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Counteracting Domestic Violence in The Polish Civil Procedure

Abstract

This publication is an analysis of Polish regulations concerning proceedings in cases for obligating the perpetrator of domestic violence to leave the jointly occupied residence and its immediate surroundings or prohibit approaching the residence and its immediate surroundings. These regulations are intended to ensure the protection of a person experiencing domestic violence on the basis of civil proceedings by introducing comprehensive solutions allowing for quick isolation of a person affected by violence from the person using violence, in situations where the latter poses a threat to the life or health of the household members. The implementation of the above goal is possible thanks to the introduction of, following the example of Austria, immediately enforceable isolation measures to protect victims of domestic violence, which are: an occupation order and a restraining order, and additionally ensuring the improvement of proceedings and curbing the phenomenon of prolonging pending proceedings in cases of separating a person suffering from violence from a person using such a form of abuse.

The author of this publication wants to show that effective counteracting domestic violence is also possible on the basis of civil proceedings, and not only through criminal proceedings.

The work uses the dogmatic-legal and comparative-law methods.

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Introduction

Domestic violence is a complex social problem with complicated psychological conditions, multiple causes and multifaceted consequences for all family members, requiring comprehensive legal regulation. Pursuant to Art. 2 point 2 of the Act on Counteracting Domestic Violence (The Act of July 29..., 2020), domestic violence shall be understood as a one-time or repeated intentional act or omission that violates the rights or personal rights of family members, in particular, exposing these people to the risk of losing life or health, violating their dignity, bodily inviolability, freedom, including sexual freedom, inflicting harm to their physical or mental health, as well as causing suffering and moral harm to people affected by violence (Mikołajczuk, 2020; Sasal, 2005; Spurek, 2013; Spurek, 2019; Ważny, 2015).

In order to counteract this negative phenomenon, on April 30, 2020, an amendment to the Act – Code of Civil Procedure and certain other acts was adopted (The Act of November 17..., 2021), which introduced institutional mechanisms for combating domestic violence into the Polish civil procedure. The aforementioned Act, which came into force on November 30, 2020, carrying the idea of full protection of a person experiencing domestic violence, introduced new legal instruments to the Polish civil procedure – isolation measures protecting victims of domestic violence from the perpetrators of this violence, which are: an occupation order requiring such a person to leave the jointly occupied flat and its immediate surroundings or an order prohibiting one from approaching the residence and its immediate surroundings. The aforementioned Act made it possible for the persons affected by violence to benefit from legal protection in situations where the perpetrator of violence poses a threat to the life or health of household members, not only through criminal proceedings, but also through civil proceedings, where the court, in the non-contentious mode of proceedings, may obligate the perpetrator of domestic violence to leave the jointly occupied residence and its immediate surroundings or prohibit approaching the residence and its immediate surroundings (Gil, 2021)².

Thanks to the introduction of new regulations to the Code of Civil Procedure, an additional form of protection for a person experiencing domestic violence was provided, which is implemented through the introduction of comprehensive solutions allowing for a quick isolation of a person affected by violence from the perpetrator, in situations where it poses a threat to the life or health of the household members, applying (see: The Act of July 29..., 2021, Art. 11a) isolation measures to protect victims of domestic violence³, as well as streamlining civil proceedings and limiting the phenomenon of prolonging pending proceedings in cases of separating a person suffering from violence from a perpetrator.

² More about isolation measures against a person using violence see: Spurek, 2009.

³ On the need for introducing such solutions: Nowakowska 2013; Spurek, 2013.

The purpose of the study is to analyse the introduced solutions and to answer the question of whether the introduced legal instruments are better than the formerly existing ones and whether they will serve more effective protection of a person experiencing domestic violence. First, new legal solutions and instruments for counteracting domestic violence used by the Police and Military Police were discussed. Then, the procedure of court proceedings against a person abusing domestic violence in a civil court, inspired by Austrian law in the field of counteracting domestic violence, is described. Finally, there was an attempt to answer the question posed about the effectiveness and efficiency of new solutions for people affected by domestic violence. The work uses the dogmatic-legal and comparative-law methods.

