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## **Selected Measures of Protecting Female Victims of Intimate Partner Violence - Legal Aspects and Opinions of Practitioners**

**Abstract:** Intimate partner violence is a difficult experience for ever, or at least for a very long time, disturbing family life, robbing the victim of a sense of safety, which is one of the most important human needs. This problem cannot be ignored. Therefore, the legal system provides certain mechanisms designed to protect victims of violence. Are these measures effective? The article discusses this problem, providing answers to this question, based on the results of research conducted as part of the international project SNaP „Special Needs and Protection Orders”, which is part of the Daphne III programme. Qualitative research (multiple casestudies) were conducted among practitioners, whose work is concerned with domestic violence were supplemented with an analysis of case files from the District Court in Białystok. Practitioners evaluate selected measures of protecting female victims of intimate partner violence more or less positively, depending on the represented area of support. Polarisation of opinion is natural. However, there is no doubt that the effectiveness of protecting victims of aggression in the household increases, but the still existing problems of the system have to be addressed so that they can be improved in the future.

**Keywords:** Intimate partner violence, safety, protection

## **Introduction**

Domestic violence is an universal phenomenon - it occurs regardless of time and place. It is experienced by both young women with active professional life, as well as those with congenital or acquired disabilities, or older women, often burdened with chronic somatic diseases, which make it impossible for them to perform everyday activities on their own. Each of them is characterized by specific, secondary needs, such as acceptance, self-esteem or independence. It seems, however, that a key need, regardless of who the person experiencing violence is, is the need for a sense of security. Generally speaking, security is "an existential need, resulting from the objective living conditions of people and different social groups and their mutual relations, requiring concern for its satisfaction" (Kukułka 1982, p. 32). Depending on the perspective we take, different aspects of security will be emphasized. It will look differently in relation to a child, an adult or an elderly person, and differently if we consider a person experiencing domestic violence and a person who is free from such experiences. This paper will outline selected legal measures applied in situations of domestic violence, aimed at 'calling the perpetrator to order' while ensuring the protection and safety of the victim. Not only will the legal conditions for the application of the said measures be discussed, but also the scale of their implementation and the opinions of practitioners on them will be presented.

This publication is one of the aspects of research carried out in 2014-2016 under the international project *SNaP - Specific Needs and Protection Orders*<sup>1</sup>. It should be noted that women can take on not only the role of victims, but also a perpetrator. However, as the project addressed the issue of women experiencing violence used by husband/partner and the issue of women using violence against their husband/partners was not the subject of research, therefore it will not be discussed in this article.

The purpose of the article is to answer the question: how are the selected measures for the protection of women experiencing domestic violence assessed? The attempt to answer this question will be based on information obtained through qualitative research carried out with practitioners with many years of experience in working with women victims of domestic

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<sup>1</sup>*SNaP – Specific Needs and Protection Orders* (JUST/2013/DAP/AG/5713). The research team consisted of members of the following institutions: Institut für Konfliktforschung (Austria), CESIS -Centre for Studies for Social Intervention (Portugal), Deutsche Hochschule der Polizei – DHPol (Germany), Zoom – Gesellschaft für prospektive Entwicklungene.V. (Germany), SAFE Ireland (Ireland) and employees of the Department of Educational Sociology and Social Gerontology and the Department of Andragogy and Educational Gerontology of the Faculty of Pedagogy and Psychology at the University of Białystok.

violence. The presented content will also be illustrated by the results of the analysis of documents of the District Court in Białystok, concerning the crime under Article 207 of the Penal Code, which concerns domestic violence<sup>2</sup>.

## **Methodology**

The starting point of the SNaP project being carried out was the hypothesis that measures protecting women experiencing domestic violence are less frequently used by the police and courts, or do not provide sufficient and effective protection against further violence if they affect women with special needs, i.e. those requiring assistance in everyday life, women with physical or mental disabilities, as well as elderly women. In order to verify such a hypothesis, a multiple case study method and an interview technique were used, while the tool was an interview scenario. In total, 30 interviews<sup>3</sup> with practitioners with professional experience in working with victims of domestic violence were conducted in the period from May 2015 to May 2016 (Table 1).

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<sup>2</sup> § 1. Whoever abuses, physically or mentally, a closest person or another person remaining in a permanent or transient relationship of dependence on the perpetrator or a minor or a physically or mentally challenged person, shall be subject to the penalty of deprivation of liberty for a period between 3 months and 5 years. § 2. If the act specified in § 1 is connected with special cruelty, the perpetrator shall be subject to the penalty of deprivation of liberty for a term of between 1 and 10 years. § 3. If the act specified in § 1 or 2 results in the victim taking his or her own life, the perpetrator shall be subject to the penalty of deprivation of liberty for a period from 2 and 12 years.

