



Protection of Persons Against Domestic Violence and Assistance to Victims in the Light of the Law of the Republic of Poland

Ochrana osôb pred domácim násilím a pomoc obetiam vo svetle práva Poľskej republiky

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The manuscript was received on 20. 05. 2019 and was accepted after revision for publication on 27. 05. 2019

Abstract:

Domestic violence is a specific type of pathology in family life that can last for a very long time, because the family, as a system, defends itself against external influences. Relevance and the complexity of the problem of domestic violence does not allow one to pass by indifferently. It is not allowed to passively observe when someone is harming another person, not to accept bad treatment, pain and suffering. No one deserves to be beaten and insulted. Assistance to victims of violence and action to eliminate this negative phenomenon have been one of the legislator's priorities for many years. More and more professionals, non-governmental organizations and specialized institutions are engaged in searching for effective forms of preventing domestic violence and helping victims in Poland. This is not an easy task, because the family environment is and should be protected from outside interference. Counteracting violence requires a thorough understanding of the complexity of family life, as well as special care and consideration during interventions. This article deals with the issue of legal regulations concerning violence in the family. The legal acts relating to the protection of persons against domestic violence were discussed. Attention was also drawn to issues related to the process of preventing domestic violence. It describes the tasks carried out by state institutions to counteract domestic violence and forms of assistance to victims of violence, by social organizations and therapeutic centers.

Keywords: family, violence, protection, prevention of violence, law



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Abstrakt:

Domáce násilie je špecifickým typom patológie v rodinnom živote, ktorý môže trvať veľmi dlho, pretože rodina sa ako systém bráni vonkajším vplyvom. Relevantnosť a komplexnosť problému domáceho násillia neumožňuje, aby sa človek neúčastňoval. Nie je dovolené pasívne pozorovať, keď niekto poškodzuje inú osobu, neprijímať zlé zaobchádzanie, bolesť a utrpenie. Nikto si nezaslúži, aby bol porazený a urazený. Pomoc obetiam násillia a opatrenia na odstránenie tohto negatívneho javu sú jednou z priorit zákonodarcu už mnoho rokov. Stále viac profesionálov, mimovládnych organizácií a špecializovaných inštitúcií hľadá účinné formy prevencie domáceho násillia a pomoci obetiam v Poľsku. Nie je to ľahká úloha, pretože rodinné prostredie je a malo by byť chránené pred vonkajšími zásahmi. Vyžaduje si to boj proti násilliu dôkladné pochopenie zložitosti rodinného života, ako aj osobitná starostlivosť a pozornosť pri intervenciách. Článok sa zaoberá problematikou právnych predpisov týkajúcich sa násillia v rodine. Diskutovali sa právne akty týkajúce sa ochrany osôb pred domácim násillím. Pozornosť sa venovala aj otázkam súvisiacim s procesom prevencie domáceho násillia. Popisuje úlohy štátnych inštitúcií v boji proti domácemu násilliu a formy pomoci obetiam násillia zo strany sociálnych organizácií a terapeutických centier.

Kľúčové slová: rodina, násilie, ochrana, prevencia násillia, právo

Introduction

Man is a free being, he has his own dignity. Every act against personal freedom is therefore understood as an act of violence. Forcing something on a person that is contrary to his will is also violence. Violence is a very disturbing phenomenon for modern families. A family home is generally seen as a safe haven to ensure that nothing bad happens to anyone here. The family is the most important environment in human life, shaping personality, values, views and lifestyle. Mutual relationships between parents based on love and understanding play an important role in a well-functioning family. In case of disorganization, the family is not able to perform basic tasks. It breaks the rules of the game, and the behavior of individual family members is becoming increasingly incompatible with legal and moral norms and social expectations. And this house, which should be associated with warmth, love and acceptance, becomes a place of pain and suffering.

