



COMMISSIONER FOR HUMAN RIGHTS

SUBMISSION OF THE COMMISSIONER FOR HUMAN RIGHTS OF THE
REPUBLIC OF POLAND
TO THE GROUP OF EXPERTS ON ACTION AGAINST VIOLENCE AGAINST
WOMEN AND DOMESTIC VIOLENCE
ON THE IMPLEMENTATION OF THE COUNCIL OF EUROPE CONVENTION
ON PREVENTING AND COMBATING VIOLENCE AGAINST WOMEN AND
DOMESTIC VIOLENCE IN THE REPUBLIC OF POLAND

For any questions concerning submission please contact:
Agata Szypulska at: agata.szypulska@brpo.gov.pl



Table of contents

Information about Commissioner for Human Rights of the Republic of Poland.....	4
Chapter I – Purposes, definitions, equality and non-discrimination, general obligations.....	5
Chapter II – Integrated policies and data collection.....	9
A. State bodies assigned with tasks to prevent violence and domestic violence (Articles 7, 10, 18 of the Convention).....	9
B. Comprehensive and co-ordinated policies of combating violence and domestic violence (Articles 4, 7, 12, 18 of the Convention).....	12
C. Financial resources for the implementation of the policy of preventing violence and domestic violence (Article 8 of the Convention)	16
D. Cooperation with non-governmental organizations and civil society (Article 9 of the Convention).....	17
E. Data collection and analysis (Article 11 of the Convention).....	20
F. Research on domestic violence (Article 11 of the Convention).....	22
Chapter III – Prevention.....	24
A. Awareness-raising (Articles 12 and 13 of the Convention)	24
B. Education (Article 14 of the Convention)	26
C. Media (Article 17 of the Convention)	28
Chapter IV – Protection and support.....	30
A. Access to information about support system (Article 13 of the Convention)	30
C. General support services and legal aid (Articles 20 and 57 of the Convention).....	31
D. Specialist support services, shelters and support for victims of sexual violence (Articles 22, 23, 25 of the Convention).....	32
F. Preventive intervention and treatment programmes (Article 16 of the Convention)	36
H. Training of professionals dealing with violence and domestic violence (Article 15).....	38
Chapter V – Substantive law.....	40
B. Custody, visitation rights and safety and other measures provided by family law (Article 31 of the Convention).....	40
C. Criminal law (Articles 33-41 of the Convention).....	42
F. Prohibition of mandatory alternative dispute resolution processes or sentencing (Article 48 of the Convention).....	45
Chapter VI – Investigation, prosecution, procedural law and protective measures	45



COMMISSIONER FOR HUMAN RIGHTS

B. Immediate response, prevention and protection, risk assessment and risk management (Articles 18, 49, 50, 51 of the Convention).....	45
C. Emergency barring orders, restrain and protection orders (Articles 52, 53 of the Convention).....	46
D. Investigations and evidence, measures of protection (Articles 54 and 56 of the Convention) 47	
E. <i>Ex parte</i> and <i>ex officio</i> proceedings (Article 55 of the Convention)	48
Chapter VII – Migration and asylum.....	49
B. Gender-based asylum claims (Article 60 of the Convention)	49



COMMISSIONER FOR HUMAN RIGHTS

Information about Commissioner for Human Rights of the Republic of Poland

The Commissioner for Human Rights of the Republic of Poland (Commissioner) is a constitutional body appointed to protect and supervise the observance of human and civil rights. The Commissioner's role is performed independently of other public authorities. The powers of the Commissioner are set out in the Constitution of the Republic of Poland as well as in the Act of 15 July 1987 on the Commissioner for Human Rights. The Commissioner is appointed by the Sejm (lower chamber of the Parliament) with the approval of the Senate (higher chamber of the Parliament) for a 5-year term of office. The Commissioner is a National Human Rights Institution (NHRI/Ombudsman) with the "A status".

The Commissioner also implements the duties of Poland's National Mechanism for the Prevention of Torture (visiting body for the prevention of torture and other cruel, inhuman or degrading treatment or punishment) and independent monitoring body for the Convention on the rights of persons with disabilities (CRPD), pursuant to Article 33 (2) of CRPD.

The Commissioner, furthermore, holds the function of an independent equality body supervising the implementation of the principle of equal treatment, including counteracting discrimination on the grounds of gender. The Commissioner's main duties in this area include the reviewing of individual complaints regarding violation of the principle of equal treatment.

