

Criminal law mechanisms for preventing and combating family violence

Summary

The family is the basic social unit and the oldest and most common form of social life. In fact, from the very beginning of its existence, family violence (domestic violence) has been the permanent issue. Over the years, family violence has been a socially acceptable phenomenon, supported by cultural and historical conditions. With the development of international law and the progress of civilization, acquiescence to domestic violence was gradually eliminated. However, domestic violence is still common in the modern world as a complex social problem with diverse causes.

Searching for effective ways to reduce the phenomenon of domestic violence, as well as helping victims of violence, has been one of the legislator's priorities for many years. Effective prevention and combating this phenomenon requires interdisciplinary understanding, taking into account psychological, sociological and social aspects, as well as cooperation of many authorities and institutions. It is also impossible to discuss the title issue without referring to civil law and administrative law instruments intended to counteract violence and showing their relationship to criminal law mechanisms.

The work consists of 14 chapters. In the first chapter, the concept of violence and its understanding on the etymological level, as well as on the basis of social and psychological sciences, were subjected to a detailed analysis. Definitions of violence adopted by representatives of the doctrine and the World Health Organization were also presented. Due to the subject of this work, the understanding of violence in the field of criminal law and criminology required special discussion. The use of violence constitutes, among others: a criterion for the application of specific institutions of criminal law (e.g. the penal measure regulated in Article 41a § 1 of the Polish Penal Code). The concept of "crime of violence" has been interpreted many times in the context of case law and doctrine, which is presented in detail in this dissertation. The interpretation adopted by the judicial authorities is of particular importance for the scope of protection and safety of victims of, among others, crimes of abuse. This chapter also discusses the types of violence according to the various criteria and their specific features.

The second chapter is focused on the phenomenon of domestic violence – among others, its origins and historical conditions (including historic legal regulations) and possible causes of its occurrence. Due to the importance of the interpretation of concepts related to domestic violence, a detailed analysis of the both contemporary and previous definitions under international and Polish law was presented. The first legal definition of "family violence" was established in the Act of July 29, 2005 on counteracting family violence. Until recently, it was pointed out that the terms "family violence" and "domestic violence" had the same scope of meaning and were used interchangeably in the literature, as well as in the statements of the legislator. Only in the justification for the Act of March 9, 2023 amending the Act on counteracting family violence and certain other acts, did the legislator point out that the name

of the act - "on counteracting family violence" stigmatizes the family and indicates that the family is the only environment where acts of such violence occur (which excludes, for example, violence between former spouses). Therefore, on the basis of the above-mentioned the act replaced this concept with the term "domestic violence". However, there is no legal definition of "family violence" or "domestic violence" under criminal law.

Chapter two also describes the cycle of domestic violence and its consequences for victims. Long-term or intense experience of violence is associated not only with physical effects, but also with mental injuries, including emotional disorders, developmental disorders and social disorders.

The third chapter of the dissertation presents the international standards in the field of preventing and combating domestic violence. The obligations of states in the field of counteracting domestic violence are the subject of numerous regulations of international and European law, both agreements and conventions, as well as other documents (recommendations, declarations, directives, guidelines) setting the standards that states should adopt at national level. Strategies and programs are being adopted at international and European Union levels to create a Europe free from violence against women and domestic violence. States are also obliged to submit reports on the implementation of the provisions of the conventions, based on which international committees issue the so-called „final remarks”. As part of the above-mentioned „final remarks” it is indicated that Poland should adopt a comprehensive strategy to prevent and combat domestic violence, not only in terms of introducing regulations and institutions that effectively protect victims, but also their use in practice, and then supervision and enforcement of the imposed measures. In the work presented were most important recommendations of international bodies in this regard.

Domestic violence, as a violation of the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms, is the subject of individual complaints to the European Court of Human Rights. The dissertation discusses sample complaints regarding violations of individual articles of the Convention, as well as the rulings issued in this regard and their most important motives. Obviously, the priority for the strategy of combating and counteracting domestic violence is the Istanbul Convention (Council of Europe Convention on preventing and combating violence against women and domestic violence), which is why the work describes its most important regulations and their impact on Polish legislation. In addition, the process of accession of the European Union to the Istanbul Convention was described, as well as the procedure aimed at adopting the first comprehensive EU act relating to the issue of domestic violence - i.e. the directive on combating violence against women and domestic violence. The work also presents models for regulating the issue of violence against women on the example of the laws of selected countries (including Austria, Spain and the USA).