<sup>3</sup>The cited interviews will be signed in the following manner: profession, gender, work experience, e.g. lawyer, K (women), 19; other abbreviations used: CPK - Centrum Praw Kobiet [*Women's Rights Centre*], NL - National Emergency Line for Victims of Domestic Violence "Niebieska Linia", OIK - Ośrodek Interwencji Kryzysowej [*Crisis Intervention Centre*], MOPR - Miejski Ośrodek Pomocy Rodzinie [*Municipal Family Support Centre*], GOPS - Gminny Ośrodek Pomocy Społecznej [*Municipal Social Welfare Centre*], NK - "Niebieskie Karty" Procedure

**Table 1. Interviews conducted by representatives of the institutions**

Organization	Details		Total
Social aid	MOPR, GOPS (social workers)	7	11
	OIK - Crisis Intervention Centre (crisis interventionists, social workers)	4	
Non-governmental organizations	CPK - Women's Rights Centre	2	6
	NL - National Emergency Line for Victims of Domestic Violence "Niebieska Linia"	2	
	Other organization (psychologists)	2	
Justice system	Lawyer	2	6
	Probation officer	1	
	Judge	2	
	Prosecutor	1	
Police	District constable	3	5
	Prevention	1	
	Other position	1	
Health service	Psychiatrist	1	1
Science	Specialist in criminal law	1	1
Total		30	30

Source: own research

The interviewees were selected in such a way that it was possible to obtain broad knowledge about the functioning of methods of women's protection. Therefore, the interviews were conducted with 11 representatives of social assistance, 6 employees of non-governmental organizations, 6 representatives of the justice system, 5 policemen, psychiatrist and a specialist in criminal law. During the interview, each of the interviewees, based on their professional experience, expressed their own observations on the subject under analysis, including an opinion on how to protect women experiencing domestic violence.

The task implemented in parallel (May 2015 - May 2016) was to analyze court documents from the period 2008-2015, qualified as domestic violence (Article 207 of the Penal Code). After obtaining the consent of the president of the court to conduct the examination, the court employees provided the members of the research team with a file of cases under Article 207 of the Penal Code, who, after verification in terms of assumed criteria of victims of violence, selected cases concerning women with special needs, i.e. women with disabilities, elderly women or mothers with children. For the needs of the project, 50 cases were analyzed. The documents were read in court and notes were drawn up on the basis of the content of the documents, based on the research tool developed within the project. The quality of the analyzed cases was at a similar level - each file contained testimonies of a victim, witnesses, documents confirming the truthfulness of testimony - e.g. Niebieska Karta forms, testimonies of the perpetrator and minutes of court hearings, including the court's decision.

Most of the analyzed cases concerned middle-aged people, and the age difference between the victim and the perpetrator was usually small - most often they were of equal age. Cases of very old women are definitely the least frequently referred to court - among the analyzed cases there was only one concerning a victim aged 84 years (Table 2).

**Table 2. Age of victims and perpetrators of violence**

No.	Age of victims of violence	Number of victims	Age of perpetrator of violence	Number of perpetrators
1	20-29	5	20-29	4
2	30-39	20	30-39	17
3	40-49	12	40-49	16
4	50-59	2	50-59	3
5	60-69	7	60-69	3
6	70-79	3	70-79	7
7	80 y.o. and older	1	80 y.o. and older	0
Total		50	Total	50

Source: own research

Reading court documents also allows to draw conclusions concerning the use of methods of protection of the victim(s) by law enforcement authorities and the justice system. The following tools for the protection of women experiencing domestic violence are discussed below: detention of the perpetrator, preventive detention of the perpetrator, an order to leave the premises occupied together with the victim and a restraining order (cf: Szafranek 2016, p.133-152).

### **Detention of a perpetrator**

The analysis of court documents shows that everything starts with police intervention, e.g. in a home of a victim of domestic violence. If police officers arriving at the scene consider that the behavior of the perpetrator endangers the safety of the members of a household, they can immediately protect them by arresting the suspect.

Preventive detention applied by police officers is regulated by Art. 15a of the Act on the Police, which states that with regard to the perpetrator of domestic violence posing a direct threat to health or human life, the police may apply preventive detention, which will result in placing a person posing a threat in the premises of a police organizational unit intended for detainees (Art. 15 point 7a of the Act on the Police), or a room for persons

detained or brought in for the purpose of sobering (Article 15, item 7b of the Act on the Police). A person who has been brought in for the purpose of sobering shall remain in the room for detained persons only until sobering, while other persons may stay in the room for up to 24 hours, and in special cases the stay may be extended to 48 hours.