The use of isolation measures by the Police and Military Police against the perpetrator of domestic violence

Pursuant to the aforementioned Act, which came into force on November 30, 2020, uniformed services – the Police as well as the Military Police (in relation to a soldier on active military service) have the right to issue an order to a person using domestic violence, posing a threat to the life or health of the person affected by this violence to immediately leave the jointly occupied flat and its immediate surroundings or to issue a restraining order prohibiting such a person to approach the flat and its immediate surroundings. If the circumstances of a particular case justify it, the occupation order and restraining order may be applied together. A policeman or a soldier, when issuing an occupation order or restraining order against a person using violence, is obliged to indicate the area or distance from the jointly occupied flat, which the person using domestic violence will be obligated to keep. Importantly, a flat is understood as any premises that meet current housing needs (The Act of April 6..., 2020, Art. 15aa; The Act of August 24..., 2020, Art. 18a). An occupation or restraining order may be issued during an intervention undertaken in a jointly occupied flat or its immediate vicinity or in connection with obtaining information about the use of domestic violence, in particular, a notification by a person affected by violence or a probation officer, as well as an employee of an organisational social welfare unit (see: The Act of April 6..., 2020, Art. 15ab, para. 1; The Act of August 24..., 2020, Art. 18b, para. 1). Both the occupation order and restraining order are immediately enforceable (see: The Act of April 6..., 2020, Art. 15aa, para. 4; The Act of August 24..., 2020, Art. 18a, para. 4). A copy of the occupation or restraining order shall be served not only to the parties to the proceedings, but also to the public prosecutor, and the locally competent interdisciplinary team appointed by the head of the municipality, mayor or city president and the locally competent guardianship court shall be notified of its issuance – if minors reside in the home where domestic violence occurs. Then, the guardianship court immediately initiates ex officio protective proceedings in the scope of regulating the manner of providing care to the minors (see: Code of Civil Procedure, Art. 755, para. 1, point 4) and may additionally regulate the method of contact between the person using violence and the minors, including an order stipulating contact prohibition.

The person against whom an occupation or restraining order has been issued may bring a means of appeal – a complaint to the district court competent for the location of a jointly occupied household, examined pursuant to the provisions of the Code of Civil Procedure. The complaint shall be examined by the court immediately, no later than within three days from the date of its receipt by the court. If the court finds that the issued occupation or restraining order is unfounded or illegal, it will be revoked (see: The Act of April 6..., 2020, Art. 15aj, para. 1–3; The Act of August 24..., 2020, Art. 18j, para. 1–3).

An occupation or restraining order issued against a perpetrator of domestic violence is only temporary and expires after 14 days from the date of its issuance unless a civil court grants consent for its extension under protective proceedings. In addition, the adjudicated occupation or restraining order will cease to have an effect in a situation where the perpetrator of domestic violence is detained on suspicion of committing a crime or offence, and then a preventive measure in the form of temporary arrest or an order to temporarily leave the premises occupied jointly with the aggrieved party will be applied (see: The Act of April 6..., 2020, Art. 15ak, para. 1–2; The Act of August 24..., 2020, Art. 18k, para. 1–2). If a person affected by domestic violence wishes to maintain the applied measure of isolation, they should, within 14 days from the date of issuing the occupation or restraining order, initiate the procedure regulated in the provisions of Art. 560²–560¹² of the Code of Civil Procedure, namely, initiate proceedings in a case of obligating the perpetrator of domestic violence to leave the jointly occupied residence and its immediate surroundings or prohibit approaching the residence and its immediate surroundings.