1. Domestic violence – an attempt at definition

Violence in the modern world is becoming more and more visible and alarmingly growing. It seems to be a phenomenon that is attacking us from all sides in everyday life. It is a common phenomenon that affects every society and occurs in almost all areas of social life. Violence is a pathological phenomenon that occurs wherever there is a human-to-human relationship. The human inventory of harming another being seems to have no end. The scale of despicable treatment ranges from innocent derision to calculating destruction of one's sense of worth, from light struggles to brutal murder, from neglect to deliberate failure to satisfy basic needs in life [1].

For a deeper understanding of the concept of domestic violence, please refer to the scientific literature. Anna Lipowska-Teutsch describes the phenomenon of violence "as a group of attacking, supervising and controlling behaviors, including physical, sexual and emotional violence. It is a coherent whole, a sequence of international behaviors and instrumental, the aim of which is to enslave the victim, to eliminate his sovereign thoughts and actions, to subordinate him to the demands and

needs of the perpetrator. These are not uncontrollable behaviors, emotional outbursts. The perpetrator often demonstrates anger in order to intimidate the victim, while deliberately choosing the place and time of the attack in such a way that it is as effective and as little risky as possible [2].

Violence is also the use of in-people-to people contacts, the advantage of the perpetrator to pursue his own goals. It is done by violating the personal rights of another person, by manipulating, ignoring the welfare of a victim of violence, by causing suffering. The most common form of violence is less drastic, and the perpetrators of violence often define their behavior as acting for the benefit of the victim [3].

According to Irena Pospiszyl, “all intentional acts violating the personal freedom of an individual, which contribute to the physical or mental harm to a person and which go beyond the social norms of interpersonal contact” “should be considered domestic violence” [4]. On the other hand, Anna Zielińska stresses that violence is “a relationship characterized by an unequal social relationship, a relationship of dominance of subordination, in which there is an abuse of power, authority, dependence or physical or mental strength, or a task of suffering” [5].

Speaking of domestic violence, at first the image of husbands beating their wives comes to mind. However, domestic violence can be multidirectional, which means that the victims of acts of violence do not necessarily have to be wives. Domestic violence is primarily an intentional and deliberate act of aggression aimed at harming another person and may be directed at children, spouses and sexual partners, parents. It follows that not only men can commit domestic violence against their wives and children, but also women can commit domestic violence against their husbands, children and grandchildren against grandparents, children against each other, and even older, teenage children against their parents [6].

2. Legislation on the protection of individuals against domestic violence

Violence is a phenomenon that violates fundamental human rights and freedoms, the right to life, personal security or the right to physical and mental health. While foreign violence seems to be a normal and widespread phenomenon, domestic violence is both terrifying and disgusting. The home should be an asylum, an oasis of peace and mutual support, not a hiding place that allows crimes to be committed. The family should be united by bonds of love and trust, not hatred and a desire to inflict pain [7].

The protection of people against domestic violence is implemented in international and national law. In national law, the most important legal acts protecting people from domestic violence are: Constitution of the Republic of Poland, substantive and procedural criminal law, civil law, family and guardianship law and administrative law. The basic source of Polish law that protects man against violence and infringement of his personal rights is the *Constitution of the Republic of Poland of 2 April 1997* [8]. It directly addresses issues related to the protection of fundamental rights and freedom and outlines the guarantees that the state should implement in relation to the citizen. The state, the state and the family and freedom and outlines the guarantees that the state should implement in relation to the citizen.

In accordance with the Constitution, the fundamental right to protection against violence is human dignity. The State, through public authorities, has a duty to protect human dignity, since it is inviolable and a fundamental source of freedom and human

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rights [8]. Dignity is due to every human being, always and irrespective of his conduct, and must therefore be equally due to every human being. It is therefore unacceptable to divide dignity according to education, race, nationality, citizenship or gender. Therefore, the role of the state is to protect dignity, and the role of the courts is to control the actions of public authorities [9].