The comments to the Act on the Police specify that this right of the police must not be questionable, as there are cases in which the perpetrators, through excessive consumption of alcohol, lead to a state of aggression, which results in the use of violence against the closest family in a way not causing visible traces of violence. In such situations, the police may have their hands tied, as the perpetrators often leave their homes before the arrival of the officers, and also have support in their mothers, who, in order to protect their son, give false testimony. Such situations often happen and can be extremely difficult to reveal (Kotowski 2012, p. 86).

However, police officers participating in the study stressed the gradual abandonment of the possibility of isolating the perpetrator of violence until sobriety, “we are moving away from this, not to favor, not to distinguish between the way the perpetrator is isolated due to their state of consciousness. Whether you are sober or not, we isolate you anyway. Why should we isolate under the Act on Upbringing in Sobriety, why should we charge the family with additional fees? It is often the case that the perpetrator is the main owner of the apartment, supports the family. Why should we deprive the perpetrator of additional source of income? Therefore, we try to train police officers not to detain on the basis of Art. 41 of the Act on Upbringing in Sobriety (...) And if they do detain on this basis, only for sobriety. Even if it will take 3-4 hours, we are obligated to do so. That is why we say it is not good, because they sober up after a few hours, but the situation at home has not normalized at all, and we have to release them [policeman, K, 7].

The police also have the possibility of process detention, pursuant to Article 244 § 1a of the Code of Criminal Procedure (if there is a justified suspicion that a person has committed an offense using violence to the detriment of a person they live with and there is a risk that he or she will again commit an offense using violence to the detriment of that person, especially when they threat of committing such an offense), or Article 244 § 1a of the Code of Criminal Procedure (if the offense referred to in § 1a was committed with a firearm, knife or other dangerous object and there is a risk that they will commit an offense using violence against that person again, in particular if they are threatening of committing such an offense),

The analysis of court documents also shows that there are situations in which a victim on the second day after the violent behavior of her husband/partner (i.e. with the use of violence) reports to the police headquarter and expresses her concern about her own and/or children's safety and asks for help. The police may also detain the suspect if they believe that there are reasons to do so.

These legal bases are not only used by police officers in cases of abuse, but also in cases of exposure to danger, serious damage to health, bodily injury, rape and other sexual offenses. Difficulties occur in the case of psychological violence, as it is difficult to imagine visible damage to health as a result of it. "We can protect women, they do not have to run away from their apartment, because it is us who take the perpetrator out. It used to be the case that we took the victims and the perpetrator ruled over. Now it is us who take the perpetrator out and the victim stays. That is a huge progress" [a policeman, K, 7].

Preventive detention of the perpetrator of domestic violence is, in the opinion of the police, a convenient tool, because it does not matter whether the perpetrator will be proven to have committed a crime, but it is important that "here and now, I can take the perpetrator out" - as one of the interviewees said [a policeman, K, 7]. In all analyzed court cases under Article 207 of the Penal Code, in which preventive measures were applied (N = 27), the perpetrator was detained for a period not longer than 48 hours. This time is used by the police to gather evidence on the basis of which decisions on the further fate of the detainee will be taken. The police will then collect more information about the incident, interview neighbors, establish details and verify whether there are witnesses to the incident and whether they will testify for the benefit of the victim. Later, a police officer notifies the prosecutor about detention of a person suspected of committing a crime, who, on the basis of their own interrogation and collected materials, either releases the suspect (if the incriminating evidence is not sufficient - such situation did not take place in the analyzed cases) or applies to the court for a preventive measure in the form of a provisional detention, an order to leave the premises, a prohibition of approaching the victim, police supervision, etc.

According to some practitioners, the period of isolation (24 - 48 hours) is not enough, because "the victims have time only to think, gather together or get some sleep in their own homes. And this is when the public prosecutor's office has time to issue a restraining order or an order to leave the premises" [NL, K, 11]. According to the above statement, it can be concluded that in situations of consistent cooperation between the victim and the justice

system, this time of isolation may be sufficient to apply other measures to protect a woman experiencing violence. The problem arises when the victim withdraws her statement, or the public prosecutor's office sees no reason to keep the perpetrator isolated for a longer period of time, or to oblige him to leave the premises he occupies together with the victim. In such a case, the police are not able to detain the perpetrator for a longer period of time, and in the opinion of practitioners: "it should be possible to keep the perpetrator isolated for longer period of time, because releasing him after 24 hours is not a solution. The worst situation is when he finds out that we cannot do anything else, he has a feeling of impunity" [a policeman-prevention, K, 3].

