

I. The Committee asked the Government to provide updated statistics on the number of cases in which restraining orders were issued against perpetrators of domestic violence and the outcomes and length of criminal prosecutions of domestic violence cases. In addition, HRC requested updated statistics on the capacity of the existing support centers for victims of domestic violence.¹

Since January 2012 there is a special fund which finances free legal, psychological and material aid to crime victims (Assistance Fund for Assistance to Victims and Postpenitentiary Assistance). These services were provided by non-governmental organizations thanks to grants offered by Ministry of Justice. As indicated in the Report,² „specialized assistance centers for victims of domestic violence, apart from providing the most fundamental needs (shelter, clothes and food) provide immediate psychological support and assure access to medical aid, social and legal counseling, host support groups or therapy groups for victims of domestic violence or personal therapy”. However since January 2016 NGOs providing specialized services to women were excluded from the possibility of applying for these funds, on the ground that they "restrict the scope of their services, by helping women only". This practice runs contrary to Art. 22 of the Istanbul Convention, as well as to the provisions of the Directive 2012/29/EU.³

One of the most pressing problems relating to domestic violence is a need to guarantee the separation of the victim (and her children or other dependant members of family) from the perpetrator. Many women stay with their abusive partners or husbands simply because they have nowhere else to go, and because they are afraid to report the violence to the police, knowing that they will have to live with the perpetrator throughout the entirety of the lengthy proceedings, which would expose them to further abuses and the risk of revenge. Art. 23 of the Istanbul Convention requires state parties to take not only legislative, but also other types of measures to provide shelters for domestic violence victims. Such shelters should be easily accessible and sufficiently numerous to ensure safe accommodation and provide support for all the victims of domestic violence. It is even harder to find a place accepting both women and their minor children, which is why many women compromise their safety and decide to stay

¹ List of issues prior to submission of the seventh periodic report of Poland, CCPR/C/POL/QPR/7, par. 9.

² Seventh periodic report - Poland, CCPR/C/POL/7.

³ See: Preamble, p. 18, Art. 9 par. 13.

at home for the sake of their children. Even if children are not directly subjected to violence, women are often afraid to move out and to leave them with the perpetrator - both fearing for their safety and being afraid that this will be seen as child abandonment. This in turn can put the mother in a bad light and thus result in restrictions or deprivation of parental rights in the future. In Poland there are only 35 shelters for victims of domestic violence.⁴ Most of them do not provide a service exclusively to women and therefore, there may be concerns about the extent to which they focus on the safety of the victim (Art. 18 of Istanbul Convention). Lack of specialized shelters is a serious problem - women who left their homes because of violence are often sent to institutions for homeless. These shelters cannot be considered as a solution adapted to the special needs of women suffering from domestic violence.⁵ Many municipal shelters used for accommodating victims of domestic violence in Warsaw are simply unfit for this purpose - the duration of the stay is too short, their locations are too remote, and there is a lack of access to medical assistance adapted to the need of victims of domestic violence.⁶ The situation in other cities is similar, if not worse. This is yet another reason why women often decide to return home and continue to live with a perpetrator.

Since 2010 there is possibility of a speedy civil trial against the perpetrator, in which a court can order him to leave the dwelling unit shared with the victim.⁷ This solution is available regardless of the right of the ownership of the dwelling or other property rights that the perpetrator may have. According to the statute, the court is obliged to hold a hearing within a period of one month, but in practice it rarely is the case. As recently reported by Polish Ombudsman, most of these proceedings last longer, in extreme cases even as long as nine months.⁸ This situation does not seem to comply with Art. 52 of the Istanbul Convention, which establishes the obligation to provide competent authorities with the power to order, in a situation of immediate danger, a perpetrator of domestic violence to vacate the residence of the victim or person at risk

⁴ Seventh periodic report - Poland, CCPR/C/POL/7, par. 57, WAVE Report 2015, p. 28.

⁵ WAVE Step up! Campaign Blue Print, Vienna, January 2016, p. 6.

⁶ See: Report by Nils Muižnieks Commissioner for Human Rights of the Council of Europe following his visit to Poland from 9 To 12 February 2016, CommDH (2016) 23, par. 157.

⁷ Domestic violence prevention act from 29 of July 2005 (Dz.U. 2005 No 180 Item 1493 as amended).

⁸ See: Inquiry by Polish Ombudsman, published on 14 of July 2016, available on: <https://www.rpo.gov.pl/pl/content/ilu-sprawc%C3%B3w-przemocy-domowej-zosta%C5%82o-zmuszonych-do-wyprowadzenia-si%C4%99-z-domu-jak-szybko-s%C4%85dy-o-tym> (in Polish only).

and to prohibit the perpetrator from entering the residence of or contacting the victim or person at risk.