Proceedings in cases for obligating the perpetrator of domestic violence to leave the jointly occupied residence and its immediate surroundings or prohibit approaching it

Proceedings against a person using violence (see: Code of Civil Procedure, Art. 560²–560¹²) are initiated at the request of the person entitled thereto – a person affected by domestic violence. A witness of the violence or any other person who has knowledge of the violence does not have the capacity to submit the application. The proceedings in question may also be conducted when the person affected by domestic violence left the shared accommodation before the initiation of the proceedings due to the use of violence against them in that household, but also when the person using violence left the shared accommodation, and even when the person using violence stays in the household with the person affected by the violence only periodically or irregularly (Pruś, 2021). In order to facilitate initiating the procedure, the applicant may submit an application for obligating the perpetrator of domestic violence to leave the jointly occupied residence and its immediate surroundings or prohibit approaching the residence and its immediate surroundings on an official form (see: Code of Civil Procedure, Art. 560³). The application submitted to the court may be preceded by the uniformed services issuing an order to immediately leave the shared accommodation and its immediate surroundings or a restraining order prohibiting one to approach the accommodation

and its immediate surroundings against the person whose behaviour poses a threat to the life or health of other people through the use of violence (see: The Act of April 6..., 2020, Art. 15aa–15ak; The Act of August 24..., 2020, Art. 18a–18k). In the interest of continued protection, a person affected by domestic violence has 14 days to initiate a court procedure for applying the indicated isolation measures.

These proceedings, due to their special character, should be conducted before the court with the participation of the prosecutor, who should be served court and procedural documents, in addition to being notified of the dates of the court hearing, which is obligatory due to the importance of the issues to be resolved by the court⁴.

Bearing in mind the efficiency of the proceedings, the ruling resolving the application should be made within one month from the date of receipt of the application by the court (Tomaszewska, 2020)⁵. In order to streamline the procedure and allow for adhering to the above-mentioned deadline, the court may serve correspondence through the Police and Military Police. Then, the deadline for service is seven days, without the necessity to issue two advice notes. Additionally, the uniformed services are obliged to determine each time whether the addressee lives at the specified address, if they are not found at the specified address during the delivery attempt. The Police or Military Police should then try to determine where the service should be provided and immediately forward this information to the court in order that further procedural decisions are taken. Moreover, in order to be able to meet the requirement for the speed of the proceedings, the Police and Military Police have been obliged to provide the court with all assistance necessary to conclude the pending proceedings as quickly as possible (Budniak-Rogala, 2021).

The application for an order obligating the perpetrator of domestic violence to leave the shared accommodation and its immediate surroundings or forbidding them to approach the accommodation and its immediate surroundings is submitted to the district court having jurisdiction over the applicant's place of residence, and if there is no place of residence – the court competent for their place of residence (see: Code of Civil Procedure, Art. 507; Code of Civil Procedure, Art. 508, para. 1; Woś, 2021). The participants of the proceedings are: the person affected by domestic violence and the person using domestic violence.

A ruling which grants the application for an order obligating the perpetrator of domestic violence to leave the jointly occupied residence and its immediate surroundings or prohibit approaching the residence and its immediate surroundings is effective and immediately enforceable, and may be amended or revoked in the event of a change in the circumstances, even if it is final. In this decision, the court indicates the area or distance from the shared accommodation that the perpetrator is obligated to keep. If, prior to the issuance of an order in this regard, the court granted a protective measure pursuant to Art. 755³–755⁵ of the Code of Civil Procedure, the decision concluding

⁴ More on the powers of the prosecutor in cases related to domestic violence: Mazowiecka, 2013.

⁵ Tomaszewska is critical about the indicated change, and concludes that the proposed date cannot be met, e.g. in a situation where it will be necessary to conduct hearing of evidence.

the proceedings also resolves the matter of the protective measure granted (see: Code of Civil Procedure, Art. 560⁷, para. 1–2; Code of Civil Procedure, Art. 560⁸).

A copy of the decision is delivered ex officio by the court to the participants of the proceedings, the prosecutor, the Police or the Military Police and the locally competent interdisciplinary team is notified, and if minors live in the apartment – also the competent guardianship court. The deadline for submitting a petition requesting the grounds for the decision begins from the date of its announcement, and not its service, which is a manifestation of realising the postulate of accelerating the proceedings in the discussed cases. The decision to obligate the perpetrator of domestic violence to leave the jointly occupied residence and its immediate surroundings or prohibit approaching the residence and its immediate surroundings, as to the merits of the case, may be appealed against.