It should also be mentioned that police officers have a great freedom to decide whether or not to apply a measure of detention. The practice of social services, as well as members of non-governmental organizations working with victims of violence, shows that there are cases, which are not interpreted seriously enough to result in the detention of the perpetrator: "Detention primarily occurs when there are children involved, because in case of two adults they can control it, and when there are small children, there is nothing to think about" [police community support officer, M, 10]. In other situations, isolation (24 or 48 hours) has the opposite effect, because the person using violence behaves even worse after being released and "the situation repeats, the woman is accused of his stay in prison" [CPK, K, 10].

It seems, however, that police officers can hardly be blamed for not always taking decisions to detain the perpetrator in every case of domestic violence. This state of affairs results from the experience of police officers, who are often confronted with "instability" of decisions of women experiencing violence: "I was once called to an intervention, where a guy with an axe was running in front of the house and there were small children. He was detained under Article 244a, his wife came, filed a notice, and then (...) she claimed that they love each other and she withdrew her statement" [police community support officer, M, 10]. Similar situations were mentioned by social workers from Podlaskie Voivodeship, who took part in research on the problem of domestic violence against seniors. They have repeatedly pointed to the characteristic attitude of victims of violence consisting in withdrawal from the actions taken - whether because of fear of the consequences of initiated actions, as a result of co-dependence or because of remorse resulting from their willingness to punish the abuser (Kramkowska 2016, p. 311-327).

### **Provisional detention of a perpetrator**



Provisional detention of a perpetrator is the most restrictive, but also, as practitioners point out, the least used way to protect the victims of violence. This measure can be used in situations where it is necessary to guarantee the proper course of proceedings, because the evidence gathered indicates a high probability of a crime being committed by the accused. In exceptional situations, this is a preventive measure to prevent the accused from committing another, serious crime (Article 249 of the Code of Criminal Procedure). The decision to use preventive detention is made only pursuant to a court's decision (Article 250, § 1 of the Code of Criminal Procedure), in the following situations, among others:

- a well-founded fear of the defendant escaping or hiding, in particular when his identity cannot be established or he does not have a place of permanent stay in the country
- justified fear that the accused may induce to make false statements, explanations or in any other unlawful way hinder criminal proceedings, e.g. inciting, forcing the victim to withdraw the statement, change the content of testimony or refuse to give it; inducing witnesses to refuse to give testimony, to withdraw or change its content, failure of the accused to appear at the hearing, inducing the victim and/or witnesses not to appear at the hearing (Article 258 of the Code of Criminal Procedure).

The literature also states that: “various situations related to domestic violence show how lenient the state and its significant institutions, e.g. courts, are for the perpetrators and do not intervene adequately due to the strong social consent to violent behavior towards women”. (Dyjakon 2014, p. 21). Dorota Dyjakon's observations seem to be very accurate. As it has already been pointed out in 50 cases analyzed, in slightly more than half of the cases (27), any means of protecting victims have been applied. In 27 cases the suspect was detained, while preventive detention was applied only to 8 of them.

During one of the interviews, a district constable pointed out that in his professional work he often encountered situations in which, in his opinion, preventive detention should be ordered, but this did not happen: "Yes, I have experienced such situations many times. I took the perpetrator, a notification was filed, the victim reported to the police station on the next day, submitted the statement, materials were sent to the prosecutor's office, but they refused to initiate the case" [a district constable, M, 5].

It should also be mentioned that this measure may be applied even in situations where the victim reported the case to the police, or to the prosecutor's office, for the first time,

which resulted in initiation of the NK procedure. What is required, however, is the exceptional drastic nature of the event and the real fear for the life and health of the victim: "if drastic actions happened and she is able to prove it, she has photos, videos, e-mails, other evidence in her phone, then the measures are taken faster" [a police officer - prevention, K, 3]. However, as stated by the prosecutor participating in the research: "these are very rare cases. Alternatively, when the perpetrator suffers from mental disorder, it is used to place the perpetrator in a psychiatric institution and treat him immediately" [a prosecutor, M, 8].

Respondents have repeatedly stressed that the measure in question could be at least a temporary guarantee of security, "but it often happens that evidence is too weak to apply detention and the prosecutor is helpless. We are even more helpless when the perpetrator does not comply with an order to leave the apartment or other orders, and there are no measures to enforce it" [a policeman, K, 7].

