



POLAND: SHADOW REPORT

on aspects of the implementation of the Council of Europe Convention on preventing and combating violence against women and domestic violence

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INTRODUCTION

Amnesty International is submitting this 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).

Poland signed the Istanbul Convention on 18 December 2012 and ratified it on 1 August 2015. The monitoring visit is currently scheduled for the autumn of 2020. This shadow report outlines Amnesty International's concerns regarding state compliance with the Istanbul Convention, focussing specifically on the definitions of violence and rape in Polish law and the failure to protect victims, including through the lack of restraining orders issued to perpetrators of domestic violence. Further, Amnesty International remains concerned at past threats to withdraw from the Istanbul Convention.

1. ECONOMIC VIOLENCE OMITTED FROM THE DEFINITION OF DOMESTIC VIOLENCE

The Istanbul Convention defines domestic violence as "all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim" (Article 3b). Amnesty International is concerned that Polish law currently does not contain the crime of economic violence. This omission places the state in breach of its obligations under the Istanbul Convention, including under Article 5(2), which requires the state to take the necessary legislative or other measures to ensure that victims of violence are able to access justice and protection. The current situation enables perpetrators to enjoy impunity for the crime of economic violence.

ECONOMIC VIOLENCE IN POLISH LAW

Polish law defines domestic violence as including physical, psychological and sexual violence but differs from the definition of violence set out in the Istanbul Convention in that it omits the crime of economic violence. The Law on Preventing Domestic Violence sets out the definition of domestic violence.^[1] Under this law, domestic violence is understood as a single or repetitive intentional act or omission that violates the rights or personal rights of family members and, in particular, exposes them to threats to life, health, dignity, personal integrity or freedoms, including sexual freedom; harms physical or mental health; or causes suffering or moral harm to those affected (Article 2). This definition, therefore, includes physical, psychological and sexual violence but differs from the definition of violence set out in the Istanbul Convention in that it does not include the crime of economic violence.

To some degree, certain issues relating to economic violence (or more specifically to its prevention) are covered by the Polish Family and Guardianship Code.^[2] However, the objective of this law is to establish that the standard of living of both spouses should be on the same level, even if only one of

them is gainfully employed outside the home. It sets out the maintenance obligations for members of the family and the principle that spouses are equally entitled to manage common goods. The Code does not use or define the term economic violence or regulate related issues in a comprehensive manner.

Further, Polish criminal law does not provide a definition of either domestic violence or of economic violence. Various offences set out in the Criminal Code cover different aspects of domestic violence: physical or psychological abuse (Article 207), causing bodily injury (Articles 156, 157), punishable threats (Article 190), rape (Article 197), persistent harassment (Article 190a), failure to pay maintenance (Article 209) and forcing another person to behave in a specific manner (Article 191).

Article 207 of the Criminal Code is the key provision in terms of domestic violence. It states that anyone found guilty of physically or psychologically abusing a member of their family or a close relative or partner, any other permanently or temporarily dependent person, a person with physical or mental disabilities or a minor can be punished by a minimum of three months and a maximum of five years in jail. However, Article 207 makes no mention of economic abuse and, as experts have pointed out, this has resulted in impunity in some cases as certain acts of violence were not considered crimes.^[3] In some, but not all, cases, behaviours which constitute economic violence may be classified as psychological violence, however this depends entirely on the inclination of the judge, since it is not in the law.^[4] The definition of violence in Polish law must be brought into line with the Istanbul Convention. In order to do so, economic violence needs to be included in the relevant provisions of Polish law and subsequently recognized by the systems and state officials established and mandated to prevent, eradicate and punish domestic violence.

THE LACK OF A SPECIFIC CRIME OF ECONOMIC VIOLENCE IS A LONGSTANDING CONCERN IN POLAND

Economic violence is a consequence of a gender-based division of roles that is deeply entrenched in society. Research indicates that men in Poland receive higher pay than women and that women often end up performing unpaid work, for instance domestic work and caring responsibilities towards children and older family members.^[5] Systemic gender discrimination is one of the reasons why women are often economically dependent on men, which in turn puts them in vulnerable positions with respect to various forms of violence.