In order to streamline the proceedings, there are also exceptional regulations concerning interinstitutional and appeal proceedings. If the submitted appeal contains formal defects in the form of the lack of its copies, the court shall prepare and deliver the copies ex officio. In addition, the deadline for submitting a response to the appeal is one week, and the court of second instance should resolve the case within one month from the date of presenting the case files by the court of first instance together with the appeal (see: Code of Civil Procedure, Art. Art. 560¹⁰–560¹²). A cassation appeal against the decision of the court of second instance obligating a family member to leave the apartment is inadmissible (Decision..., 2017).

Failure by the perpetrator of violence to comply with the ruling concerning the order to leave the jointly occupied apartment and its immediate surroundings will allow for conducting compulsory enforcement under the provisions of the Code of Civil Procedure on the enforcement of non-pecuniary benefits – the obligation to empty the premises serving the debtor's housing needs and Art. 17 of the Act on the Protection of Tenants' Rights (see: Code of Civil Procedure, Art. 1046; The Act of May 20..., 2020, Art. 17). Bearing in mind the grounds for the order to leave the place of residence (use of violence), the provisions on the right to social housing and the protection period from November to March, when, as a rule, eviction decisions are not enforced, do not apply to the execution of the court order (Wrona, 2020).

Moreover, in view of the need to ensure that court decisions are respected, a new type of offence has been added to the Code of Petty Offences. Failure to comply with a court ruling imposing an order on the perpetrator of domestic violence to leave the jointly occupied residence and its immediate surroundings or prohibit approaching the residence and its immediate surroundings (as well as failure to comply with the occupation order and restraining order of the Police or Military Police or a decision on protective measures) constitutes an offence punishable by imprisonment, restriction of liberty or a fine (Journal of Laws of 2021, item 281 as amended; see: The Act of May 20..., 2021. Art. 66b).

In order to facilitate exercising the envisioned legal protection, a person suffering from domestic violence is exempt from the obligation to bear court costs in the case of obligating the perpetrator of domestic violence to leave the jointly occupied residence and its immediate surroundings or prohibit approaching the residence and its

immediate surroundings (Journal of Laws of 2020, item 755 as amended; see: The Act of July 28..., 2020, Art. 96, para. 1, point 15).

Protective proceedings

The introduction of proceedings in cases for obligating the perpetrator of domestic violence to leave the jointly occupied residence and its immediate surroundings or prohibit approaching the residence and its immediate surroundings to the civil procedure, was also accompanied by the enactment of laws regulating protective proceedings in cases concerning the application of isolation of a domestic violence perpetrator. The same amendment added new regulations to the Code of Civil Procedure, thanks to which the court hearing a petition for obligating the perpetrator of domestic violence to leave the jointly occupied residence and its immediate surroundings or prohibit approaching the residence and its immediate surroundings will be able to provide protective measures for the duration of proceedings, not only on general principles – in accordance with the provisions on securing non-pecuniary claims (see: Code of Civil Procedure, Art. 755), but also apply a new measure – protection in the form of extending the validity of the order to leave the jointly occupied residence and its immediate surroundings or prohibit approaching the residence and its immediate surroundings, imposed previously by the Police or the Military Police, pursuant to Art. 15aa para. 1 of the Police Act and Art. 18a para. 1 of the Act on Military Police and Military Law Enforcement Bodies (Stefańska, 2021).

