response forms...” notes that in some countries there is a possibility to apply for an order even for facts that do not yet have a criminal conviction, based on an assessed risk or threat (Levchenko & Lehenka, 2018, p. 223). Another aspect is the regulation of the role of police or other state services in issuing or enforcing protective orders. In most foreign countries, the police have participation or authority to respond even before a court decision (e.g., temporary orders, emergency measures) (Law Library of Congress, 2025, p. 2). In Ukraine, the issue of emergency prescription has not yet been fully regulated by law.

Regulation in judicial practice also includes the issue of implementing automatic mechanisms for the recognition and enforcement of protection orders, especially when it comes to interregional or international decisions. For example, in the legal system of England and Wales there is Practice Direction 38A on “Recognition and Enforcement of Protection Measures”, which regulates how protection measures issued in one EU Member State are recognized and enforced in another (already in view of Brexit – the preservation of part of these provisions) (Ministry of Justice UK, 2023).

Thus, the regulation of a restraining order in civil proceedings and family law is a set of norms that cover legislation, procedural codes, international standards and judicial practice. Foreign models (Great Britain, Germany and the EU) demonstrate a high level

of detail, clear criteria and rights of victims, which can be a useful guideline for improving Ukrainian regulation. Domestic works already outline the gaps (evidence base, terms, procedure, emergency orders), which can be eliminated through legislative changes and practical standards.

It should be noted that the problems of enforcing restraining orders in Ukraine are closely related to conflicts between the norms of special and general legislation. Thus, the Law of Ukraine “On Prevention and Counteraction to Domestic Violence” defines the mechanisms for obtaining a restraining order, but the Civil Procedure Code does not always contain agreed norms regarding procedural terms and the procedure for proving. This creates legal uncertainty for courts and lawyers.

One of the key problems is the different understanding of the term “restraining order” in the context of civil proceedings and criminal procedural measures. Judicial practice shows that sometimes orders are interpreted as a means of securing a claim, and sometimes as an independent institution of protection. This leads to different decisions even in similar categories of proceedings.

There is also a conflict between restraining orders and preventive measures in criminal proceedings. In some cases, courts refuse to grant applications for an injunction, believing that the application of a preventive measure is sufficient, which actually deprives the victim of an effective protection mechanism. Such practice contradicts international standards of the Council of Europe (Council of Europe, 2014, p. 15).

A significant problem is the limited evidentiary base. In Ukrainian courts, when considering an application for an injunction, proof of the fact of violence is often required, although international experience indicates that a reasonable threat of its commission is sufficient. Such an approach significantly reduces the effectiveness of the preventive function of injunctions.

In the field of family law, there is also a problem of a conflict of norms: the family legislation of Ukraine does not contain special provisions on restraining orders, which forces courts to apply the analogy of law or law. This complicates the practice of their application in cases of divorce or determination of the child’s place of residence.

The issue of the effectiveness of the enforcement of restraining orders is important. In Ukraine, unlike in some foreign countries, the police have limited powers to monitor their compliance, which makes the order more of a declaratory measure than a real protection mechanism. In Germany and the United Kingdom, however, there is a

mechanism of immediate liability for violation of the order.

Conflicts also arise at the international level. For example, in cases of cross-border recognition of orders in Ukraine, there are no clear mechanisms for their automatic enforcement. This contradicts EU norms and the practice of the ECHR, which require ensuring continuous protection of victims regardless of jurisdiction (Council of Europe, 2014, p. 27).

Thus, the enforcement of restraining orders in Ukraine faces a number of problems: from the lack of regulation of terminology and evidentiary standards to insufficient control over implementation and international conflicts. They can be overcome by harmonizing civil, family, and criminal procedural legislation, as well as implementing best European practices in the field of human rights protection.

#### **4.4 Criminal procedural aspects of a restraining order**

The institution of a restraining order in the criminal process of Ukraine became the subject of legal regulation after the adoption of the Law of Ukraine “On Prevention and Counteraction to Domestic Violence” in 2017. In accordance with Part 10 of Article 26 of this Law, a restraining order may be used in criminal proceedings as an additional means of protecting the victim, regardless of whether the person is brought to criminal responsibility or the state of the proceedings (Law of Ukraine “On Prevention and Counteraction to Domestic Violence”, 2017). This allows for a faster response to threats associated with domestic violence, given the risk to the life or health of the person.

