

Violence against women in Poland – European standards, Polish law and some practice of Polish courts

Dr. Marcin Górski, Jean Monnet Chair of
European Constitutional Law, University of
Łódź, legal advisor, member of the HR
Committee of the National Board of
Attorneys-at-Law

Part I

European legal framework applicable to cases of violence against women: The European Convention on Human Rights, The Istanbul Convention, EU directives – an overview

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**Number of reported and detected rapes in Poland 1999-2016 (Source: the Police)
Year / reported rapes / detected rapes / percentage of detected rapes)**

Zgwałcenie wg jednostek podziału administracyjnego kraju - przestępstwa stwierdzone, przestępstwa wykryte, % wykrycia.

Jednostka podziału administracyjnego	Rok	Przestępstwa stwierdzone	Przestępstwa wykryte	% wykrycia
Polska	2016	1 383	1 116	80,5
Polska	2015	1 144	896	77,6
Polska	2014	1 249	983	78,1
Polska	2013	1 362	1 164	84,1
Polska	2012	1 432	1 209	83,3
Polska	2011	1 498	1 230	80,1
Polska	2010	1 567	1 305	82,3
Polska	2009	1 530	1 268	82,6
Polska	2008	1 611	1 315	81,1
Polska	2007	1 827	1 549	84,2
Polska	2006	2 001	1 665	82,7
Polska	2005	1 987	1 678	84,1
Polska	2004	2 176	1 818	82,7
Polska	2003	2 322	2 021	85,7
Polska	2002	2 345	2 032	85,3
Polska	2001	2 339	1 972	83,9
Polska	2000	2 399	2 075	85,9
Polska	1999	2 029	1 715	83,7

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- In fact: even up to 200 rapes in PL daily
- Numerous cases of sexual harassment
- Culture approving sexual violence

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Dziś będzie
na twarz,
skarbie.

Krem, maska, serum, kolagen...
Poczuj na twarzy
naturalną rozkosz pielęgnacji.

Dopieszczanie Twojej twarzy
oddaj w ręce

BINGOSPA



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- „Left-wing politicians present pre-natal homicide as a form of care for women’s health. Not a single international document provides basis for such a statement” – Ms. Joanna Banasiak, *Ordo Iuris*, extreme right lawyer’s network
- „Equality of sexes shall exist when a man gives birth to a child” – Ms. Beata Szydło, Prime Minister
- „Above all, it should not be applied” – Mr. Andrzej Duda, President of Poland, about the Istanbul Convention

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- Costs of violence against women – 109 bln EURO annually (Europ. Inst. For Gender Equality)
- 0,8% of EU GDP
- Only 3% of the amount which is lost per year – is invested in prevention and combating gender-based violence

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- 19% of female respondents in PL declared that they were victims of violence,
- in Denmark 52%
- in Finland 47% a
- in Sweden – 46%
- EU average 33%

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VIOLENCE AGAINST WOMEN:

any act of **gender-based** violence, which results in, or is likely to result in, **physical, sexual or psychological harm or suffering** to women, including threats of such acts, coercion, or arbitrary deprivation of liberty, whether occurring in **public or private** life

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ECHR

M.C. v Bulgaria (2004)

M.G.C. v Romania (2016)

Y. v Slovenia (2015)

D.J. v Croatia (2012)

P.M. v Bulgaria (2012)



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M.C. v Bulgaria (2004)

historically, proof of physical force and physical resistance was required under domestic law and practice in rape cases in a number of countries. The last decades, however, have seen a clear and steady trend in Europe and some other parts of the world towards abandoning formalistic definitions and narrow interpretations of the law in this area

a requirement that the victim must resist physically is **no longer present** in the statutes of European countries

the member States of the Council of Europe, through the Committee of Ministers, have agreed that penalising **non-consensual sexual acts**, “[including] in **cases where the victim does not show signs of resistance**”, is necessary for the effective protection of women against violence

In international criminal law, it has recently been recognised that force is not an element of rape and that taking advantage of coercive circumstances to proceed with sexual acts is also punishable. The International Criminal Tribunal for the former Yugoslavia has found that, in international criminal law, **any sexual penetration without the victim's consent constitutes rape** and that **consent must be given voluntarily, as a result of the person's free will, assessed in the context of the surrounding circumstances**

