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Centre of Excellence for
Professional Education and Training



Poland – National legal framework on case law and violence against women

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THE BAR of
NORTHERN
IRELAND



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

Evolving legislation in Poland

- **2002 - the work on the first draft law on counteracting domestic violence** started – Poland used an Austrian law as a model legislation to its own draft;
- **2005 – adoption of the law on counteracting domestic violence** – the first version lacked basic provisions as regards, i.e. lack of provisions regarding isolation of the victim from the perpetrator (ownership of the real estate questions, whether or not the court can decide to evict the perpetrator from his house);
- **2010 - amendments to the law** - *inter alia* the obligation for local authorities (self-governments) to create interdisciplinary teams composed of social assistant, local committees for solving alcohol-related problems, police, educational staff, healthcare staff and representatives from relevant NGOs. - The role of the interdisciplinary team is to diagnose, monitor, and take measures to solve problems of domestic violence at local level and in individual cases.

Law on counteracting domestic violence

- **Rules of counteracting domestic violence;**
 - anyone who while acting in his professional capacity get any information about the possible acts of domestic violence is obligated to report it to the Police or the Public Prosecutor (under the pain of liability for disregarding duties of the public official);
 - anyone else who has information about the acts of domestic violence is obligated to report it to the Police or the public prosecutor (informing other services is also possible, eg. Social services)
- **Rules regarding treatment of victims of domestic violence:**
 - support system of the interdisciplinary teams – the information and support system points organized by the Polish Nationwide Agreement of People, Organizations and Institutions helping victims of violence „The Blue Line”.
- **Rules regarding treatment of the perpetrators of domestic violence:**
 - **Civil proceedings:** possibility of eviction of the perpetrator from the house/apartment shared with the victim(s) if the behaviour of the perpetrator is highly disturbing and makes it impossible for the family to stay together– not possible when he/she is the sole owner of the property;
 - If evicted, the perpetrator has no right to the social housing or any form of such help;
 - the victim(s), if in need, she/he may be granted legal-aid and exoneration from court fees;
 - also possible during the divorce proceedings – no separate fees required;
 - **the possibility of eviction of the perpetrator under the Law on counteracting domestic violence** – the difference – it is possible to evict the perpetrator even if he/she is the sole owner of the property.

Arrest of the perpetrator

- **possibility** to arrest the perpetrator in case of danger to life and health of the victim(s);
- **obligation** to arrest the perpetrator when the acts of violence committed against the victim(s) were with use of firearm, knife, or other dangerous objects, and the fear of committing those acts again is justified, especially when he threatens to do it;

Remand in custody

- decided by the court upon the motion from the Public prosecutor
- when other preventive measures are insufficient;
- To secure the right course of the proceedings and to prevent the perpetrator from committing any other serious crime;
- maximum 3 months, possibility to prolong up to 12 months;

Other measures against the perpetrator

When convicted the offender can be obligated to:

- inform the court or the probation officer about the time of probation;
- Apologize to the victim;
- Refrain from alcohol and other substances;
- Subject himself to rehab centre or undergo therapy;
- Subject himself to corrective and educational facilities, therapy;
- Refrain from contacting the victim and maintain certain distance from her/him;
- Move out from the apartment;
- Fulfil other obligations as ordered by the court.

The Blue Card procedure

- The procedure of “Blue Card” forms was introduced by an Ordinance of the Minister of Labour and Social Policy in 2011.
- This procedure is independent from and complementary to any other criminal, family and civil law proceedings.
- The procedure is initiated by a representative of a competent service (mostly by a police officer but also by social workers, healthcare staff, teachers, or local committees for solving alcohol-related problems) when he/she suspects domestic violence.
- The victim of violence is then provided with relevant instructions and invited to a meeting with the interdisciplinary team for a discussion on the most adequate individual assistance plan. A separate meeting is organised by the interdisciplinary team for the perpetrator, notably to evaluate the situation of the family and encourage participation in programmes of corrective and educational measures.

2014-2020 National Programme for Counteracting Domestic Violence

- 2014-2020 National Programme for Counteracting Domestic Violence adopted on the basis of the Law on Counteracting Domestic Violence, foresees actions in four areas:
 - prevention and social education;
 - protection of and assistance to those affected by domestic violence;
 - influence on people using domestic violence;
 - and raising competence of the relevant services

Criminal Law – art. 207 – mistreatment

- § 1. Anyone who mentally or physically mistreats a person close to him or her, or another person in a permanent or temporary **state of dependence to the offender**, between three months and five years.
- §1a. Anyone who mentally or physically mistreats a minor or a person who is vulnerable because of his or her mental or physical condition is liable to imprisonment for between six months and eight years.
- § 2. If the act specified in § 1 or §1a is carried out with particular cruelty, the offender is liable to imprisonment for between one and 10 years.
- § 3. If the act specified in §§ 1 - 2 results in a suicide attempt by the afflicted party, the offender is liable to imprisonment for between two and 12 years.