The Constitution indicates the legal regulations concerning the family. The right to the protection of private and family life, the right to honor and a good name and the right to decide on personal life, enshrined in Article 47, ensure the freedom of the family to take decisions within family life [8]. However, in Article 18, the Constitution recognizes that the family, motherhood and parenthood are under the care of the Republic of Poland. These rules mean that parents are primarily responsible for the child that they first have the right to his or her upbringing [10].

The Criminal Code is a further detail of the provisions of the Constitution in the Polish law concerning protection against domestic violence [11]. According to Article 207 of the Penal Code, which states that “anyone who torments, physically or mentally, the closest person or another person who has a permanent or temporary relationship of dependence on the perpetrator or a minor or a person incapable of being incapacitated because of their mental or physical condition, shall be subject to the penalty of deprivation of liberty for a term of between 3 and 5 years. If the above act is determined with particular cruelty, then it shall be subject to the penalty of deprivation of liberty for up to 10 years. If the consequence of the above act is the victim's own life intrusion, then the perpetrator shall be subject to the penalty of deprivation of liberty for from 2 to 12" years [11].

Abuse is understood to mean the conduct of a person aimed at deliberately inflicting physical pain or moral suffering that severely and gravely violates the physical integrity of the victim, as well as inflicting psychological pain for the purpose of harassment. These can be either repetitive or one-off activities [12].

Chapter XXVI of the Penal Code was entitled by legislator “Offences against family and custody”. It points out that a legally protected good is the family, its functioning and the protection of its individual members. There is also a catalogue of so-called protected by-products, which includes primarily physical inviolability, part of individual family members, their health, safety and life of each of them [13]. Prohibited and criminal acts are classified as crimes of domestic violence such as: murder, causing severe health impairment, causing medium or slight health impairment, participation in a fight or beatings, criminal threat, coercion, rape, incest, insult, as well as violation of the inviolability [12].

In addition to the Criminal Code, *The Family and Guardianship Code* [14] is a document that addresses domestic violence. Family law is a set of rules governing legal relationship concerning marriage, parent-child relations and adoption and custody. Family law provisions apply to the protection of persons against domestic violence mainly in the following areas: protection against liability for the spouse's debts, dissolution of marriage, limitation or deprivation of parental authority, adoption and custody of minors and maintenance obligations [15].

One of the most important issues relating to problems in the family is parental authority, which is largely abused by parents, especially as they care for children until they reach the age of majority [14]. An important provision concerning the problem is Article 96¹, which clearly states that: “Corporal punishment shall be prohibited for persons exercising parental authority and the custody or custody of minors” [14]. Where this provision is violated and the best interests of the child are endangered, the

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guardianship court may, in accordance with Article 109, issue appropriate directives to deal with the problem. The court may order the family to cooperate with a family assistant or refer to family therapy, it may forbid parents to perform certain activities, and in case of exceeding the limits of exercising parental authority, it may impose on parents supervision by a court superintendent. In a few cases, the guardianship court may order that children be temporarily in a family or foster home placed [14]. The ultimate solution in cases of abuse of parental authority or huge negligence of duties towards children is to deprive parents of parental authority [14].

Among the statutory regulations applicable to the protection of persons against violence and the prevention of domestic violence, the most important documents are laws;