The Commissioner also performs the following tasks:

- analysing, monitoring and supporting equal treatment of all persons;
- conducting independent research on discrimination;
- developing and issuing independent reports and issuing recommendations concerning discrimination-related issues;
- submitting annual reports to the Parliament on the Commissioner's activities in the field of equal treatment, the results thereof as well as the state of observance of the principle of equal treatment.



COMMISSIONER FOR HUMAN RIGHTS

Chapter I – Purposes, definitions, equality and non-discrimination, general obligations

1. The Commissioner for Human Rights is grateful for the opportunity to present his comments on the implementation of the Council of Europe Convention on preventing and combating violence against women and domestic violence¹, pursuant to Article 68 (5) thereof. The Commissioner's comments and postulates included herein have been formulated based on complaints submitted to the Office of the Commissioner for Human Rights, Commissioner's general letters of intervention addressed to relevant public bodies² as well as information acquired during Commissioner's direct meetings with individuals or representatives of various non-governmental organizations. The Commissioner refers to the information presented in a Report of the Government of the Republic of Poland submitted to the Secretary General of the Council of Europe.
2. The Commissioner notes that discrimination on the grounds of gender is prohibited by the Constitution of the Republic of Poland. Article 32 states that everyone is equal before the law and has the right to equal treatment by public authorities. No one may be discriminated against in political, social or economic life for any reason whatsoever. Article 33 of the Constitution provides that men and women have equal rights in family, political, social and economic life.
3. Two main legal acts providing for protective measures against discrimination in Poland are: Labour Code³ and the Act on Equal Treatment⁴. The Labour Code provides for protection against discrimination on the grounds of gender and other grounds in the areas of: establishing and terminating employment relationships, employment conditions, promotion at work and access to training for the purpose of raising professional qualifications. Employees who have been discriminated against in the aforementioned areas have the right to sue for compensation for

¹ Council of Europe Convention on preventing and combating violence against women and domestic violence, adopted in Istanbul on 11 May 2011, Journal of Laws (Dz.U.) of 2015, item 961 (further herein also referred to as the Istanbul Convention or the Convention).

² The Commissioner may notify the authorities of systemic problems identified based on the examined cases. The problems may relate to faults in legislation, to its non-adjustment to changing social conditions, or to solutions proposed by the authorities. The Commissioner's letters by way of which such problems are notified are called general letters of intervention. They are based on in-depth legal analyses that contain references to constitutional and international norms. Representatives of the authorities are required to reply to such general letters of intervention but do not have to seek implementation of the presented postulates.

³ Labour Code Act of 26 June 1974, Dz.U. of 2019, item 1040, consolidated version.

⁴ Act of 3 December 2010 implementing certain provisions of the European Union in the scope of equal treatment, Journal of Laws of 2016, item 1219, as amended (further herein also referred to as the Act on Equal Treatment).



COMMISSIONER FOR HUMAN RIGHTS

material as well as non-material damage; moreover, case law has established the requirement that compensation for such damage should be “effective, proportional and deterring”, in line with the EU law.

4. The Act on Equal Treatment, however, establishes different levels of protection in various areas on different grounds, i.e. gender, race, ethnic origin, nationality, religion, denomination, belief, disability, age and sexual orientation. Women who have experienced discrimination enjoy only limited protection under the Act, i.e. only in areas such as access to vocational training; employment and performance of business or professional activity; activities in trade unions, employers’ organizations or governing bodies of professional organizations; access to and conditions of use of labour market instruments and services; social security; access to services, including residential services, objects and procurement of rights and energy, provided they are publicly offered. However, the Act on Equal Treatment does not guarantee women legal protection against discrimination in the areas of health care or access to education and higher education. The Act states that everyone whose right to equal treatment has been violated is entitled to compensation. However, the damages awarded by the court only compensate the claimant for material damage. Yet, in the vast majority of cases of equal treatment violations, it is not primarily the victim’s property rights that are subject to protection, but the person’s dignity. Thus, if the victim of discrimination has not suffered a material damage, he/she should nonetheless be entitled to pursue compensation in line with the principles specified in the Act, though this issue is currently controversial. The practical applicability of the provisions of the Act on Equal Treatment is insignificant. The Commissioner is aware of only one case in which a claim for compensation was based on discrimination on the grounds of gender. The number of court cases concerning violation of the principle of equal treatment is far out of proportion to the scale of discrimination in Poland.
5. The problem of low awareness of gender-based discrimination was sufficiently reflected in three surveys conducted by the Commissioner in recent years. The surveys confirmed that discrimination on the grounds of gender, including unequal treatment of women, is a phenomenon almost invisible to Poles of both genders, and that women do not identify themselves as victims of discrimination. The latest survey⁵ reveals that 27% consider themselves to belong to a group subject to discrimination. However, despite substantial differences in social and economic status, women feel exposed to gender-based discrimination only slightly more