It is worth noting that civil society organizations in Poland providing services and support to survivors of domestic violence and violence against women have consistently highlighted the need to introduce the concept of economic violence into the Polish legal system. This specific gap in the Polish definition of violence was also noted during the process of signing and ratifying the Istanbul Convention and the issue formed part of the campaign in support of the law on ratification.^[6]

In 2015, the Institute of Public Affairs, an independent think tank, carried out research on economic violence and published a report, in cooperation with many experts in the field of violence prevention. This was the first comprehensive study concentrating solely on economic violence and aimed to formulate recommendations on the changes needed in law and the system of violence prevention. At the end of the project, roundtable discussions were organized, involving participants from the public sector, the criminal justice system, non-governmental organizations (NGOs) and others active in the field of preventing violence against women. The discussions resulted in several recommendations, including to reform the law to include a definition of domestic violence and violence against women, which incorporates economic violence.^[7]

The need to carry out a comprehensive analysis of how the Polish legal system deals with domestic violence and potential solutions to combat this form of violence formed an important part of the

National Action Plan on Equal Treatment 2013-2016. The report on the National Action Plan for 2013-16 referred to economic violence on several occasions. Further, the report on the implementation of the Plan concluded that the need to take measures to combat economic violence appeared well founded.^[8] Despite the inclusion of the problem of a lack of a crime of economic violence in the National Action Plan on Equal Treatment 2013-2016 and its implementation report, the issue of economic violence was not included in the subsequent – and current - National Programme for Preventing Domestic Violence 2014-2020.^[9]

2. THE DEFINITION OF RAPE IS NOT COMPLIANT WITH THE ISTANBUL CONVENTION

The Istanbul Convention requires states to take the necessary legislative measures to ensure that all non-consensual acts of sexual violence, including rape, are criminalized. Specifically, states must criminalize the following intentional acts: “engaging in non-consensual vaginal, anal or oral penetration of a sexual nature of the body of another person with any bodily part or object; engaging in other non-consensual acts of a sexual nature with a person; causing another person to engage in non-consensual acts of a sexual nature with a third person.” (Article 36 1a-c). The Convention provides that consent must be given voluntarily as the result of the “person’s free will, assessed in the context of the surrounding circumstances.” (Article 36 b)

SEXUAL VIOLENCE IN POLISH LAW

Articles 197, 198, 199 and 200 of the Polish Criminal Code deal with crimes of sexual violence.^[10] Article 197 criminalizes rape. Article 198 penalizes taking advantage of a person’s vulnerability or mental disability or disorder to subject them to sexual intercourse or to make them submit to another sexual act or perform such an act. Article 199 provides criminal sanctions for such sexual violence in the context of abuse in a relationship of dependence or taking advantage of a crisis situation. Article 200 deals with sexual violence against minors. These provisions apply to all persons, including intimate partners and spouses.

Under Polish law, rape means to subject another person to sexual intercourse, to submit to another sexual act or to perform such act, using force, illegal threat or deceit. The aggravated forms of this crime, which carry more severe penalties, are set out in paragraphs 3 and 4 of Article 197.

Criminal Code

Article 197

§ 1. Anyone who, by force, illegal threat or deceit, subjects another person to sexual intercourse is liable to imprisonment for between 2 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 6 months and 8 years.

§ 3. If the offender commits rape: 1) with another person; 2) on a minor under the age of 15; 3) on a descendent, ascendant, adopter, adoptee, brother or sister, he or she is liable to imprisonment for at least 3 years.

§ 4. If the offender commits the rape as specified in §§ 1-3 with particular cruelty, he or she is liable to imprisonment for at least 5 years.