1. The Act of 29 July 2005 on Counteracting Domestic violence [16] is an important stage in the Polish legislation on preventing abuse and maltreatment of the closest relatives. The aim of the law is to increase the effectiveness of the prevention of violence in the family and initiating and supporting activities aimed at raising social awareness of the causes and effects of violence in the family. The Act specifies the following tasks in the scope of: prevention of domestic violence, conduct towards persons affected by domestic violence and conduct towards persons using domestic violence. A person affected by domestic violence shall be assisted by medical, psychological, legal and social counselling; crisis intervention and support; protection against further harm by preventing violent persons from using their shared accommodation with other family members and by prohibiting contact with the victim, providing, upon request, safe haven is specialized support center for victims of domestic violence. With regard to persons using violence in the family, the measures provided for in the Act are applied aimed at preventing their contact with the aggrieved parties (Articles 3 and 4) and corrective and educational effects [16].
2. Act of 26 October 1982 on Upbringing in Sobriety and Counteracting Alcoholism [17]. It defines tasks within the scope of counteracting alcoholism which should be implemented through appropriate shaping of social policy, in particular counteracting domestic violence (Article 2 point 7). Counteracting domestic violence is therefore one of the elements of appropriate shaping of social policy, aimed at counteracting alcoholism, and in accordance with Article 41.1, the own tasks of the commune, consisting in conducting activities related to prevention and solving alcohol problems, include in particular providing families with alcohol problems with psychosocial and legal assistance, especially protection against violence within the family (point 2). In addition, pursuant to Article 41 of the Act, mayors of town and cities appoint municipal commissions for solving alcohol-related problems, which have the following tasks in particular, initiate measures to protect against violence [18].
3. The Act of 19 August 1994 on the Protection on Mental Health [19]. Violence is often based on mental illness, mental handicap or other mental disorders. In such a situation, the only solution may be to voluntarily undergo or force the offender to undergo psychiatric treatment. The Act on the Protection of Mental Health assumes that a person whose behavior indicates that due to mental disorders he/she may directly endanger his/her own life or health or the health of other persons may be subjected to a psychiatric examination also without his/her consent (Article 21, paragraph 1), as well as be compulsorily admitted to hospital when his/her previous

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behavior indicates that due to his/her illness he/she directly endangered his/her own life or the life or health of other persons (Article 23, paragraph 1) [20].

4. The Act of 29 November 1990 on Social Welfare [21]. One of the basic tasks within the framework of social assistance is to help the family, including recognition of family conflict and taking action in order to solve it. The Social Welfare Act provides many solutions for the family. Article 1 stresses that social assistance should aim at helping families to overcome difficult life situations. It also imposes an obligation on the family to cooperate in solving these problems [20].
5. Polish law provide for institutionalized forms of assistance to people affected by violence. Victims of violence, and in certain situations the perpetrators of violence, may be assisted by non-governmental organizations whose direct or indirect aim is to help the family, especially when there is violence in the family. The forms of assistance range from providing medical, psychological and legal advice to providing shelter. Associations, foundations and other community-based organizations, as well as churches and other religious communities, have a special role to play in preventing domestic violence and resolving conflicts. The activity of such institutions is regulated by the Law on Associations of 7 April 1989 [22] and the Law on Foundations of 6 April 1984 [23].

3. The system of preventing domestic violence and forms of assistance to victims in accordance with the law of the Republic of Poland.

Although violence has always existed in interpersonal relations, it is not the case that little was said about domestic violence, as if it were not perceived as a serious disorder in the functioning of the family. One that leads to serious violations of moral and legal norms, tragic psychological consequences and, in extreme cases, to serious mutilations or murders. Violence inevitably leads to a sense of helplessness, and it does not allow the victim to find a simple way out of this situation. Assistance to the victims and perpetrators of violence shall be provided by institutions and services which, in accordance with their powers as laid down in the statutory instruments, intervene in cases of domestic violence. Act of 29 July 2005 on Counteracting Domestic Violence sets out tasks for government agencies and local government units – communities, counties and voivodship self-government; Police, Public Prosecutor's Office, social welfare and health care units.