⁵ Report for the Commissioner for Human Rights, *Świadomość prawna w kontekście równego traktowania 2018*, [Legal Awareness in the Context of Equal Treatment 2018] compiled by Kantar Public.



COMMISSIONER FOR HUMAN RIGHTS

often than men do (5% vs. 3%). This indicates women's low awareness in this area, and confirms that **discrimination on the grounds of gender is so deeply rooted in women's everyday lives that it is essentially imperceptible to them**. At the same time, only 17% of the respondents who admitted to experience discrimination in the past year decided to report it to any public institution. When asked why they did not report instances of discrimination, the respondents mainly gave the following answers: reporting discrimination doesn't change anything (44%), don't know/hard to say (22%), and it was not a serious matter (13%). The results appear to confirm that discrimination is not taken seriously in Poland, and that its victims have seemingly "reconciled" themselves to this fact. These attitudes explain the paucity of complaints on violations of women's rights, submitted to the Commissioner.

6. In respect of gender-based violence, the Commissioner underlines that the entry into force of the Council of Europe Convention on preventing and combating violence against women and domestic violence on 1 August 2015 was **a milestone** in ensuring that women and girls suffering from gender-based violence in Poland have their fundamental human rights and freedoms protected. The Commissioner appreciates the determination of all people, organizations and institutions whose common efforts resulted in the Convention being signed and then ratified by Poland.
7. **The Commissioner points to the fact that ensuring actual implementation of the rights guaranteed by the Istanbul Convention has been a problem not only due to imperfect legal and institutional measures, insufficient funds dedicated to implementing certain actions, but also due to lack of necessary determination and awareness of the decision makers.**
8. Firstly, the Commissioner points out that the main piece of legislation concerning gender-based violence focuses mostly on the issue of intimate partner violence. Article 2 (2) of Domestic Violence Prevention Act⁶ provides for a **definition of „domestic violence”** which is **not coherent with the definition** of this phenomenon included in **Article 3 (b) of the Istanbul Convention**. The definition provided by the Polish law does not cover all the types of violence suffered by victims, regardless of whether the violence takes place between former or current spouses or partners, and regardless of whether a perpetrator and a victim share accommodation.

⁶ Domestic Violence Prevention Act of 29 July 2005, Journal of Laws of 2020, item 218, consolidated version (further herein also referred to as Violence Prevention Act or the Act).



COMMISSIONER FOR HUMAN RIGHTS

9. Domestic Violence Prevention Act defines domestic violence as „one-off or repeated deliberate action or omission which violates personal rights of a »family member«, in particular putting the person’s life or health at risk, violation of dignity, physical integrity, freedom, including sexual freedom, which cause physical or emotional harm or which result in suffering and moral harm. According to the Act, the definition of „family member” covers only a list of individuals included in Article 115 § 11 of Penal Code Act of 6 June 1997⁷, i.e. spouses, ascendants, descendants, siblings, relatives of the same line or degree, an adopted person and his/her spouse, a conjugal partner as well as a cohabitant.
10. The Commissioner points out that the **Act does not provide for protection against instances of economic violence and offers no support to victims who experience violence by former partners or husbands with whom the victims do not cohabitate or do not run a conjugal home.** Although the argument of the definition being incoherent with the Istanbul Convention has been pointed out as early as at the stage of the Convention ratification, the required changes have not been made.
11. Meanwhile, despite an obvious need to redefine domestic violence, in December 2019 the Ministry of Family, Labour and Social Policy attempted to modify the definition by striking out the word „one-off”. Adoption of that proposal would mean that domestic violence involves only „repeated deliberate action or omission which violates personal rights”⁸. Finally the government gave up work on the proposal.
12. The Commissioner also highlights that the National Programme for Domestic Violence Prevention 2014-2020⁹ is limited in its scope. There are no other action plans adopted by public authorities that would address the problem of violence in a systemic way. Moreover, the **situation of groups particularly exposed to discrimination and violence** in private and public sphere – namely women with

⁷ Penal Code Act of 6 June 1997, Journal of Laws of 2019, item 1950 and 2128 (further herein also referred to as Penal Code).