### **An order to leave the premises occupied jointly with a victim**

Pursuant to Article 3 sec. 1 item 3 of the Act on Counteracting Domestic Violence of 29 July 2005 [ustawa o przeciwdziałaniu przemocy w rodzinie], it is possible to oblige a person using violence to leave the premises occupied together with the victim. The use of this measure is possible by the court in the case of conviction for an offense against sexual freedom or morality to the detriment of a minor or other crime against freedom and in the case of conviction for an intentional crime using violence, including in particular violence against the closest person (Article 41a § 1 of the Penal Code). A decision to order to leave the premises occupied jointly with the victim may also be made pursuant to a prosecutor's decision, if there is a justified fear that the accused will again commit a violent crime or threatens to commit it (Article 275a of the Code of Criminal Procedure). Moreover, the said order is issued for a period not longer than 3 months, except for the situation when the prerequisites for its application have not ceased to exist after that time, then it may be extended (Article 275a § 4 of the Code of Criminal Procedure). It should be noted that Article 11a of the Act on Counteracting Domestic Violence indicates that in cases where a family member jointly occupying an apartment makes it particularly burdensome to reside together, a victim may demand that the court oblige him/her to leave the apartment. In this particular case, the court shall hear the case in accordance with the provisions of the Act of 17 November 1964 - The Code of Civil Procedure on Non-contentious

Proceedings, and the hearing should take place within one month from the date of filing the application.

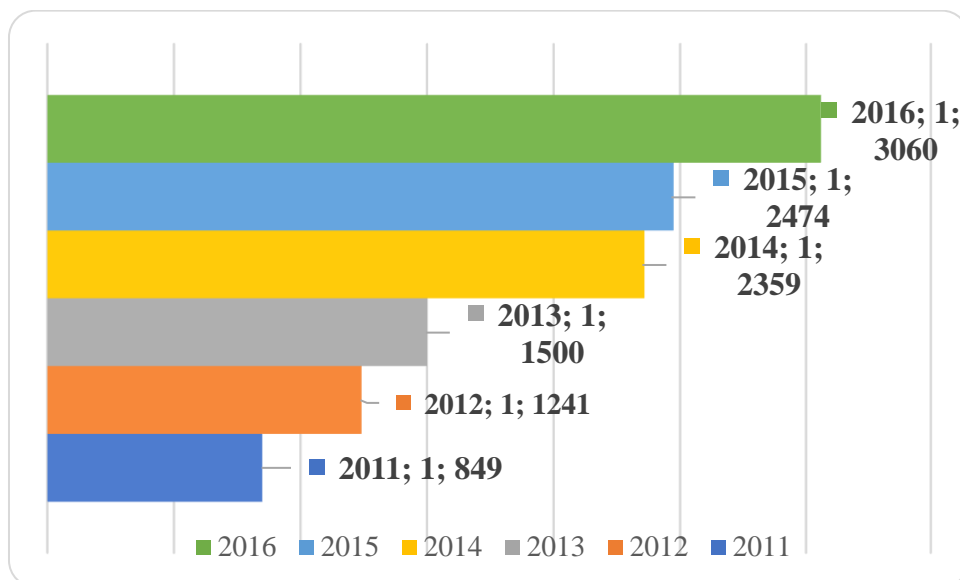
The above provision, added as of June 10, 2010 and amending the Act on Counteracting Domestic Violence is of great importance. It allows, through the request of the victim, for the judicial imposition of an obligation to leave the premises by a perpetrator, which consequently results in the performance of that obligation. In order for the procedure provided for in that Article to be initiated, a co-residency of a person using and experiencing violence is necessary. It is important that from the point of view of Art. 11a of the Act on Counteracting Domestic Violence, it does not matter who has the legal title, and of what kind, to the occupied premises. The provision does not exclude the obligation to leave the apartment by a person holding an exclusive title to the apartment, as the ruling does not result in the loss of the legal title to occupy it (Kiełtyka, Ważny 2012, p. 157). There is only a time restriction of the right to use the apartment (Spurek 2011, p. 157).

It should be noted that the condition for initiation of proceedings aimed at obliging people to leave the apartment is a request made by a person experiencing violence. Such a request may not be made by third parties, e.g. witnesses of violence, or any other person living together and not experiencing violence. Another entity entitled to submit the said request and initiate proceedings is the prosecutor (Kiełtyka, Ważny 2012, p. 158). And such prosecutor's actions took place in 4 out of 50 analyzed cases from the District Court in Białystok. In these four cases, the detention of a person suspected of violence was followed by his release and an obligation to leave the premises shared with the victim. The purpose of this measure is not only to eliminate the conditions that will enable a person using violence to commit another crime against the victim, but also to protect against negative experiences and emotions resulting from daily contact with the perpetrator (Stefański 2006, p. 28). The content of the said preventive measure indicates not only an order to leave the premises, but also an obligation to stay outside the premises (Penal Code 2011).