1. Police – a body established to protect the life and health of people. It operates on the basis of the Act of 6 April 1990 on the Police (Journal of Laws of 1990, No.30, item 179). It plays an extremely important role in combating domestic violence and often depends on the effectiveness of the intervention to ensure that the assistance provided by other services is effective. The experience of people helping victims shows that domestic violence requires a slightly different approach and more active help than other forms of violence against which the Police intervene [24]. Officers have to make a note about the incident and the detention of the perpetrators of violence. In the case of a report of an offence, the initiation of a pre-trial investigation shall be initiated in order to collect and preserve evidence, assist the victim in providing information on possible further action and punish the offender. Domestic policemen are also obliged to inform victims of violence about their rights and about

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- other actors outside the police who provide social, legal or psychological support and therapeutic too.
2. The Public Prosecutor's Office is a state agency established to prosecute crimes. It operates on the basis of the Act on Public Prosecution of 30 June 1985 (Journal of Laws of 1985, No.31, item 138). Persons wronged as a result of domestic violence and witnesses may submit to the prosecutor's office or the police a notification of an offence prosecuted by public indictment or a motion to prosecute the perpetrator of an offence – this applies to offences prosecuted at the request of the wronged person, of the perpetrator is the closest person. Where there is a reasonable suspicion that a crime has been committed, the public prosecutor's office has a duty together with the police: initiate preparatory proceedings aimed at verifying whether a crime has actually been committed; clarify the circumstances of the act; collect and secure evidence; capture the perpetrator; in a justified case, apply a preventive measure against the perpetrator of violence in the form of: police supervision, pre-trial detention – depending on the assessment of the evidence gathered, the proceedings may result in a bill of indictment being filed with the court, discontinuance of the investigation, conditional discontinuance [25].
 3. Social assistance – is an institution of the social policy of the state, aimed at enabling individuals and families to overcome difficult life situations, which they are unable to overcome using their own entitlement, resources and capabilities. Social welfare is one of the tasks of the state authorities and local government units carries out for the benefit of individuals and families, therefore it is also an institution of the social policy of the state [26]. Direct assistance to families and people in need is provided by social workers operating in the agreed region. Within the scope of its competences and tasks, social assistance conducts: community interview enabling diagnosis of the situation of a family or a person, prepares a comprehensive plan of assistance; monitors the effects of actions taken; helps in dealing with official matters and other important living matters; provides counselling in the broad sense of the term, e.g. legal, psychological. In justified cases; provides financial assistance in the form of permanent, periodic, purpose-specific or in-kind allowances. Social workers can also identify places where they can help victims of domestic violence, including shelter, e.g. in shelters, hotels, centers. If necessary, or at the request of the interested parties, social workers may ask the police to take preventive measures against the perpetrator, in accordance with the competences of the Police, and in the event of identifying or suspicion of committing a crime, inform the law enforcement authorities. It can organize and run e.g. information centers, help centers, support groups for victims of domestic violence, day care centers for children; it cooperates with other institutions and organizations [21].
 4. Health service – the tasks which are its representatives include: monitoring signals of violence, recording violence during a medical interview, notifying the police of the suspicion of a crime, in the case of children – informing the family court, drawing up a health certificate, informing about the possibility of doing drugs, informing about facilities helping victims of violence, informing about the crime [27].
 5. The educational system is to support families in fulfilling their educational functions, provide care for students in the event of a difficult financial and life situation, take care of the following the right conditions for learning. As far as children and young people are concerned, most schools have policies in place to combat violence. It consists in clearly formulating rules and determining behavior that is unacceptable [28].

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The obligation to perform tasks in the field of preventing domestic violence rests also on the bodies of territorial self-government units – the commune, county, voivodeship self-government [29]. The municipality plays a key role in the prevention of domestic violence and can respond to the reported problem and provide support in the shortest possible time.

Article 6(2) of the Act of Counteracting Domestic Violence contains an open catalogue of tasks of the commune in the fields of counteracting domestic violence. In this respect, the Municipality is obliged to carry out four types of activities:

- development and implementation of a communal program to prevent domestic violence and protect victims of domestic violence;
- providing advice and intervention to prevent violence in the family, in particular through educational activities aimed at strengthening the caring and educational competences of parents in families threatened with domestic violence;
- providing support for people affected by domestic violence with places in support centers; the creation of interdisciplinary teams [16].