⁸ Letter of intervention of the Commissioner for Human Rights to the Prime Minister concerning a proposal of 28 January 2019, XI.518.1.2019.

⁹ Polish: Krajowy Program Przeciwdziałania Przemocy w Rodzinie na lata 2014-2020.



COMMISSIONER FOR HUMAN RIGHTS

disabilities¹⁰, elderly women¹¹ and migrant women¹² – **is not taken sufficiently account of in the law and practical implementation thereof.** Nor even in the Program mentioned above specific solutions have been included to support these mostly vulnerable persons.

Recommendations:

- I. To develop a comprehensive strategy of preventing gender-based violence so that it covers all the manifestations thereof in public and private sphere and to take account of a specific situation of various groups (women with disabilities, elderly women and migrant women).**
- II. To intensify educational actions in order to increase social awareness in the scope of identifying and preventing violence against women as a form of gender-based violence.**
- III. To include such a definition of domestic violence to the Domestic Violence Prevention Act, which will be corresponding in all aspects to the definition provided in Article 3 (b) of the Istanbul Convention.**

Chapter II – Integrated policies and data collection

A. State bodies assigned with tasks to prevent violence and domestic violence (Articles 7, 10, 18 of the Convention)

13. Pursuant to Article 6 (1) of Domestic Violence Prevention Act, the tasks of preventing domestic violence are implemented by central as well as local government administration bodies. Such a solution is coherent with the rule of dualistic public administration system.

¹⁰ See: Committee on the Rights of Persons with Disabilities Concluding observations on the initial report of Poland of 29 October 2018, CRPD/C/POL/CO/1, points 9-10; available online: https://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=4&DocTypeID=5. The Committee pointed out that comments concerning the situation of women with disabilities, including in the scope of preventing violence towards that group, should be addressed urgently by the state (see Section 57).

¹¹ See: still valid report of the CHR *Przeciwdziałanie przemocy wobec kobiet, w tym kobiet starszych i kobiet z niepełnosprawnościami. Analiza i zalecenia*, [Preventing violence against woman, elderly women and disable women. Analysis and recommendations] Warsaw 2013; accessed in digital format: https://www.rpo.gov.pl/sites/default/files/Biuletyn_Rzecznika_Praw_Obywatelskich_2013_Nr_7.pdf

¹² See: *Bezpieczny dom? Przemoc fizyczna i symboliczna wobec uchodźczyń i uchodźców*, red. W. Klaus, Warszawa 2014; [Secure home? Physical violence and symbolic power towards female and male migrants] W. Klaus, *Przemoc ze strony najbliższych w doświadczeniach życiowych uchodźczyń. Analiza kryminologiczna*, [Violence experienced by female migrants from their dearest. Criminological Analysis] Warszawa 2017.



COMMISSIONER FOR HUMAN RIGHTS

14. From the perspective of rights and needs of persons experiencing domestic violence, particularly important tasks are vested with the administrations of municipalities, counties and provinces which are responsible for developing local strategies of preventing domestic violence (conf. municipal/county/provincial programme of preventing domestic violence). According to the Commissioner, developing such local strategies should be based on a reliable identification of the prevalence of the violation phenomenon in a given region. It is necessary that a local strategy be developed with the participation of inhabitants, NGOs and that it takes account of the context and specific character of a given community. According to the Commissioner, only in this way will they address effectively the needs of inhabitants of a given area, while reinforcing within the community the responsibility for observing the law, principles and social norms and increasing awareness of domestic violence phenomenon.
15. According to the data available, **a number of local government bodies in Poland have not taken any actions towards identifying the extent of domestic violence problem within their areas:** out of 2,478 municipalities, 314 counties and 66 towns with county rights¹³, in 2017 only 683 municipalities and 132 counties had their domestic violence identification reports compiled. The situation did not improve much in 2018 (781 municipalities and 118 counties made investigations to identify the extent of the problem)¹⁴. Such a low number of problem identification reports point to the fact that a lot of local government bodies plan their actions randomly, without actually being aware of how much action is needed in their areas.
16. Although developing a local strategy for violence prevention is a mandatory task of the local authorities, **it has not been developed in each county and in each municipality yet.** In 2018, such strategies were developed in 2344 out of 2478 municipalities, in 313 out of 314 counties and 66 towns with county rights¹⁵. The Commissioner welcomes the fact that the number of municipal strategies for violence prevention in 2018 is higher as compared to 2017 (17 programmes more), it is necessary, however, that such a programme is in place in each local administration unit.
17. The Commissioner wishes to invoke the town of Zakopane as an example of causes and effects of a lack of mandatory municipal programme of domestic violence prevention. In November 2019 the Municipal Council refused to adopt a relevant