CoE Committee of Ministers' Recommendation 2002

...calls upon the CoE Member States to insure that none of the victims suffer **secondary (re)victimisation** or any **gender-insensitive treatment** by the police, health and social personnel responsible for assistance, as well as by judiciary personnel and that they provide for **appropriate measures and sanctions** in national legislation, making it possible to take **swift and effective action** against perpetrators of violence and **redress** the wrong done to women who are victims of violence

➔ legal context due to be taken into consideration by Polish courts (Constitutional Court, 2006, case K 17/05)

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Directive 2012/29/UE establishing minimum standards on the rights, support and protection of victims of crime (previously Framework Decision 2001/220/JHA)

Preamble:

- (5) The resolution of the European Parliament of 26 November 2009 on the elimination of violence against women [\(7\)](#) called on the Member States **to improve their national laws and policies to combat all forms of violence against women** and to act in order to tackle the causes of violence against women, not least by employing preventive measures, and called on the Union to guarantee the right to assistance and support for all victims of violence.
- (6) In its resolution of 5 April 2011 on priorities and outline of a new EU policy framework to fight violence against women [\(8\)](#) the European Parliament proposed a strategy to combat violence against women, domestic violence and female genital mutilation as a basis for future legislative criminal-law instruments against gender-based violence including a framework to fight violence against women (policy, prevention, protection, prosecution, provision and partnership) to be followed up by a Union action plan. International regulation within this area includes the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) adopted on 18 December 1979, the CEDAW Committee's recommendations and decisions, and the Council of Europe Convention on preventing and combating violence against women and domestic violence adopted on 7 April 2011.

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European Parliament resolution of 5 April 2011 on priorities and outline of a new EU policy framework to fight violence against women (2010/2209(INI)), 2012/C 296 E/04.

- necessity of “a combination of infrastructural, legal, judicial, enforcement, educational, health, and other service-related actions” instead of a single-document approach
- problem of pornography and advertising which is likely to trivialise the problem of gender-based violence
- function of gender-based violence which ultimately leads to shaping and undermining women’s place in a society
- low record of notification of crimes involving gender-based violence

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Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), 2011

Entered into force in (or will soon enter and was already ratified by) 26 CoE MS

➔ In Poland – applied to date **only once** (D.C. Wrocław-Śródmieście, 3rd Feb 2016, case VIII Ns 504/14, concerning the ordering of the person liable for domestic violence to leave home)

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ECtHR on Istanbul Convention

First time: **VALIULIENĖ v. LITHUANIA**, 26.03.2013, 33234/07 (LT – not a party to the Convention to date!)

The applicant alleged that the State had failed to protect her from acts of domestic violence. She also complained that the criminal proceedings she had instituted had been futile, given that the perpetrator of the crimes had been left unpunished. The prosecution was discontinued and also found time-barred.

- The applicant stated that between 3 January and 4 February 2001, she had been beaten up on five occasions by her live-in partner, J.H.L., a Belgian citizen. She submitted that she had been strangled, pulled by the hair, hit in the face and kicked in the back and in other parts of her body.
- The applicant's injuries were documented by forensic expert examinations, the results of which were as follows: report of 5 January 2001 concerning injuries sustained on 3 and 4 January: hypodermic bruising on the left hip and thigh; report of 8 January concerning injuries sustained on 7 January: a scrape on the right cheek and brachium; report of 30 January concerning injuries sustained on 29 January: bruising on the right eye and cheek, the left temple, the shin, and a scrape on the left shin; report of 7 February concerning injuries sustained on 4 February: hypodermic bruising on the face. Each time the experts concluded that the bodily injuries sustained were minor and had not caused any short-term health problems

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ECtHR:

41. On 5 May 2011 the Council of Europe adopted the Convention on Preventing and Combating Violence against Women and Domestic Violence. To this day the Convention has been signed by twenty eight Council of Europe Member States and ratified by three. The Convention has not yet entered into force, nor has it been signed by Lithuania. One of the purposes of the Convention is to protect women against all forms of violence, and prevent, prosecute and eliminate violence against women and domestic violence.