In the opinion of Ryszard Andrzej Stefański, an order to leave the premises occupied jointly with the victim should not be applied in situations where the crime committed has no connection with co-residence, as it would be contrary to the purpose of the measure. Thus, the possibility of issuing such an order should take place, for example, in the case of conviction for an intentional crime with the use of violence, also against a closest person (Article 41a of the Penal Code). (Stefański 2010 p. 87-88).

The practice of using this protection measure has not been satisfactory for a longer period of time. This problem was raised in a speech by Janusz Kochanowski, Ombudsman, dated 15 January 2008 to the Minister of Justice and Prosecutor General, Zbigniew Cwiąkański (Kowalczyk 2009, p. 141). Over the last few years, there has been an upward trend in adjudicating the protection measure in question. This state of affairs is confirmed not only by the statements of the respondents, e.g. "a person was beaten, the police came, took the perpetrator, in the meantime the prosecutor issued an order to leave the premises. Previously, such situations did not happen at all, and now they do" [OIK, K, 9, a crisis interventionist], but mainly by statistical reports of the National Public Prosecutor's Office from 2011-2016 (Chart 1).

Chart 1. Number of orders to leave the premises occupied jointly with the victim used in preparatory proceedings



Source: Own elaboration based on statistical reports of the National Public Prosecutor's Office for the years 2011-2016, available online:

- <https://pk.gov.pl/dzialalnosc/sprawozdania-i-statystyki/sprawozdania-statystyczne-pg-plk-pg-plca-i-pg-1n-za-2016-r/>

- <https://pk.gov.pl/wp-content/uploads/2016/02/b66b050ee4c171941edffcd6aea387af.pdf>

- <https://pk.gov.pl/wp-content/uploads/2015/04/a57c5060f280badfee94079b9490d03d.pdf>

- <https://pk.gov.pl/dzialalnosc/sprawozdania-i-statystyki/sprawozdanie-z-dzialalnosci-powszechnych-jednostek-organizacyjnych-prokuratury-w-sprawach-karnych-za-rok-2013/>

- <https://pk.gov.pl/dzialalnosc/sprawozdania-i-statystyki/sprawozdanie-z-dzialalnosci-powszechnych-jednostek-organizacyjnych-prokuratury-w-sprawach-karnych-za-rok-2012/>

- <https://pk.gov.pl/dzialalnosc/sprawozdania-i-statystyki/sprawy-karne-w-prokuraturze-w-2011-r/>

- [date of access: 23.03.2017]

Over the period 2011-2016, the number of orders to leave the premises occupied jointly with the victim has almost quadrupled, which may indicate that the measure in question is producing the expected results. The above trend is also confirmed by the words of the prosecutor, according to whom it is a basic preventive measure aimed at protecting victims. "In my opinion, this is the most effective measure. We, as prosecutors, have this measure at our disposal and can apply it immediately. The perpetrator must then leave the apartment for 3 months. Immediately, regardless of whose this property is. If we use this measure, the perpetrator must indicate the place where he will be staying in order to deliver correspondence, and if they do not have such a place or claim not to have any, then we give them the address of a night shelter where they can stay. And if there are indications that the perpetrator does not comply with this and harasses the victim, then I write a motion to the court for preventive detention. And I recently had such a situation. But most often the perpetrators, being at the prosecutor's office, know that the case is serious and do not decide to return to the apartment, the other thing is that women often forgive the perpetrators and ask to repeal the measure. This is an emotional dependence, and if the victim demands it, we have no reason to oppose the will of the victim" [a prosecutor, M, 8]. The first part of the respondent's statement fills us with optimism, however it is difficult not to notice the problem of emotional dependence of the victim on the perpetrator of violence. The prosecutor himself claims to be aware that women experiencing violence are emotionally unstable as a result of dependence on a partner. Therefore, it may be worthwhile to introduce the practice of an additional interview with the victim requesting the repeal of the measure, rather than not opposing her will.

Practitioners also draw attention to the fact that social services, the police and the judiciary do not always have a common point of view on a given case. One of the police officers mentioned that "the prosecutor's office does not fully understand us. Sometimes we want the perpetrator to be separated for the benefit of the family and the prosecutor releases him. As a result, the victim is broken and does not know what to do, because the system has stopped working. Often it ends with the victim leaving the apartment instead of the perpetrator. The prosecutor's office treats them too gently. However, the public prosecutor must have strong evidence, e.g. bodily injury, rape to issue an order to leave the premises" [a district constable, M, 8]. Attention was also drawn to the sometimes appearing mechanism of shifting responsibility to the victim, who due to lack of security does not think rationally. "What is the point of issuing an order to leave

the property, if she will let him into the house anyway?"[NL, K, 21]. Or another statement about the fact that the victims' concern for the common household and the duties associated with it are the reason why they accept the perpetrator to remain in the apartment [a policeman, K, 7]). This lack of rational thinking, however, cannot be equated with a lack of respect for the work of a judge or prosecutor [NL, K, 21].