¹³ The number of local government units as at 2020-01-01, information provided by TERYT – TERC CIS database, Office in Łódź, <http://eteryt.stat.gov.pl/eteryt/raporty/WebRaportZestawienie.aspx>

¹⁴ Report on the implementation of the National Programme for Domestic Violence Prevention 2014-2020 for the period 1 January - 31 December 2018, p. 6.

¹⁵ *Op.cit.*, p. 36.



COMMISSIONER FOR HUMAN RIGHTS

programme for the eleventh time. As a consequence, individuals who experience domestic violence are deprived of comprehensive support and in case of a threat to their lives or health they are forced to look for support in neighbouring municipalities. Despite i.a. Human Rights Commissioner's intervention, the situation in Zakopane municipality has not changed for 10 years¹⁶.

18. The case of Zakopane municipality and other municipalities which have not adopted a local programme for domestic violence prevention **questions the effectiveness of central government supervision over municipalities** which refuse to execute statutory tasks related to violence prevention. In 2019, the Commissioner was ensured by the Governor of Małopolska Province that should Zakopane municipality not adopt the programme, he would consider a dissolution of the Municipality Council or introduction of a central government-appointed receiver¹⁷. Despite that declaration none of the actions, referred to above, has been taken. The Commissioner indicates that the Province Governor's failure to take action could be influenced by a statement of Prime Minister Beata Szydło who, during a visit to Zakopane, approved of the Council's decision (see Section 28).
19. The Commissioner wishes to point out that **the quality of local programmes is quite diverse**. According to an analysis carried out by NGOs¹⁸, the programmes often do not include definitions of particular types of violence or lack an analysis of specific nature of situation and support to the persons with disabilities, the older persons or migrants, or lack quantitative data broken down to gender categories. They rarely include information concerning roots of violence against women. They most frequently do not address the problem of prejudice against women, including those originating from various minority groups. Nor the problem of social permission to male aggression, or domestic violence as a form of gender-based discrimination. Thus, it is justified to conduct evaluations of local strategies of domestic violence prevention on a nationwide scale. According to the Commissioner, this task should be carried out by the Ministry of Family, Labour and Social Policy.
20. The task of coordinating actions carried out by institutions responsible for implementation, monitoring and evaluation of policies and actions aimed at

¹⁶ Letter of intervention of Human Rights Commissioner to the Minister of Family, Labour and Social Policy of 18 April 2019, XI.816.1.2015.AS; Letter of intervention of Human Rights Commissioner to the Governor of Małopolska Province on Zakopane's failure to implement Domestic Violence Prevention Act of 16 October 2019, Ref. XI.816.1.2015.

¹⁷ Response of the Governor of Małopolska Province of 12 November 2019. Ref: WP-X.9452.16.2019.

¹⁸ [Local programmes for domestic violence prevention and gender perspective] Lokalne programy przeciwdziałania przemocy w rodzinie a perspektywa płci. Report. Model Programme. Feminoteka Foundation, Warsaw 2016.



COMMISSIONER FOR HUMAN RIGHTS

prevention and combat of all form of violence has been vested with the Minister of Family, Labour and Social Policy. The Minister is supported by a team of advisors called a Monitoring Task Force for Domestic Violence Prevention, whose task is i.a. to initiate and support actions aimed at domestic violence prevention. A limited scope of the Task Force's competence results from the limited scope of programmed actions against violence which are vested with public administration. The fact that the Task Force does not include a representative of the Minister of Justice who is responsible for the area which regulates a number of key issues for ensuring effective implementation of the Istanbul Convention and Domestic Violence Prevention Act, is quite striking. Moreover, **the effectiveness of the Task Force and the National Coordinator** (the Minister of Family, Labour and Social Policy) in preparing new measures in this respect **is impaired significantly** by the currently applicable timetable of works – the last meeting of the Task Force was held in December 2019.