The fourth chapter presents the issue of domestic violence under national law, including the Constitution of the Republic of Poland. Family violence violates many constitutional values. This chapter presents a historical approach to legal regulations regarding domestic violence and subsequent changes, including: the course of work on the first act regulating the issue of family violence, i.e. the Act of July 29, 2005 on counteracting family violence and its first amendment of June 10, 2010, as well as their impact on criminal law institutions for preventing and

combating family violence. In recent years, there was a dynamic influx of changes in the regulations regarding family violence, which was caused by, among others, the COVID-10 pandemic and forced social isolation, where the consequences were particularly severe when it was impossible to immediately ensure the safety of people experiencing domestic violence. The work discusses the most important changes introduced under the Act of April 30, 2020 amending the Act - Code of Civil Procedure and certain other acts, the Act of January 13, 2023 amending the Act - Code of Civil Procedure and certain other acts, the Act of of March 9, 2023 amending the Act on counteracting family violence and certain other acts and the Act of July 28, 2023 amending the Act – Family and Guardianship Code and certain other acts. The most important assumptions and goals of the Government Program for Counteracting Domestic Violence for 2024-2030 were also presented, as well as statistics on the phenomenon of domestic violence in Poland and the implementation of the "Blue Card" procedure in Poland.

Chapter five was entirely devoted to the penalization of domestic violence, primarily the crime of abuse under Article 207 of the Polish Penal Code, which most often covers the behavior of perpetrators of domestic violence. The work discusses in detail the evolution of the provisions of previously applicable criminal laws in this regard, and also analyzes the constituent elements of the crime under Article 207 of the Polish Penal Code (in its current wording). The discrepancies in case law and doctrine were pointed out, among others: as to the subject of protection under the crime of abuse, the possibility of mutual abuse, the assessment of the severity of the suffering of the victim or the possibility of committing the crime of abuse with conceivable intent. The interpretation adopted by the court and the law enforcement authorities will often determine whether a given act of the perpetrator is classified as a crime under Article 207 of the Polish Penal Code and if the perpetrator will incur criminal liability, and also if the victims will be provided with the protection in given circumstances. The work also draws attention to other prohibited acts that are manifestations of various forms of domestic violence - mental, physical and sexual violence regulated in various chapters of the Polish Penal Code. It was also necessary to raise the issue of non-statutory justification in the context of punishing minors.

The next part of the work concerns the mechanisms for preventing and combating domestic violence available at individual stages of criminal proceedings. Chapter six is focused on preparatory proceedings. The topics discussed included: institutions such as notification of a suspicion of committing a crime (taking into account the obligation to denounce and the conflict that may occur between such an obligation and the obligation to maintain professional secrecy including medical secrecy), as well as activities undertaken by law enforcement authorities to detect the perpetrator and held him criminally liable, secure the interests of the victim, protecting its rights and ensuring its safety. In particular, it describes the activities undertaken by the authorities as part of processing the report of crime, verification activities, necessary instructions, collecting information about the victim in accordance with Article 52a of the Polish Code of Criminal Procedure, appointing a representative for the minor and a proxy for the victim (especially for older and helpless people), conducting a community interview or reporting obligations of the authorities. Due to the fact that the value of the collected evidence and whether an indictment will be filed against the perpetrator often depends on the activities

undertaken by law enforcement authorities as part of evidentiary proceedings, the work discusses in detail the issue of interrogating suspects, victims and witnesses in criminal cases regarding domestic violence, as well as the rights of these people, including: to refuse to testify and the consequences of exercising this right (i.e. the possibility of using the statements submitted under the "Blue Card" procedure by victims who then exercise the right to refuse to testify).

The seventh chapter is devoted to coercive measures used against perpetrators of domestic violence, including the grounds for their ruling. The work describes the theoretical and practical basis for the use of such instruments in criminal cases involving domestic violence, such as: procedural detention under Article 244 § 1 of the Polish Code of Criminal Procedure (and also compared with orderly arrest under Article 15(1)(3) of the Police Act and administrative arrest under Article 40 of the Act of October 26, 1982 on upbringing in sobriety and counteracting alcoholism), pre-trial detention, ordinary Police supervision (Article 275 § 1 of the Polish Code of Criminal Procedure) and especially dedicated to perpetrators of domestic violence: conditional police supervision (Article 275 § 3 of the Polish Code of Criminal Procedure), an order for the accused to leave the premises occupied together with the victim and his closest surroundings, as well as a ban on approaching the victim for a specified period of time, distance (Article 275a of the Polish Code of Criminal Procedure).

Chapter eight discusses consensual and conciliatory methods of ending the proceedings, which are used relatively often in cases of domestic violence and are the subject of lively discussion in the literature. It is possible to conclude an agreement (settlement) both in court at a conciliation session - in cases of private prosecution (Article 489 § 1 of the Code of Criminal Procedure) and during mediation proceedings (Article 23a of the Code of Criminal Procedure) - both in preparatory and court proceedings. On the other hand, consensual procedures are provided for in Article 335 of the Polish Code of Criminal Procedure, 338a of the Polish Code of Criminal Procedure and 387 of the Polish Code of Criminal Procedure. This chapter discusses the premises as well as the positive and negative aspects of using these instruments in such specific proceedings as proceedings in cases of crimes classified as domestic violence.