Criminal Code – sexual offences

- **Art. 197 – Rape:**

§ 1. Anyone who, by force, illegal threat or deceit, subjects another person to sexual intercourse is liable to **imprisonment for between two and 12 years**.

§ 2. If the offender forces another person to submit to another sexual act, or to perform such an act in the manner specified in § 1, he or she is liable to **imprisonment for between six months and eight years**.

§ 3. If the offender commits a rape

1) in concert with another person,

2) towards a minor under the age of 15,

3) towards a descendent, ascendant, adopter, adoptee, brother or sister, he or she is liable to **imprisonment for at least three years**.

§ 4. If the offender commits the rape specified in §§ 1-3, **with particular cruelty**, he or she is liable to the penalty of **imprisonment for at least five years**.

- **Art. 198 – Taking advantage of vulnerability**
- Anyone who takes advantage of the vulnerability of another person, or their inability to recognise the significance of the act or ability to control their conduct, as a result of a mental disability or disorder in order to subject such a person to sexual intercourse, or to force him or her submit to another sexual act or to perform such an act is liable to **imprisonment for between six months and eight years.**

- **Art. 199. - Abusing a relationship of dependency**
- § 1. Anyone who, by abusing a **relationship of dependency or manipulating a critical situation**, makes another person perform sexual intercourse or to submit to another sexual act or to perform such an act, is liable **to imprisonment for up to three years.**
- § 2. If the act specified in § 1 has been **committed to the detriment of a minor**, the offender is liable to **imprisonment from three months to five years.**
- § 3. The penalty specified in § 2 applies to anyone who makes a **minor** perform sexual intercourse or to submit to another sexual act or to perform such an act, **by an abuse of trust or by giving him a financial or personal benefit, or its promise.**

- **Art. 200 - Sexual intercourse with a minor**
- § 1. Anyone who has sexual intercourse with a minor **under the age of 15**, or commits any other sexual act, or leads him or her to undergo such an act or to execute such an act, is liable to **imprisonment from two to 12 years**.
- § 2. Anyone who, for sexual gratification, subjects a minor under the age of 15 to sexual acts is liable to **the same penalty**.

Damage and Just satisfaction

- **Art. 46 - Remedying damage**
- § 1. In the event of a conviction, the court may order, or at the request of the aggrieved party or another party authorised in the order the court orders **the offender to partially or fully remedy any material damage caused by the offence, or pay just satisfaction for the suffering**; the civil law provisions on the possibility of awarding a pension do not apply.
- § 2. If ordering the obligation set out in §1 above is highly hindered, instead of the obligations set out in § 1, the court may order exemplary damages to be paid in the amount up **to PLN 200 000** to the aggrieved party or in case of his or her death to the next of kin whose life situation has been impeded by the death of the aggrieved party. If the late aggrieved party had more than one next of kin, the exemplary damages shall be granted to all of them.
- §3. Granting the damages or just satisfaction by the court indicated in § 1 above or exemplary damages indicated in §2 above, shall not restrict the right of the aggrieved person to sue the offender in the civil court if the damage was not covered fully.

Human Rights Law

- European Convention on Human Rights and Fundamental Freedoms – mandatory jurisdiction of the ECHR;
- No final judgement against Poland as regards the domestic violence and positive obligations of the State towards the applicant;
- one case was lodged in August 2017 under art. 3, art. 3 and 14, art. 8 and 14 of the Convention – still in preliminary examination. The case follows the case-law of the Court: *Opuz v. Turkey*, *M.C. v. Bulgaria*.

Convention on preventing and combating violence against women and domestic violence

- signed in 2012 and ratified by Poland in 2015;
- 2013 - Poland introduced some amendments to its criminal procedure code – such as the questioning of the victim of violence by the judge in the preliminary stage of criminal proceedings, and only once, in a „friendly questioning room” – without presence of the alleged perpetrator;
- applied in practice only once so far – District Court Wrocław-Śródmieście, 3rd Feb 2016, case VIII Ns 504/14, concerning the ordering of the person liable for domestic violence to leave home

Fields for improvement:

- Education in the field of equality of sexes;
- Elimination of stereotypes regarding sex and a role of a female in society;
- Fighting hate speech connected with sex and status of women;
- Discussion about the definition of „rape” in the Criminal Code – the Ministry of Justice is preparing amendments to the law and proposed that we change the definition of rape in the CC – voices suggesting that anything but the consensual intercourse after informed and conscious consent where disregarded in public debate;
- actions empowering women to stand up and fight for their rights – NGOs role, school system.

THANK YOU!

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