Fighting Domestic Violence - Poland

2. Introduction: framework guiding domestic violence law

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# 2.1 Are there civil and criminal legal remedies for domestic violence victims?

There are both civil and criminal legal remedies available to domestic violence victims. In particular, under the DV Act, a person affected by domestic violence is given free assistance, in particular in the form of the following:

medical, psychological, legal, social, professional and family counseling

crisis intervention and support

protection against further harm by preventing persons using violence from sharing a flat occupied jointly with other family members and by prohibiting contact and approaching the injured person

providing a person affected by domestic violence with safe shelter in a specialist support center for victims of domestic violence

medical examination to determine the causes and type of bodily injury associated with the use of domestic violence and to issue a medical certificate in this regard

providing a person affected by domestic violence, who does not have legal title to the premises occupied jointly with the perpetrator of violence, assistance in obtaining housing

In principle, the Polish system of domestic violence prevention is more criminally oriented. Even though there is no separate type of criminal offense called "domestic violence," domestic violence acts are penalized, depending on the circumstances, as mistreatment, punishable threat, infliction of bodily harm, rape, etc. Consequently, the competence to issue various protective orders associated with the suspected perpetration of said offense, such as the order to leave premises or prohibition of contact, is vested in criminal courts. Furthermore, criminal courts issue final rulings concerning the guilt of the offender and the appropriate sanctions, as well as the applicable punitive, preventive and precautionary measures.

Family courts are competent to preside over child custody cases stemming from domestic violence, as well as to decide on the appropriate child support and alimony.

Civil courts are competent to rule on tort-based compensation and damages.

# 2.2 Is domestic violence identified in national law as a human right (noting that at a European level protection from domestic violence has not been explicitly identified as a human right but is indirectly captured by the other provisions)?

The Polish legal system recognizes domestic violence as a violation of human rights. The aforementioned fact can be derived from the preamble to the DV Act, which stipulates the following:

**Declaring that domestic violence violates fundamental human rights**, including the right to life and health and respect for human dignity, and that public authorities are obligated to guarantee that all citizens are treated equally and that their rights and freedoms are duly respected, and for the maximization of efficiency of counteracting domestic violence the Act reads as follows […]

# 2.3 Has your country signed and ratified the Council of Europe's Istanbul Convention (2011) preventing and combating violence against women and domestic violence (CETS No. 210)?

Yes, Poland signed the Council of Europe's Istanbul Convention on 18 December 2012, it was ratified on 27 April 2015 and entered into force on 1 August 2015. By depositing the ratification instrument at the Council of Europe in Strasbourg, the country became the 18th member of the Council of Europe to ratify the Istanbul Convention.

# 2.4 If it has ratified the Istanbul Convention, how has this convention been implemented into national law?

The provisions of the Istanbul Convention of 11 May 2011 are being gradually introduced into the Polish legal system.

The first major change resulting from the requirements of the convention was the introduction of the ex officio prosecution of sexual offences instead of prosecution by motion, which was in force in Poland until 2013. More recently, there has been a change in providing the police with a means of immediate response by isolating the perpetrator of violence from the victim, as described in Section 1 above.

However, the provisions of the convention are still not fully implemented.

For example, the definition of domestic violence does not coincide with the definition of family violence in the Act on Counteracting Family Violence. The Polish act defines domestic violence as a one-time or repeated intentional act or omission violating the personal rights or goods of family members, i.e., the closest persons, including a spouse, parents, children, siblings, relations in the same line or degree, a person in an adoption relationship and his/her spouse, as well as a person in a cohabitation relationship. There is no extension of legal protection in the area of domestic violence to former spouses or partners, or to situations where they no longer share a residence. However, violent situations do occur between ex-spouses or partners who have children in common, for example in the course of contact. Such persons will not be able to count on being covered by the Blue Card procedure.

Additionally, as far as economic violence is concerned, the Istanbul Convention explicitly distinguishes it as a type of violence, which is missing in Polish law.

While the Istanbul Convention stresses the aspect of lack of consent of the victim in order for the perpetrator to be held criminally responsible for sexual violence, Polish law does not make the crime of rape dependent on the lack of consent of the victim to sexual intercourse. For the crime of rape to be considered under the Penal Code, it is essential that a person is induced to have sexual intercourse by means of violence, unlawful threat or deceit.

Additionally, a 24-hour hotline has been implemented, as well as crisis intervention centers that provide not only comprehensive assistance to victims, but also a lawyer and a psychologist. Also, domestic violence is no longer treated as a private family matter. Additionally, as already indicated above, the police can order the perpetrator of domestic violence to leave the apartment immediately. Please see the detailed information on how the Istanbul Convention has been implemented into Polish law can be found in the report regarding measures taken for the implementation of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence submitted by the Government of the Republic of Poland pursuant to Article 68 of the Convention to the Secretary General of the Council of Europe. Please see the following link to the detailed report: <https://www.coe.int/en/web/istanbul-convention/poland1> and <https://rm.coe.int/grevio-inf-2020-8-eng/pdfa/16809e5394>.

Additionally, the commissioner for human rights in Poland presented his comments on the implementation of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence pursuant to Article 68 (5) thereof. The commissioner's comments and postulates included herein have been formulated based on complaints submitted to the Office of the Commissioner for Human Rights, the commissioner's general letters of intervention addressed to relevant public bodies as well as information acquired during commissioner's direct meetings with individuals or representatives of various nongovernmental organizations. The commissioner refers to the information presented in a Report of the Government of the Republic of Poland submitted to the secretary general of the Council of Europe. The report can be found here: <https://rm.coe.int/chr-poland-submission-30-06-2020/16809eed4b>.

Please note that Amnesty International has also submitted the shadow report to the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) in advance of GREVIO's monitoring visit to Poland. The visit is part of the ongoing evaluation procedure regarding the country's legislative and other measures giving effect to the provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (the Istanbul Convention). The shadow report can be found here: <https://rm.coe.int/poland-shadow-report-amnesty-international-grevio/16809efdd1>.

# 2.5 If it has not ratified or signed the Istanbul Convention, is it envisaged that your country will do so?

N/A — see above

# 2.6 If it has ratified the 1979 Convention, how has the recommendations part of General Comment No. 35 been implemented into national law?

Since its publication in 2017, the Republic of Poland has not implemented into national law any measures specifically addressing the recommendations part of General Comment No. 35. The state party's report for the IX Reporting Cycle (scheduled for 1 November 2018) has not been made available yet. Based on the activity reports of the Government Representative for Equal Treatment for 2018 and 2019 and other publicly available resources, we are not able to identify any legislation activities initiated or taken in this respect.

# 2.7 If the 1979 Convention has not been ratified or signed, is it envisaged that your country will do so?

N/A

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