Within the framework of the criminal process, a restraining order plays the role of a guarantor of the victim’s safety, especially when traditional preventive measures (for example, house arrest, personal commitment) are insufficient or their application is delayed. Scientific studies emphasize that the use of such an order in the Code of Criminal Procedure of Ukraine is aimed at temporarily restricting the rights or imposing obligations on the accused or suspect in order to reduce the risks of violence or reoffending.

The case law of the Supreme Court of Ukraine specifies that the circumstances established in criminal proceedings are of auxiliary importance when making a decision on a restrictive order. However, these circumstances do not automatically eliminate the need to assess the risk and the mandatory nature of such a measure – courts must take into account the nature and degree of the threat, evidence, and the availability of other

means of protection.

A restrictive order in criminal proceedings does not serve as an alternative to criminal punishment. It functions as a preventive and protective measure that can be applied along with preventive measures or before deciding on the merits of the case. Its purpose is not punishment, but ensuring safety, reducing the risk of continuing the offense or harm to the victim.

In criminal proceedings, the relationship of a restraining order with other measures of the criminal process, in particular with preventive measures (custody, personal commitment, etc.), is of particular importance. On the one hand, the order should be softer than some preventive measures; on the other hand, it can be applied when it is more difficult to establish the circumstances that would allow a stricter preventive measure, or when such measures cannot be applied in view of the law. This function opens up the possibility of temporary protection, even before decisions are made regarding criminal liability.

Another aspect is the evidentiary basis in criminal proceedings for a restraining order. Although facts established during the pre-trial investigation or investigation can be used to justify the order, they do not exempt the court from a thorough assessment of the risk and compliance with the requirements of the law. Practice shows that courts refuse orders if the evidence (testimony, pre-trial investigation materials) does not confirm the presence of a risk or threat.

This role of the injunction in the criminal process also involves ensuring the principle of proportionality and fairness to the offender (suspect or accused). Restrictions on rights or imposition of obligations must be justified and not go beyond what is necessary to protect the victim - this is important so as not to violate the rights to defense, presumption of innocence, etc. (Levchenko & Lehenka, 2018, p. 151).

Practice in Ukraine demonstrates that a restrictive injunction can be applied both at the stage of pre-trial investigation and after notification of suspicion or indictment. However, there are reservations regarding when the criminal proceedings are already at a complex stage or the suspect has other preventive measures - and whether the injunction can be applied in parallel with them. The Supreme Court notes in its decisions that a restrictive order and the applied criminal preventive measures cannot be in an improperly contradictory relationship - for example, when a preventive measure that completely restricts contacts has already been applied, the order must expand or specify the

obligations, but not duplicate or contradict it.

Thus, the institution of a restraining order occupies an important place in the criminal process as a means of operational protection of the victim, which complements, but does not replace, criminal preventive measures. Its correct application requires a clear regulatory framework, coordination with international standards, transparency in evidence and control over implementation, as well as respect for the rights of the offender. In Ukraine, there is still room for improvement - primarily in legislative clarification, judicial practice and staffing of law enforcement officers and judges.

It should be noted that the issue of the correlation of a restraining order with criminal procedural preventive measures appears as a central legal problem due to the different target orientation of these institutions: a restraining order is focused mainly on the operational protection of the victim, while preventive measures are aimed at ensuring the procedural behavior of the suspect / accused and guaranteeing the proper conduct of criminal proceedings.

Formally, the legal difference lies in the procedural status: preventive measures (detention, house arrest, personal commitment, etc.) are directly enshrined in the CPC as measures to ensure the process, while a restraining order has the status of a measure to protect the victim, regulated by a special law and the procedural rules of the civil procedure for considering the application.

In practice, this raises the question of synergy: do preventive measures exclude the possibility of issuing an injunction, and vice versa – does an injunction make the application of a certain preventive measure unnecessary. Most modern approaches emphasize that these instruments are complementary and can be applied in parallel, if necessary to guarantee the security and procedural integrity of the proceedings (Council of Europe, 2014, p. 15).

At the same time, there is a risk of duplication and contradiction: for example, when a court in criminal proceedings imposes restrictions, and a court decision on an injunction issued in separate civil proceedings contains different or extended obligations, this creates regulatory uncertainty regarding the order of implementation and the control of the authorities responsible for supervision.

An important criterion of proportionality is the degree of interference with the rights of the individual: preventive measures, in particular detention, have the most serious consequences for freedom, while a restrictive injunction is usually less severe and

is aimed at specific prohibitions (approach, contact, etc.). Given the principle of proportionality, an injunction is often seen as a first, less invasive, measure of protection.