➔ there has been a violation of Article 3 of the Convention

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ECtHR on Istanbul Convention

Y v. Slovenia (28th May 2015), 41107/10

In the cases hitherto before the Court, the question of whether the domestic authorities succeeded in striking a fair balance between the competing interests of the defence, especially the right of the accused set out in Article 6 § 3 (d) to call and cross-examine witnesses, and the rights of the victims under Article 8 was raised by the accused. Conversely, **in the present case the Court is called upon to examine this issue from the perspective of the alleged victim**. In addressing the question, the Court will take into account the criteria laid down in the relevant international instruments (see paragraphs 69-72 above). In this connection, the Court notes that **the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence** requires the Contracting Parties to take the necessary legislative and other measures to protect the rights and interests of victims. Such measures involve, inter alia, protection from intimidation and repeat victimisation, enabling victims to be heard and to have their views, needs and concerns presented and duly considered, and enabling them, if permitted by applicable domestic law, to testify in the absence of the alleged perpetrator. In addition, the EU Directive establishing minimum standards on the rights, support and protection of victims of crime provides, inter alia, that interviews with victims are to be conducted without unjustified delay and that medical examinations are to be kept to a minimum.

Note: the Convention entered into force in respect of Slovenia on **1st June 2015!!!**

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ECtHR on Istanbul Convention (11 decisions so far)

[CASE OF VALIULIENĖ v. LITHUANIA](#)

33234/07 | Judgment (Merits and Just Satisfaction) | Court (Second Section) | 26/03/2013
Violation of Article 3

[CASE OF BLJAKAJ AND OTHERS v. CROATIA](#)

74448/12 | Judgment (Merits and Just Satisfaction) | Court (First Section) | 18/09/2014
Preliminary objection dismissed (Article 34 - Victim) Violation of Article 2

[CASE OF ROHLENA v. THE CZECH REPUBLIC](#)

Selected for Case Reports | 59552/08 | Judgment (Merits and Just Satisfaction) | Court
(Grand Chamber) | 27/01/2015
No violation of Article 7

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ECTHR on Istanbul Convention (11 decisions so far)

[CASE OF Y. v. SLOVENIA](#)

Selected for Case Reports | 41107/10 | Judgment (Merits and Just Satisfaction) | Court
(Fifth Section) | 28/05/2015

Violation of Article

[CASE OF M. AND M. v. CROATIA](#)

Selected for Case Reports | 10161/13 | Judgment (Merits and Just Satisfaction) | Court
(First Section) | 03/09/2015

Remainder inadmissible Violation of Article 3

[CASE OF M.G.C. v. ROMANIA](#)

61495/11 | Judgment (Merits and Just Satisfaction) | Court (Fourth Section) | 15/03/2016

Violation of Article 3

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ECtHR on Istanbul Convention (11 decisions so far)

[CASE OF J. AND OTHERS v. AUSTRIA](#)

Selected for Case Reports | 58216/12 | Judgment (Merits and Just Satisfaction) | Court (Fourth Section) | 17/01/2017

Remainder inadmissible No violation of Article 4

[CASE OF BĂLȘAN v. ROMANIA](#)

49645/09 | Judgment (Merits and Just Satisfaction) | Court (Fourth Section) | 23/05/2017

Violation of Article 3

[CASE OF Ž.B. v. CROATIA](#)

47666/13 | Judgment (Merits and Just Satisfaction) | Court (Second Section) | 11/07/2017

Violation of Article 8

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ECtHR on Istanbul Convention (11 decisions so far)

[CASE OF CARVALHO PINTO DE SOUSA MORAIS v. PORTUGAL](#)

Selected for Case Reports | 17484/15 | Judgment (Merits and Just Satisfaction) | Court
(Fourth Section) | 25/07/2017

Violation of Article 14+8

[CASE OF D.M.D. v. ROMANIA](#)

23022/13 | Judgment (Merits and Just Satisfaction) | Court (Fourth Section) | 03/10/2017

Violation of Article 3

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ECtHR on Istanbul Convention (11 decisions so far)

[CASE OF CARVALHO PINTO DE SOUSA MORAIS v. PORTUGAL](#)

Selected for Case Reports | 17484/15 | Judgment (Merits and Just Satisfaction) | Court (Fourth Section) | 25/07/2017

Violation of Article 14+8

[CASE OF D.M.D. v. ROMANIA](#)

23022/13 | Judgment (Merits and Just Satisfaction) | Court (Fourth Section) | 03/10/2017

Violation of Article 3