The information obtained from the interviews indicates that, according to some experts, an order to leave the premises shared with the victim is the most important, but rarely used tool. "The treatment of the perpetrators is too lenient, I do not know why this is the case. This, in turn, means that victims do not have sufficient protection. This is a certain inefficiency of the system. The attitude towards perpetrator shows too much patience and the pressure on him is too little. I can't even say if we protect the victim by being so gentle to the perpetrator [a psychologist, M, 10]. Another psychologist's statement indicating a similar course of thinking is also worth quoting: "even when a woman manage to obtain a sentence of guilt under Article 207, where the court should throw him out on the streets even in minus 40 degrees, they do not do it. And the victims do not want the perpetrator to go to prison; they want him to be punished for their crime, their offense [a psychologist, K, 20].

Respondents also drew attention to a characteristic issue consisting in an order to leave the premises occupied jointly with the victim without a restraining order, or failing to specify the distance at which the perpetrator should not approach the victim. The lack of such provisions may lead to absurd situations, which one of the police officers mentioned saying that "the perpetrator leaves the apartment but sleeps on a doormat. And then he knocks every 5 minutes: I left my shoes, I left my socks, and so on. In theory, he is ordered to leave the apartment, but he is still a burdensome" [a policeman, K, 7]. The analysis of the documents of cases under Article 207 of the Criminal Code from the District Court in Białystok indicated that in four cases in which the prosecutor initiated proceedings in which the suspect was ordered to leave the premises, he was always obligated not to approach the victim. As a result, there has been a co-occurrence of the analyzed measures for the protection of victims of violence.

### **Restraining order**

The measure in the form of a restraining order is also referred to in Article 3 sec. 1 item 3 of the Act on Counteracting Domestic Violence as one of the possibilities to protect people

experiencing violence. This tool is used pursuant to Article 41a § 1 of the Penal Code, which defines the possibility for the court to order (apart from temporarily leaving the premises occupied jointly with the victim) the prohibition on staying in certain environments or places, contacting certain persons, or approaching certain persons, in the case of conviction for an offense against sexual freedom or morality to the detriment of a minor or another offense against freedom and in the case of conviction for an intentional crime using violence, including in particular violence against the closest person. Restraining order means that it is impossible to approach the victim and reduce the distance between the victim and the perpetrator (Spurek 2012, p. 281), which at the same time means that a protection zone is created around the victim (Penal Code 2011).

Restraining order in relation to certain persons may be imposed regardless of the prohibition to contact these persons. Thus, these order does not guarantee a complete lack of contact with the individuals concerned. The court is obligated under Article 41a § 4 to indicate the distance to which the prohibition applies, but the legislator does not specify either a minimum or a maximum value. Thus, it can be concluded that if the order is to apply to a person living with the victim, its decision should be connected with an order to leave the premises (Mozgawa 2013)

Practitioners evaluated this measure in two ways. Some of them claimed that it was the most effective measure of protection, while others stressed that it did not fulfill its tasks. “Restraining order is the most effective. I would stop there, this one is the best, the others are not used, or very rarely” [a psychologist, K, 20]. Also voices have been raised indicating that the wording itself sounds very good, but the frequency of application of this measure leaves a lot to be desired [OIK, a crisis interventionist, K, 28], or a completely different opinion emphasizing that this possibility is increasingly being used by the prosecution [NL, K, 11].

However, restraining order in many cases does not give a sense of security to women, who are intimidated and know what the perpetrator is capable of doing. Sometimes, despite the restraining order, people using violence follow their victims, bullying them psychologically in order to destroy their sense of security: “women have GPS in their phones, the perpetrator tracks them down. Although the restraining order is being used more and more often, but still not too frequently and usually after our intervention. The law is not bad, but our experience shows that people who do not know the behavior of the perpetrators of

violence do not apply the law, as they do not see the danger, because it is a well-known person, because she is a strange person, and he behaves well at the trial [a psychologist, K, 20].

### **Selected problems within the scope of protection of women experiencing husband/partner violence**

Practitioners drew attention to a number of key difficulties linked to the possibility of applying certain measures of protection of women experiencing violence. The first and most important is the excessive duration of all procedures. In statutory time, little can be done "the procedure takes too long because we are waiting for the divorce hearing four months and the stay in the centre lasts three months", so the stay almost always has to be extended [CPK, K, 10]. In order to simplify the procedure for adjudicating measures to protect women experiencing domestic violence, a civil procedure has been introduced (Article 11a of the Act on Counteracting Domestic Violence), which, in the opinion of practitioners, does not fulfill its purpose, as court cases still last too long. The purpose of the provision "was to make it a separate path and make it easy to issue an order. However, »quickly« in practice means one year, and this may turn out to be 11 months too long" [a lawyer, M, 13].