When issuing a decision extending the validity of an occupation order or restraining order, the court will also be authorised to change the area or distance from the place of residence indicated in the order or prohibition that the person using domestic violence was obliged to observe, thus adjusting the protection of the victim to the current situation. If the court does not rule on the area or distance from the place of residence in its decision, the provisions contained in the occupation order or restraining order issued by the Police or Military Police will remain in force in this respect. The execution of a temporary occupation order or restraining order is subject to control by uniformed services. In the decision on granting protective measures, the court determines the frequency with which the indicated services check whether the extended occupation order or restraining order is not infringed, and the court's decision determines the frequency of verification activities, which should be adjusted to the actual needs of a specific case (Justification..., 2020). In order to streamline and expedite the procedure, special regulations have been provided for in the case of supplementing any formal shortcomings in the documents submitted. If the application for protective measures or other pleadings have been submitted without a copy for the party, the court hearing the case shall not call the party to supplement these deficiencies but draws them up on its own and then serves them. In addition, in order to expedite the proceedings, the court may effect service through the intermediary of the Police or the Military Police, on the terms specified in the provisions governing the proceedings in cases for obligating the perpetrator of domestic violence to leave the jointly occupied residence and its immediate surroundings

or prohibit approaching the residence and its immediate surroundings. The court should notify the prosecutor about the initiation of protective proceedings and serve notices on the dates of meetings to them.

An application for a protective measure consisting in extending a previously imposed occupation order or restraining order shall be examined immediately, but not later than within three days from the date of its receipt by the court. Such a short period of time for examining the application for extending the period of the perpetrator's isolation results from the need to guarantee the right holder, i.e., a person affected by violence, the continuity of protection granted by the issued occupation order or restraining order. Bearing in mind that the protective proceedings are of temporary nature, it is obligatory to indicate the duration of the protective measure in the order by which the court extends the isolation measures applied (Gil, 2021). A copy of the decision on protective measures shall be immediately served by the court to the participants in the proceedings, as well as to the prosecutor and uniformed services. In addition, the locally competent interdisciplinary team and the locally competent guardianship court shall be notified of the order if minors reside in the household where the domestic violence occurs. The court, when issuing the final judgment in the case, is obliged in that final judgment also to resolve the matter of the protective measure granted to eliminate from legal transactions any potential possibility of the existence of two titles authorising enforcement (Justification..., 2020).

Apart from the possibility to provide a protective measure by extending the validity of isolation measures already applied by the Police or Military Police, the court has also the right to provide protective measures on general principles, in such a manner as it deems appropriate according to the circumstances (Julke, 2020), e.g. by issuing an order to immediately leave the flat by a person applying domestic violence or a restraining order in the absence of such an occupation order or restraining order issued by the Police or Military Police. Such an application for a protective measure shall be examined in accordance with the general rules. It should be done immediately, but no later than within one week from the date of its receipt by the court, as the special regulation provided for in Art. 755³–755⁵ Code of Civil Procedure cannot be applied in this case.

The decision on the matter of a protective measure is open to challenge through a complaint, which is examined by the court which issued the decision, composed of three judges (see: Code of Civil Procedure, Art. 741, para. 1–2).

Austrian law as an example of a model solution for counteracting domestic violence

The use of isolation measures against the perpetrator of domestic violence, consisting in an occupation order or restraining order, is not a Polish innovative regulation.

An occupation order or restraining order as a measure of isolation for perpetrators of domestic violence has been in force in Austria for 24 years now. The Law on Protection against Domestic Violence (de. *Gewaltschutzgesetz*) was adopted there

in November 1996 and has been in force since May 16, 1997. The law is based on the premise that domestic violence is not a private matter but a matter of public safety, and that the state bears responsibility for the use of violence against close relatives by the perpetrator. Based on this assumption, it was assumed that in order to counteract this negative phenomenon, the state should react decisively from the very beginning by demonstrating unconditional condemnation of the perpetrator. In the name of this idea, a principle was introduced whereby it is the perpetrator of violence who is obliged to leave the flat shared by the victim, and not the victim⁷.