The commune undertakes activities aimed at counteracting domestic violence, in particular within the framework of an interdisciplinary team appointed by a commune head, a mayor or a city mayor. The interdisciplinary team consists of representatives of: organizational units of social assistance; municipal alcohol problem solving committee, police, education, health care, non-governmental organizations, as well as court superintendents, prosecutors and representatives of other entities working for the prevention of domestic violence. Detailed conditions for the functioning of the team shall be determined by the commune by way of a resolution of the commune council, and the organizational and technical support for the team shall be provided by the social welfare center. The team's main objective is to coordinate the activities of the entities whose representatives are members of the team and specialist in the fields of domestic violence prevention. An interdisciplinary team may set up working groups to solve problems related to domestic violence in individual cases. The working group shall carry out its tasks in particular by developing and implementing a plan of assistance in individual case of domestic violence; monitoring the situation of families where violence occurs and families threatened by violence; documenting the actions taken against families where violence occurs and the effects of such actions. The tasks of the working group focus on the individual case and helping a particular family [16].

The tasks of the interdisciplinary team, in addition to the implementation of strategies and policies relating to domestic violence and the integration of specialists, include in the field of preventing this violence, it also concerns assistance to specific families. Crisis intervention centers offer comprehensive support to victims of domestic violence, offering all types and forms of assistance. The purpose of crisis intervention is to help the victim regain his or her ability to deal with emerging difficulties on his or her own. Victims of violence are treated individually, they can count on security, psychological support, legal, social and medical assistance, assistance in mobilizing natural resources to cope with difficult situations, assistance in the event of violence. In constructing an individual safety plan and becoming self-sufficient [30].

One of the elements of comprehensive actions aimed at changing attitudes and behavior of persons using violence in the family is corrective-educational influence, conducted in the form of psychological, educational and socialization programs. The

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aim of the programs is to correct undesirable and harmful behaviors and the attitude of the perpetrators of violence, thereby reducing the risk of further violence and increasing the ability to self-control violent behavior and to live constructively in the family. The education of perpetrators is based, among other things, on various concepts of explaining the causes of violence. It should also confront all beliefs and attitudes by which perpetrators justify violence. Implementation of programs of corrective and educational effects on persons using violence in the family should be conducted taking into account different groups of perpetrators of violence, separated according to the way in which they are qualified to participate in the program. Reducing domestic violence and assisting victims is an overarching objective that should combine the activities of institutions and services. An example of combining the competences of the above mentioned institutions in Poland is the “Blue Card” procedure, defined as a model of interventional and auxiliary proceedings indicated by the Act on Counteracting Domestic violence and the Regulation of the Council of Ministers of 13 September 2011, amended in 2010. It is provided by different services when there is a suspicion that a family may have a problem with domestic violence. In such cases, these services are required, as a direct result of the Act, to initiate the “Blue Card” procedure. The initiation of a procedure has no legal consequences. This is because it is not a criminal proceeding, nor is it tantamount to an accusation. Its main objective is to identify violence and improve the support offered by the various services in the local community, but also to create the conditions for a systemic interdisciplinary model of working with the family.

The effectiveness of the procedures and assistance offered shall be based on cooperation between the representatives of the services for the benefit of the affected persons and violence in the family. It is being treated as a signal, a kind of incentive for the representatives of the auxiliary services to check the alarming situation and implement the “Blue Card”, if necessary [31].

Conclusion

In conclusion, it can be concluded that, despite the existence of a number of institutions to prevent and neutralize violence, the problem is still present. It is also impossible to prevent the phenomenon completely; it can only be reduced in size and provide more assistance to victims. The state policy should influence through social opinions and sensitize society to the phenomenon of harming people. All violence should be controlled by the state, which is committed to protecting its inhabitants and ensuring the safe existence of the individual. It should be remembered that proper cooperation between services and institutions carrying out common tasks is also important, because only the right approach by those working in this area can help victims of violence and give them a sense of security.

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