Chapter nine concerns mechanisms for combating and preventing domestic violence in court proceedings. Such instruments include, among others: the possibility of the victim acting as an auxiliary prosecutor, the act of hearing the victim in court and conducting evidentiary proceedings in the remaining scope, as well as the obligation to notify the family court under Article 43c of Polish Penal Code. This chapter also discusses the criminal sanctions that may be imposed for the crime of abuse under Article 207 of Polish Penal Code and penal measures relevant from the point of view of combating domestic violence and protecting the victim, including a ban on conducting activities related to the upbringing, treatment, education of minors or taking care of them (Article 39 point 2a of the Penal Code), a ban on staying in specific environments or places, contacting specific persons, approaching specific persons or leaving a specific place of stay without the court's consent (Article 39 point 2b of the Polish Penal Code), an order to temporarily leave the premises occupied jointly with the victim (Article 39 point 2c of the Polish Penal Code). In addition, the issue of possibilities and grounds

for applying security measures to perpetrators who committed the crime from Article 207 of the Polish Penal Code was also analyzed.

One of the most frequently used instruments against perpetrators of domestic violence are the measures related to putting the perpetrator on probation, described in chapter ten of this work, i.e. conditional discontinuation of proceedings and conditional suspension of the execution of the sentence. Due to their conditionality, their goal is to encourage the perpetrator to behave in accordance with the law and to perform probation obligations imposed on him by the court, which are of a disciplinary nature and protect the victims against repeated harm. The work discusses in detail the duties most frequently applied or recommended for perpetrators of domestic violence.

A systemic approach to the problem of domestic violence requires influencing not only the victim, but also the perpetrator of the crime. It should be noted that victims, who are mainly members of the perpetrator's family, are most often interested not in punishing the perpetrator, but in changing his behavior and eliminating violence from their mutual relationships. A significant number of victims also decide to remain in a relationship with the perpetrator or continue their stay in common dwelling. Chapter eleven is devoted to corrective-educational and psychological-therapeutic activities for domestic violence perpetrators. Individual programs, their goals, effectiveness, strengths and weaknesses were characterized. The possibilities of influencing a convict serving a sentence of absolute imprisonment were also indicated. The prison system, as an important entity of state social policy, performs a number of tasks resulting from laws and national programs that are aimed at counteracting domestic violence and reducing the scale of this phenomenon in Poland. Working with convicts under Article 207 of the Polish Penal Code, should be focused on identifying, diagnosing and treating problems related to possible addiction, and then on correcting the behavior of convicts related to violence.

A probation officer plays an extremely important role in the system of counteracting domestic violence, which is why his tasks, competences and activities are described in a separate, twelfth chapter of this work. The probation officer not only checks the course of the probation period under supervision, but also whether the convict performs the duties imposed on him, supervises the performance of punitive measures, controls electronic surveillance and prepares community interviews, as well as submits applications initiating incidental proceedings. The role of the probation officer is to prevent the convict from committing a crime again, to influence the convict to obey the law, and to provide him with the necessary assistance in overcoming life difficulties.

Chapter thirteen describes the mechanisms for preventing and combating domestic violence in enforcement proceedings (i.e. ordering the execution of a suspended sentence, resuming conditionally discontinued proceedings, revoking conditional early release, notifying the victim of the convict's release from prison under Article 168a of the Polish Penal Code). In cases of domestic violence, one should not stop at imposing a punishment on the perpetrator. It is very important to respond to manifestations of negative, violent behavior of the convict during enforcement proceedings, as well as a flexible approach to the imposed obligations,

measures, punishment and supervision. This chapter also refers to the possibility of serving imprisonment under electronic surveillance in cases involving domestic violence.

The last chapter describes the file research that was carried out as part of this dissertation. A total of 100 cases of crime of abuse under Article 207 of Polish Penal Code concluded in 2017 or 2018 were examined. The research was conducted using a research tool in the form of a detailed, standardized survey questionnaire. Each case was analyzed in terms of the characteristics of the perpetrator and the victims, previous police interventions and the "Blue Card" procedure preceding the initiation of the criminal proceedings, and the course of preparatory, judicial and enforcement proceedings. The aim of the research was primarily to analyze whether law enforcement authorities and courts effectively use a wide range of criminal law measures to prevent and combat domestic violence, as well as how often and under what circumstances they use specific instruments. The aim was also to present the crime of abuse, the profile of the perpetrator and the victims in the judicial practice, as well as to determine whether the criminal law system for counteracting domestic violence has sufficient and appropriate instruments to combat domestic violence.

The work ends with a summary containing *de lege ferenda* conclusions and postulates. The dissertation also includes a bibliography, a list of tables and charts, as well as a sample of the research tool used.

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