A police order is issued *ex officio*, not at the request of the victim of violence, and is valid for 14 days, with the Police being obliged to check compliance with the measures at least once during the first three days⁸. In addition, the Police are obliged to inform the institution providing support to victims of domestic violence of the fact that an occupation order has been issued within 24 hours. The period of isolation may be extended by the court at the request of the person affected by the violence. The court may issue an occupation order requiring such a person to leave the flat and its immediate surroundings, prohibiting them from staying in certain places and meeting household members, as well as contacting a given person, even by phone. The court's orders are of a temporary character and are valid for three months with the possibility of their extension, provided that an application for divorce or division of the estate is submitted to the court before the expiry of the three-month period, and in the case of cohabitation – a request for an eviction order or for the premises to be allocated to sole use. In the event of initiating these proceedings, the occupation order or restraining order shall remain in force until their legitimate expiry (Justification..., 2020; Spurek, 2008).

The issuance of appropriate orders or prohibitions by the court is not dependent on the prior issuance of an occupation order or restraining order by the Police but may be a consequence thereof. Similar regulations are in force in Spain, the Czech Republic, Denmark and Bulgaria (Justification..., 2020). For these countries, just like for Poland, the Austrian regulations were an inspiration to create institutional mechanisms to combat domestic violence.

Conclusions

Proceedings against a person using domestic violence, regulated in the provisions of the Code of Civil Procedure (Art. 560²–560¹²; Art. 755²–755⁴), in the current formula, should be assessed positively. Until 30 November 2020, in the civil procedure, proceedings for obligating a perpetrator of domestic violence to leave the flat were carried out on the basis of the general provisions on non-contentious proceedings, which, however, did not provide sufficient protection to a person who suffered from violence, in a situation where no criminal proceedings were pending in relation to

⁶ See more: Haller, 2021; EUCPN, 2013; Pelikan et al., 2004.

⁷ See more: Spurek, 2013.

⁸ See more: Logar & Niemi, 2017.

domestic violence. The civil court did not possess appropriate instruments – measures to isolate the victim from the perpetrator of violence quickly and efficiently.

The procedure in question is of comprehensive character and implements Art. 52 of the Convention of the Council of Europe (2015) on preventing and combating violence against women and domestic violence, which obligates the parties of the Convention to create national legal solutions aimed “to order, in situations of immediate danger, a perpetrator of domestic violence to vacate the residence of the victim or person at risk for a sufficient period of time and to prohibit the perpetrator from entering the residence of or contacting the victim or person at risk. Measures taken pursuant to this article shall give priority to the safety of victims or persons at risk” (Convention..., 2015)⁹. The convention was signed by Poland on December 18, 2012.

Numerous instruments have been introduced into the Polish legal system enabling effective protection in the field of domestic violence through the possibility of taking quick and efficient actions leading to the isolation of a person affected by violence from the person using violence in situations where their life and health are at risk. These changes include not only separate non-contentious proceedings, in which the court may obligate the perpetrator of domestic violence to leave the jointly occupied residence and its immediate surroundings or prohibit approaching the residence and its immediate surroundings, but also introduce solutions enabling the court to issue decisions on the extension of an occupation order requiring such a person to leave the jointly occupied residence and its immediate surroundings or prohibiting them from approaching the residence and its immediate surroundings, previously imposed by uniformed services – the Police or the Military Police.

The introduced solutions will certainly contribute to more effective protection and real improvement in the situation of people affected by domestic violence, who, for various reasons, do not decide to initiate criminal proceedings against the perpetrator of domestic violence. Therefore, they should be assessed positively. These are solutions aimed at streamlining proceedings in the matter of obligating the perpetrator of domestic violence to leave the jointly occupied residence and its immediate surroundings or prohibit approaching the residence and its immediate surroundings, while ensuring adequate legal protection for a person suffering domestic violence.

Finally, it was understood that the overriding goal should be to efficiently isolate the victim of violence from the perpetrator, as it is the application of immediate isolation of the perpetrator which is the most effective means of protecting the victim of domestic violence. Similar regulations have been in force for many years in the laws of other countries, i.e., Austria, Spain, the Czech Republic, Denmark and Bulgaria.

⁹ See more: Lewoc, 2015; Olszewska, 2016.

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