As indicated by the Government „in 2014 public prosecutors made 2,633 decisions to use a preventive measure in the form of police custody in conjunction with a restraining order (1,593 in 2013). Polish authorities have no information on the duration of proceedings in domestic violence cases.”⁹ These preventive measures can be applied by a prosecutor (on his/her own motion or on the motion of the police) or by a court in the course of criminal proceedings against perpetrator.¹⁰ But even on those occasions when the prosecutor decides to apply such orders, the whole procedure usually lasts too long, and therefore can prove ineffective as a means of providing direct protection for the victims. It seems questionable whether the restraining and protection orders under Polish law meet every single criterion set forth by Art. 53 of the Istanbul Convention, such as those of availability and rapidity.

One of the solutions to improve the means of separation of victims from perpetrators and to guarantee a better protection of victims' rights is the possibility of granting additional powers in this regard to police officers. The police should be given the possibility to issue restraining orders when there is an immediate threat for the victim. Police officers should be trained in order to conduct proper risk analysis. This would probably require some kind of reform of the "Blue Card" procedure, which was introduced in 2011. The procedure is implemented through the specially established local interdisciplinary teams and its main purpose is to prevent the escalation of domestic violence, and to implement individual assistance plans. Interdisciplinary teams consist of police officers, social workers, healthcare staff, teachers, local committees for solving alcohol-related problems and representatives of NGOs. The whole procedure is independent from and complementary to any court proceedings (criminal, family, civil). Risk analysis should be seen as an important component of the Blue Card procedure, which could allow for the application of effective prevention mechanisms. Police officers and other members of interdisciplinary teams involved in the Blue Card procedure often know the situation of the families involved in it. Therefore they are in the position to predict threats and decide about the application of different legal measures designed to protect victims. It goes without saying that the police play an essential role in domestic

⁹ Seventh periodic report - Poland, CCPR/C/POL/7, par. 60.

¹⁰ The law on criminal procedure from 6 of June 1997 (Dz. U. 1997 No. 89, Item 555), Art. 275, 275a.

violence prevention. Due to the fact that police officers can respond quickly to domestic violence, they should be endowed with the fastest and most efficient measures to separate perpetrators from the victims of domestic violence. This solution seems to go in line with the recommendation by the Human Rights Committee to provide victims with access to effective remedies and means of protection, including restraining orders, with immediate effect.¹¹ At present, a police officer is entitled to apply preventive detention in cases where a perpetrator of domestic violence poses a direct threat to life or health.¹² The detainee must be released within 48 hours unless a motion for a temporary arrest is filed to the court.¹³ In 2010 the amendment of the domestic violence prevention act made significant changes in the arrest policy.¹⁴ New provisions expanded police officers' powers, introducing the institution of mandatory arrest, until then unknown in the Polish criminal procedure. The so called „arrest process” is an independent means of coercion, used when there is a reasonable assumption that the suspected person has committed an offence, and there is a threat that such a person may go into hiding or destroy the evidence of his offence or if his identity could not be established.¹⁵ Due to the need to ensure the safety of domestic violence victims who live together with an abusive member of the family new grounds for making an arrest were also introduced to the law on criminal procedure in 2010. Under the first instance, in the case of domestic violence, the decision to make an arrest is within police discretion. The grounds of arrest are more or less the same as in the standard police arrest procedure mentioned above but an offence must be committed to the detriment of a person living together with the offender,¹⁶ and at the same there exists a risk of reoffending, which is especially the case when the suspected person threatens to commit another offense. In cases where the offence was committed with the use of a firearm, knife or other dangerous item an arrest becomes obligatory. The idea of mandatory arrest was to strengthen the police response to domestic violence and lower the rate of repeated domestic violence offences.

¹¹ Concluding observations on the seventh periodic report of Poland CCPR/C/POL/CO/7, par. 20(a).

¹² The law on Police from 6 of April 1990 (Dz.U. 1990 No. 30 Item 179), Art. 15a.

¹³ The law on criminal procedure from 6 of June 1997 (Dz. U. 1997 No. 89, Item 555), Art. 248.

¹⁴ Domestic violence prevention act from 29 of July 2005 (Dz.U. 2005 No. 180 Item 1493 as amended).

¹⁵ The law on criminal procedure from 6 of June 1997 (Dz. U. 1997 No. 89, Item 555), Art. 244 § 1

¹⁶ The protection covers not only close family, but also every person living together with the perpetrator. On the other hand, however, the personal scope is limited only to a narrowly defined group of suspects.

Although the Polish legal system has undergone some changes as a result of Poland's adoption of the Istanbul Convention¹⁷, there still are a number of substantive and procedural shortcomings that women suffering from domestic violence have to face when accessing justice, such as lack of mechanisms providing immediate protection and the insufficient number of emergency shelters and specialized assistance centres. These flaws can result in breach of Arts. 2, 3, 6, 7 and 26 of the ICCPR. On top of that, the situation is uncertain, as many politicians and representatives of the government have made public declarations about the willingness to withdraw from the Convention and the President himself has advised not to apply it.

¹⁷ Council of Europe Convention on preventing and combating violence against women and domestic violence, Istanbul 12 April 2011 (CETS No.210).