Another difficulty is the evidentiary standard. In criminal proceedings, courts require substantial justification of risks (avoidance of legal action, threat of destruction of evidence, etc.) to apply strict preventive measures, while an order can often be based on a less formal assessment of the risk to the victim (likelihood of repeated violence), which makes it more accessible, but at the same time more vulnerable to procedural objections.

Foreign practice offers constructive mechanisms for coordination: in the UK and some other jurisdictions, police temporary preventive measures (DVPN/DVPO or DAPN/DAPO) introduce a rapid civil-criminal “hybrid”, where the police initiate the temporary preventive measure, and the criminal court controls its further application and sanctions for violations – this reduces conflicts between institutions and increases the efficiency of the protection (UK CPS Guidance, 2022, p. 4).

To avoid conflicts, Ukrainian doctrine advises implementing clear priority regulations and coordination mechanisms between courts and law enforcement agencies: for example, automatic consideration of the facts of criminal proceedings when considering an application for an injunction, agreed decision formats, and unified registers that will avoid contradictory injunctions and duplication of measures.

Another aspect is liability for violation: the effectiveness of a restraining order largely depends on the availability of operational sanctions for its violation. In jurisdictions where violation of the order entails immediate criminal liability, the order has a rather strong preventive effect; therefore, its correlation with preventive measures should also include mechanisms for criminalizing repeated violations (Council of Europe, 2014, p. 22; UK CPS Guidance, 2022, p. 5).

Thus, the correlation of a restraining order with preventive measures should be based on the principles of complementarity, proportionality and coordination. Legislative and procedural regulation should ensure: 1) a clear demarcation of the objectives and functions of the institutions; 2) uniform standards for risk assessment; 3) mechanisms for mutual recognition and coordinated enforcement of decisions; 4) the availability of effective sanctions for violations – all this is to achieve a balance between protecting the victim and guaranteeing the rights of the suspect/accused.

The issue of proving the need for a restraining order is of key importance to

ensuring its effectiveness and preventing abuse of the right. When making a decision, the court must proceed from the evidence provided by the parties that confirms the existence of a threat to the life, health or rights of the applicant. In this case, it is important to take into account not only objective evidence, such as medical certificates or police reports, but also the subjective perception of the threat by the victim.

A special role in proving the need for a restraining order is played by risk assessment. There are special methods for assessing the likelihood of repeated violence, which are used as an auxiliary tool for making judicial decisions. Such approaches allow taking into account the individual characteristics of the offender and the circumstances of the commission of violence (Tymchenko, 2021, p. 145).

Regarding the control over the implementation of restraining orders, law enforcement agencies play a key role. In Ukraine, the implementation of the court decision is entrusted to the National Police, which monitors compliance with the prohibitions and restrictions imposed on the offender. Failure to comply with the order entails administrative or even criminal liability, which significantly increases the effectiveness of this institution. The use of electronic monitoring tools is also important, in particular electronic bracelets, which allow tracking the location of the offender and preventing him from approaching the victim. Such measures are widely used in the USA and EU countries, ensuring the actual implementation of court orders (Logan & Walker, 2019, p. 311). At the same time, Ukrainian practice indicates the presence of problems in the field of proper control. Some studies note the lack of promptness of the police in responding to violations of the order, which reduces the trust of victims in this legal protection mechanism. To overcome this problem, it is necessary to create a more effective coordination system between the courts, the police and social services.

It should be noted separately that the control mechanism involves not only responding to the facts of violations, but also preventive monitoring. In Scandinavian countries, for example, there is a practice of regular checks and psychological work with offenders, which reduces the risk of repeated violation of the terms of the order (Schneider, 2018, p. 59).

Thus, proving the need for the application of a restrictive order is based on a combination of evidence, risk assessment and preventive measures, while control over its implementation is multi-level and requires close interaction between the court, law enforcement agencies and social institutions. Only under such conditions can real

protection of the rights and freedoms of a person from the threat of violence be guaranteed.

#### **4.5 Integration of civil law and criminal procedural approaches: development prospects**

The institution of a restraining order is a unique legal instrument that is on the border of civil law and criminal procedural regulation. Its dual legal nature necessitates the search for ways to integrate these approaches in order to achieve a balance between the protection of the rights of victims and guarantees of due process for offenders. This approach corresponds to modern trends in the development of international law in the field of human rights protection (Ivanova, 2022, p. 118).