As established, for instance, in the jurisprudence of the European Court of Human Rights, there should be no assumption in law or in practice that a victim gives her consent because she has not physically resisted unwanted sexual conduct, regardless of whether or not the perpetrator threatened to use or used physical violence.^[11] However, some legal scholars and practitioners in

Poland believe that for the crime of rape to be committed, the victim must actively and continuously resist or demonstrate their lack of consent by means of loud protests, requests or screaming.^[12] In the opinion of other commentators, resistance must be, in their view be manifestly “real”.^[13] A 2013 Supreme Court judgment is revealing; the Court relied on an interpretation of the wording of the law to determine that violence is an act of brutality in which one person uses force to impose their will on another person or to force them to do something. If a person uses violence, it means they intend to overcome the other person’s resistance. One consequence of the wording of Article 197 is that the focus is on how the victim resisted and how the perpetrator overcame that resistance. This means that prosecutors and at a later stage judges, concentrate on establishing whether the alleged perpetrator used force, illegal threat or deceit in order to overcome the victim’s resistance. This situation leads the authorities to focus not on the survivor’s absence of consent, but rather on the level of opposition or resistance, how that was communicated, and for how long.^[14]

Academic sources and Polish jurisprudence suggest that a victim’s resistance is necessary for the crime of rape to be committed. However, one of the resolutions of the Supreme Court provides, among other things, that resistance is not a necessary feature of rape, especially when the survivor had no opportunity to resist because of entrapment by the rapist or because their resistance could provoke more aggression and lead to worse consequences.^[15]

In summary, under Polish law, intercourse which takes place without the victim’s consent but also without the use of threat, deceit or violence is not considered rape. Hence, the scope of the criminalization of rape in the Polish Criminal Code is both different and narrower than in the Istanbul Convention. Furthermore, in practice, the application of the relevant provisions narrows this even further when the criminal justice system considers that if a survivor failed to resist physically, it is not rape. This situation places Poland in breach of its obligations under the Istanbul Convention, and violates the rights of victims of rape.

3. LACK OF RESTRAINING ORDERS TO PROTECT VICTIMS FROM VIOLENCE LEAVES THEM AT RISK

Article 53 of the Istanbul Convention requires that restraining orders are available for immediate protection irrespective of, or in addition to, legal proceedings. Amnesty International is concerned that despite recent welcome reforms to the laws on protection available to victims of domestic violence, there are residual gaps in the Polish legal framework regarding protection measures, which mean it falls short of its obligations under Article 53. This situation leaves victims at risk of violence and further harassment, particularly when they are in locations outside of their home.^[16]

In 2016, in a response to the Commissioner for Human Rights, the Minister of Labour and Social Policy indicated that existing provisions related to restraining orders were not adequate and that the Ministry was considering introducing new provisions to the Law on Preventing Domestic Violence which would “guarantee the legal capacity and autonomy of the family and deal more effectively with perpetrators of domestic violence”.^[17]

In 2019, the Ministry of Justice started the legislative process and a bill was approved by Parliament and signed by the President in May 2020.^[18] This law reforms various pieces of legislation, including the Civil Procedure Code, to better enable the removal of perpetrators of domestic violence from the home.^[19] However, the new reform does not provide for restraining orders to be made available for immediate protection on a temporary basis by the police, in accordance with the requirements under Article 53 of the Istanbul Convention. In particular, there is still little option for rapid protection measures to be sought or issued without it being connected to legal proceedings.

It is worth noting that the full implications of the new law could not be assessed at the time of writing because of the unusually long period of time, six months, between its promulgation and entry into force.

4. RESIDUAL CONCERN AT PAST THREATS TO WITHDRAW FROM THE ISTANBUL CONVENTION

In December 2016, senior Polish government officials publicly threatened to withdraw from the Istanbul Convention.^[20] In its response to a request for clarification sent by Poland's Commissioner for Human Rights, the Ministry of Justice stated on 13 February 2017 that all work towards withdrawing from the Istanbul Convention had been suspended.^[21] The Government Plenipotentiary for Civil Society and Equal Treatment also declared: "Work on the withdrawal from the Convention is not pending. The Minister of Justice has initiated them; however, the government has not engaged with his initiative further. The case is over. Stop, full stop. The government does not want to withdraw from the Convention. It seems it is rather the opposition wanting to withdraw from the Convention."^[22]

Withdrawing from the Istanbul Convention would constitute a retrogressive measure, which is a violation of international human rights law. Amnesty International is calling on the Polish government to respect, protect, fulfil and promote women's rights, abide by its obligations under international human rights law and abstain from any future efforts to withdraw from the Istanbul Convention.

