

New laws to protect victims of domestic violence in Poland

In case of domestic violence, it is usually the victim, often the woman with children, who is forced to flee from home to escape from the perpetrator. The purpose of the new law is to prevent such situations and to improve the safety of victims, ensuring that their rights and needs are prioritized.

BY PROGRAM OPERATOR IN POLAND, THE MINISTRY OF JUSTICE IN POLAND | PUBLISHED 12 FEB 2021

The new legal provisions known as the "anti-violence act" entered into force on November 30, 2020. (Illustration: iStockphoto)

Domestic violence is a severe social issue in Poland. Like in other countries, the problem is widespread, but remains under-reported. In 2019 over 227 000 persons experienced domestic violence and over 110 000 families were supported under the "Blue Cards" procedure (see fact box), according to the Report on the implementation of the National Programme for Counteracting Domestic Violence for 2014-2020. The actual number of victims and families affected by domestic violence is however difficult to estimate. The prevalence study, commissioned by the Ministry of Family, Labour and Social Policy (2014), revealed that nearly 1/4 of the respondents experienced at least one form of violence from a close relative in their lifetime.

The "anti-violence act"

The new legal provisions, initiated by the Minister of Justice and adopted almost unanimously by the Polish Parliament, entered into force on November 30, 2020. The law, known as the "anti-violence act", includes amendments to the Code of Civil Procedure and several other acts, such as inter alia the Act on counteracting domestic violence, the Police Act and the Act on the Military Police and Military Law Enforcement Units. The laws introduce new protection measures to be applied in cases of domestic violence.

Under the new regulations, the Police (or Military Police in case of families of military personnel) during an intervention, or in case of being notified about domestic violence, have the power to issue emergency barring order. This measure will be applied in the event of a threat to life or health of the household members. The decision will be based on a risk assessment, carried out separately for adults and children, with the use of a standardised tool.

The order will be imposed directly on site. The perpetrator will have to leave the home and its surroundings immediately. The person will be allowed to take his or her personal effects and work tools. The police will instruct the perpetrator about the possibility of submitting a complaint and will provide information on facilities offering accommodation (such as homeless shelters) and facilities conducting corrective-educational measures. The victims will be informed about their right to apply to the court and about available support services. In addition to the barring order, the police can issue a restraining order, banning the perpetrator from approaching the home and its surroundings. These measures can be applied jointly. If the perpetrator is detained, the orders may be issued directly after his or her release.

The orders can be enforced with the use of coercive measures. The police are also obliged to regularly check if the perpetrator is complying with the orders (at least three times during the period the orders are valid, with the first check taking place on the following day). In case the person breaks the order, he or she can face arrest, restriction of liberty or a fine. The application of the new measures is subject to control by the court, which may take into account the complaint of the perpetrator and revoke the order, or the ban issued.

The police will deliver a copy of the order to the prosecutor without delay and will notify the local interdisciplinary team (see fact box). In case there are children living in the household, the respective family court will be also notified. The family court, upon notification, will initiate ex officio procedure and decide on the precautionary measures without delay.

The order or the ban applies for two weeks. At the request of the victim, the court may extend this period. The court proceedings in such cases will be enhanced. The application for the precautionary measures will be examined within three days. The court shall issue the decision on the case within one month from the date of the victim's request. The order of the court obliging the perpetrator to leave and/or to stay away from the residence and its surroundings will be effective from the time of the announcement. The court can also extend the barring and restriction orders as the precautionary measures. In such case the court will define the duration of the orders and frequency of checking if the perpetrator is complying with them.

The court will deliver the copies of the order to the participants of the proceedings, the prosecutor and the Police or Military Police and will notify the local interdisciplinary team. In case there are children living in the household, the respective family court will be also notified.

In order to speed up the procedure, the court is able to deliver the correspondence by the Police. The Police are also obliged to provide the court with other assistance necessary for the timely completion of the proceedings. In addition, persons requesting such measures are exempt from paying a court fee.

The new regulations also apply to cases of domestic violence involving soldiers performing active military service and give special powers to the Military Police in this respect.

Soldiers of the Military Police have the power to detain a soldier performing active military service who is using domestic violence within the meaning of the Act of 29 July 2005 on counteracting domestic violence, posing a threat to life or health.

In addition, it is now possible to include representatives of the Military Police in the interdisciplinary teams as well as in the working groups - in the event of cases concerning soldiers on active military service using domestic violence.

Protection of victims is the core element

Protection of victims is a core element of the new regulations. It is now guaranteed by providing the physical distance between the victim and the perpetrator in situations of an immediate danger. This allows to help those in need immediately, and not after a few weeks or months, as has been the case in civil court cases. This also makes possible to avoid situations where victims of violence are forced to live under one roof with the perpetrator or have to seek shelter

outside their own home.

The newly introduced changes also improve the court proceedings in the scope of art. 11a of the Act on counteracting domestic violence. Even before this article has given a court a possibility to decide on removing the perpetrator but the procedure was more complicated and time-consuming. The new rules make it more effective and easier to apply.

The new laws are in line with the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, in particular its article 52, and considerably improve the safety of victims and persons at risks.

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