Practitioners repeatedly observe the disappointment of women at the judicial stage, which is caused by the duration of the procedures, and at the same time they see the progressing mental violence against them [a district constable, M, 10]. Therefore, in many cases, despite the ongoing procedure, violence does not stop, but only changes its form into a more difficult to prove and more painful for the victim, because, as the results of research carried out within the IPVoW<sup>4</sup> project indicate, psychological violence is the most painful and destructive form of abuse for victims (Halicka 2012, p. 145-151). Moreover, "the mechanisms start working too late and it takes too long. Even directing a person abusing alcohol using violence to the so-called obligatory treatment, i.e. referral and delivery to the ward, sometimes takes six months, if not longer, so there are tools, but the implementation is sometimes complicated" [OIK, K, 16 a crisis interventionist].

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<sup>4</sup>*IPVoW Intimate Partner Violence Against Older Women Project* (DAPHNE III no. JLS/DAP/2007-1) was implemented in 2009-2010 by the following partners: Austria, Israel, Germany, Portugal, Poland, Hungary, Great Britain. Poland was represented by employees of the Department of Andragogy and Educational Gerontology and the Department of Educational Sociology and Social Gerontology at the University of Białystok.



Women experiencing violence do not always want to punish the perpetrator, but above all an immediate protection and a sense of security, “they want the environment to act against the perpetrator and not against them (...) because we, as practitioners, we will say to the perpetrator: you can be convicted of bullying and you can get a fine or a suspended sentence for that and you will get 4 years, and he laughs in our faces” [M, 13, a lawyer]. Significant are the words of the next respondent who said that “the punishment should happen here, now and immediately. The perpetrator must feel that it is a punishment and not a suspended sentence, during which he will use violence in a perfidious and calculated manner [a psychologist, K, 20]. The possibility of counteracting such problems may be the removal of the perpetrator by the police, immediately and for a longer period of time. “However, a removal order usually has a long time of execution, and the victim at that time often has no protection at all. Methods of protecting women could meet the needs of victims if they were strictly and extensively applied. And duration of procedures must be shortened” [a trainer in violence prevention, K, 7].

There are also concerns, as practitioners have also pointed out, that a woman will give false testimony because she does not experience violence from her husband/partner, but wants to gain an advantage in divorce proceedings for which she collects evidence. Respondents pointed out that such situations occur and that it is impossible to eliminate them completely, but the legal system should be constructed in such a way that the lie in a long perspective turns against them [M, 13, a lawyer].

### **Final thoughts**

Domestic violence is a crime punishable by imprisonment, but such a sentence is rarely used. Most often a criminal case ends with a suspended sentence, unless the perpetrator does not improve their behavior, in which case they are put in jail (cf. Halicka, Halicki, Kramkowska, Szafranek 2015, p. 195-214). Since serving a sentence in prison is a rare solution, the question arises as to how are those who have been subjected to harmful behavior protected? The presented text discusses selected legal tools to ensure the safety of persons experiencing domestic violence. This included detention of a perpetrator, their preventive detention, an order to leave the premises occupied together with the victim, or a restraining order. When we ask practitioners dealing with these types of issues on a daily basis to assess the effectiveness of the listed measures, we notice the natural polarization of opinions. Depending on the represented area of assistance to people affected by violence (social

assistance, police, public prosecutor's office), different methods are assessed as producing the expected results. However, an analysis of the legislation currently in place shows that its quality has improved in order to make it more effective. Amended acts, codes or other legal acts more and more often fill in the gaps that have not been worked out so far in order to make Polish law good and serving its citizens. And such actions of the state should be noticed and appreciated, and further activities in this area should be called for.

But in addition to the law, there is a need for human support, a helping hand that will make it easier to create a sense of security for people experiencing violence and will have a more stable foundation. And this is a task that all those who know people experiencing domestic violence are obligated to fulfill. The process of social rehabilitation, i.e. the process of re-learning everyday life by the victims of violence, life without a perpetrator, life without names or subordination to a stronger one is something only seemingly easy. The psyche and the way of life of a person experiencing violence undergoes great changes, especially when the situation lasts for many years. An attempt to improve one's own situation requires courage, but also strength and self-denial. This process is likely to be successful, and its likelihood will increase when the state provides the best possible protection, and those who are right next to us will show support, empathy and patience in heading towards a better tomorrow together.

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