RECOMMENDATIONS

TO PARLIAMENT:

1. Amend Article 207 of the Criminal Code to extend the material scope of the crime of physical or psychological abuse so that it includes sexual and economic violence, bringing it into line with the Istanbul Convention;
2. Amend the Law on Preventing Domestic Violence to include economic violence;
3. Amend the definition of rape in the Criminal Code so that it is based on the absence of consent as opposed to use of force or threat, bringing it into line with the Istanbul Convention and other international human rights treaties to which Poland is party;
4. Reform the relevant laws to bring them in line with Article 53 of the Convention and ensure victims have effective and immediate access to protection measures irrespective of legal proceedings.

TO THE MINISTER OF JUSTICE:

5. Propose legislation to amend Article 207 of the Criminal Code to extend the material scope of the crime of physical or psychological abuse so it includes the sexual and economic violence, bringing it into line with the Istanbul Convention;
6. Propose legislation to amend the legal definition of rape so that it is based on the absence of consent as opposed to use of force or threat, bringing it into line with international human rights standards, such as the Istanbul Convention;
7. Ensure capacity building for legal professionals so that they fully comprehend and implement the law and any reforms passed.

TO THE MINISTER OF FAMILY, LABOUR AND SOCIAL AFFAIRS:

8. Strengthen capacity building for public officials and awareness-raising measures to ensure that the need to prioritize the safety of survivors of domestic violence is understood and adhered to;
9. Properly fund rape crisis centres, domestic violence shelters and civil society organizations providing support services.