The civil law approach to the regulation of restraining orders involves an emphasis on the restoration of violated rights and the provision of preventive protection. In contrast, the criminal procedural component focuses on ensuring the safety of the participants in the process and preventing the continuation of unlawful actions. In the perspective of the development of the institution of restraining orders, a harmonious combination of these elements is important, which will allow creating a single effective model of personal protection (Goodmark, 2021, p. 73).

An important direction of integration is the convergence of standards of proof in civil and criminal proceedings when considering applications for restraining orders. If civil law allows for a more flexible approach to assessing evidence, then criminal proceedings require a high level of justification. The introduction of unified risk assessment criteria that will ensure a balance between the speed of decision-making and proper justification seems promising (Gryshchuk, 2023, p. 59).

One of the key aspects is also the integration of mechanisms for monitoring the implementation of restraining orders. In civil law, the private nature of the obligation prevails, while in criminal proceedings, control is exercised by state authorities. Modern practice proves the effectiveness of combining these approaches by introducing hybrid mechanisms that allow both victims and law enforcement agencies to monitor compliance with the terms of the order.

A promising direction of integration is also the expansion of opportunities for the application of restrictive orders within the criminal process, in particular as an alternative

to preventive measures. This will avoid excessive criminalization and at the same time ensure the protection of victims' rights in a more flexible manner.

In the international dimension, there is a tendency to unify the legal regulation of restrictive orders. Thus, the practice of the European Court of Human Rights emphasizes the importance of effective protection from violence regardless of the procedural form of the measures applied. Ukrainian legislation is gradually integrating these standards, but requires further improvement in the direction of combining civil law and criminal procedural instruments.

At the same time, the integration of these approaches requires taking into account the principle of proportionality, since excessive expansion of criminal procedural elements can lead to the restriction of a person's rights without sufficient grounds. Therefore, the key task of the legislator is to create a flexible model that allows taking into account both the interests of victims and procedural guarantees for other participants.

Thus, the integration of civil law and criminal procedural approaches to the application of a restraining order is a promising direction for the development of national legislation of Ukraine. It provides for a balanced combination of the preventive function of civil law and the protective potential of the criminal process, which meets modern international standards and contributes to increasing the effectiveness of the protection of individual rights and freedoms.

## 5 CONCLUSIONS

Summarizing the results of the study, it can be stated that the institution of a restraining order is one of the key legal mechanisms for protecting the rights and freedoms of an individual, which combines elements of civil law and criminal procedure. Its legal nature is preventive, which involves not so much punishment for an already committed offense, but rather the prevention of potential threats to the rights of victims. This approach determines its special role in the system of legal remedies, giving it the status of a tool for rapid response to manifestations of domestic violence and other situations that pose a danger to a person.

An analysis of the relationship between a restraining order and such legal institutions as measures to secure a claim and preventive measures has shown that they have common features and, at the same time, significant differences. A restraining order

is characterized by greater flexibility and universality of application, which allows it to be used in a wide range of legal relations. Its integrative nature, which combines civil law and criminal procedural elements, forms the basis for creating an effective protection mechanism in cases of threat to life, health or freedom of an individual. This indicates its potential as an innovative legal instrument capable of ensuring an appropriate balance between the interests of the state, society and the injured person.

The human rights protection function of a restraining order is manifested in its ability to provide rapid, proportionate and at the same time minimally burdensome protection. International experience, in particular the practice of the European Court of Human Rights, confirms that the effectiveness of this institution depends on proper regulation and the ability of the legal system to guarantee its effectiveness in practical terms. Thus, the improvement of the national model of legal regulation of restraining orders should be carried out taking into account both international standards and national socio-legal realities, which corresponds to the general trend of harmonization of Ukrainian law with European Union law.

Therefore, a promising direction for the development of this institute is the further integration of civil law and criminal procedure approaches in the context of the formation of a comprehensive model of protection of individual rights. Such a model should be based on the principles of the rule of law, proportionality and ensuring effective legal remedies. Its implementation will contribute not only to strengthening the human rights protection function of the state, but also to the fulfillment of international obligations in the field of human rights protection. This is especially relevant for Ukraine in the context of the transformation of the legal system and gradual integration into the European legal space.

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### **Authors' Contribution**

Both authors contributed equally to the development of this article.

### **Data availability**

All datasets relevant to this study's findings are fully available within the article.

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