- [¹] Law on Preventing Domestic Violence (Journal of Laws 2005, no. 180 item 1493), <http://isap.sejm.gov.pl/DetailsServlet?id=WDU20051801493>.
- [²] Family and Guardianship Code (Journal of Laws 1964, no. 9 item 59), <http://isap.sejm.gov.pl/DetailsServlet?id=WDU19640090059>.
- [³] Economic violence requires definition, Lex, 15 April 2015, <http://www.lex.pl/czytaj/-/artykul/przemoc-ekonomiczna-wymaga-zdefiniowania> and Grzegorz Wrona, *Conflict versus violence. Application of Article 207 of Polish Criminal Code in prevention of domestic violence*, PhD thesis. University of Warsaw, Faculty of Law and Administration, Warsaw 2017, p 9.
- [⁴] Grzegorz Wrona, *Conflict versus violence. Application of Article 207 of Polish Criminal Code in prevention of domestic violence*, PhD thesis. University of Warsaw, Faculty of Law and Administration, Warsaw 2017, p 214.
- [⁵] Agata Chełstowska, Małgorzata Druciarek, Aleksandra Niżynska, *Economic violence in the relationships. Institute of Public Affairs*, 2015, <http://www.isp.org.pl/publikacje,25,857.html>, p 11.
- [⁶] Government Draft Law on the ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence adopted on 11 May 2011 in Istanbul, <http://www.sejm.gov.pl/sejm7.nsf/druk.xsp?nr=2515>.
- [⁷] Agata Chełstowska, Małgorzata Druciarek, Aleksandra Niżynska, *Economic violence in the relationships. Institute of Public Affairs*, 2015, <http://www.isp.org.pl/publikacje,25,857.html>.
- [⁸] Report on the Implementation of the National Action Plan for Equal Treatment for 2016, <https://isp.policja.pl/isp/aktualnosci/7359,Raport-pelnomocnika-rzadu-ds-rownego-traktowania.html>, pp 70 - 73.
- [⁹] Resolution of the Council of Ministers no. 76 of 29 April 2014 on establishment of the National Programme for Preventing Domestic Violence 2014-2020, https://ms.gov.pl/Data/Files/public/ppwr/krajowy_program/krajowy-program-przeciwdzialania-przemocy-w-rodzinie-na-lata-2014-2020.pdf
- [¹⁰] Law of 6 June 1997 - Criminal Code (Journal of Laws, 1997 no. 88 item 553), Amnesty International's translations.
- [¹¹] *M.C. v. Bulgaria* (2003), European Court of Human Rights (ECHR) 651.
- [¹²] Andrzej Marek, *Criminal Law*, C.H. Beck Publishing, 2011.
- [¹³] Andrzej Marek, *Criminal Law*, C.H. Beck Publishing, 2011.
- [¹⁴] Judgment of the Supreme Court of 18 February 2014 (case no. II KK 19/14), <http://www.sn.pl/sites/orzecznictwo/Orzeczenia3/II%20KK%2019-14.pdf>
- [¹⁵] Resolution of the Supreme Court of 21 March 2007, case no. I KZP 39/06.
- [¹⁶] Amnesty International, *Polska wolna od przemocy wobec kobiet. Wybrane problemy dotyczące wdrożenia konwencji o zapobieganiu i zwalczaniu przemocy wobec kobiet i przemocy domowej*, February 2018, www.amnesty.org.pl/wp-content/uploads/2018/02/Polska-wolna-od-przemocy-wobec-kobiet_analiza_Amnesty-International-2.pdf
- [¹⁷] Information on the activities of the Commissioner for Human Rights in the field of equal treatment in 2016, <https://www.rpo.gov.pl/sites/default/files/Informacja%202016%20RT%20DRUK.pdf> and Letter of the Commissioner for Human Rights to the Minister of Labour and Social Policy, https://www.rpo.gov.pl/sites/default/files/Do_MRPiPS_ws_izolacji_sprawcy_od_ofiary_przemocy.pdf.
- [¹⁸] Law amending the Civil Procedure Code and some other laws (Journal of Laws 2020, item 956) [http://orka.sejm.gov.pl/opinie9.nsf/nazwa/279_u/\\$file/279_u.pdf](http://orka.sejm.gov.pl/opinie9.nsf/nazwa/279_u/$file/279_u.pdf).
- [¹⁹] Law on tenants' rights, council housing resources and amendments to Civil Procedure Code (Journal of Laws 2001 No. 71, item 733) <http://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20010710733/U/D20010733Lj.pdf>.
- [²⁰] Amnesty International, 'Poland threatens to withdraw from the Convention on preventing and combating violence against women', 9 December 2016, www.amnesty.org/download/Documents/EUR3753092016ENGLISH.pdf.
- [²¹] Commissioner for Human Rights public statement, 10 January 2017, www.rpo.gov.pl/pl/content/informacja-pe%C5%82nomocnika-rz%C4%85du-do-spraw-spo%C5%82ecze%C5%84stwa-obywatelskiego-i-r%C3%B3wnego-traktowania-o-rz%C4%85dowym and the Ministry of Justice's response, 13 February 2017, www.rpo.gov.pl/sites/default/files/Odpowied%C5%BA%20Ministerswa%20Sprawiedliwo%C5%9Bci%20w%20sprawie%20Konwencji%20Stambulskiej.pdf.
- [²²] *Dziennik.pl*, 'The Plenipotentiary for Equal Treatment replies to female MPs of Civic Platform' (the opposition party) <http://wiadomosci.dziennik.pl/polityka/artykuly/541125,lipinski-rzad-nie-chce-wypowiedziec-konwencji-antyprzemocowej-sprawa-zakonczona.html> and statements made during to Poland's Parliament's on 26 January 2017: http://www.sejm.gov.pl/sejm8.nsf/wypowiedz.xsp?posiedzenie=34&dzien=4&wyp=23&symbol=PYT_WYP

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