Recommendations:

- IV. To ensure that each local government unit has identified current needs for action against domestic violence, has got a relevant report on the matter and has been implementing a municipal/country/provincial programme of domestic violence prevention.***
- V. To strengthen Province Governor's supervision over local governments' actions aimed to prevent domestic violence.***
- VI. To evaluate and assess the contents and effectiveness of local programmes for domestic violence prevention.***
- VII. To improve institutional collaboration by means of developing coordination and monitoring of efficiency in the implementation of measures intended to prevent domestic violence.***

B. Comprehensive and co-ordinated policies of combating violence and domestic violence (Articles 4, 7, 12, 18 of the Convention)

21. The Commissioner points out that, pursuant to Article 10(1) of Domestic Violence Prevention Act, the development of assumptions for the policy of combating domestic violence is chiefly the task of the Council of Ministers whose statutory duty is to develop a National Programme for Domestic Violence Prevention. The chief goal of the National Programme for Domestic Violence Prevention is to create the environment for effective prevention of domestic violence.



COMMISSIONER FOR HUMAN RIGHTS

22. The Commissioner notes with concern that despite an approaching expiry deadline for the current National Programme for Domestic Violence Prevention 2014-2020¹⁹, its continuation for the subsequent years, i.e. the period 2021-2028 has not been presented yet. The Commissioner points out that the National Programme for Domestic Violence Prevention 2014-2020 was adopted by the Council of Ministers with delay, i.e. in April 2014, and it entered into force only in June 2014. While remembering the above, the Commissioner hopes that works on the Programme continuation will be completed and approved forthwith. The Programme should enter into force as of 1 January 2021 to ensure a fluent continuation of actions in this area. It is also necessary for the draft Programme to be subject to broad social consultation.
23. The Commissioner points out that since the entry into force of the Convention, the need to prevent violence against women and domestic violence, as well as the need to implement the Istanbul Convention have been openly challenged by public authorities. **The Commissioner is gravely concerned about statements to withdraw from the Istanbul Convention, which have been heard repeatedly since 2015.**
24. As a result of media reports on the government's actions aimed at withdrawal from the Istanbul Convention, the Commissioner applied to the Government's Plenipotentiary for Civic Society and Equal Treatment²⁰ for information whether it is really true that works aimed at withdrawing Poland from the Convention are being conducted within the government. The Plenipotentiary responded²¹ that on 28 November 2016 a draft motion for withdrawal from the Convention, together with grounds, came to the Office of the Plenipotentiary, the Ministry of Justice being the leading force behind the draft. However, the works aimed at withdrawing from the Convention have not been included in the 2016 Plan of Legislative Works of the Council of Ministers.
25. Thus, the Commissioner approached the Minister of Justice²² with a request to be sent a copy of the draft motion for withdrawal from the Istanbul Convention, together with grounds, and all the other relevant documentation, and to be

¹⁹ Resolution no 76 of the Council of Ministers of 29 April 2014 establishing the National Programme for Domestic Violence Prevention 2014–2020.

²⁰ A letter of Commissioner for Human Rights to the Government Plenipotentiary for Civic Society and Equal Treatment of 9 December 2016, concerning withdrawal from the Istanbul Convention, Ref. XI.816.1.2015.

²¹ Response of the Government Plenipotentiary for Civic Society and Equal Treatment of 23 December 2016, Ref. XI.816.1.2015.

²² A letter of Commissioner for Human Rights to the Minister of Justice of 9 January 2017 concerning withdrawal from Istanbul Convention, Ref. XI.816.1.2015.



COMMISSIONER FOR HUMAN RIGHTS

informed about an expected timetable of works. In his response²³, the Minister of Justice admitted that at the end of November 2016 he had sent an initial draft of a motion for withdrawal from the Convention for the purpose of inter-ministerial consultations. At the first stage a need arose for the grounds to be modified significantly and to obtain the opinion of the EU bodies. Thus, a decision was made then to suspend works on the final draft motion and grounds thereof, and as a consequence, on the withdrawal of the Istanbul Convention.

26. Moreover, the Commissioner wishes to invoke statements by representatives of highest state institutions which undermine the authority of the Istanbul Convention and the need to implement the standards resulting from the Convention.
27. In February 2017, President Andrzej Duda said in an interview for the Polish Television, that from the very beginning he had not agreed with the assumptions of that document. He said: *„I pointed out that our existing regulations concerning violence are very efficient and they work fine, and are enforced. Adopting additional regulations is unnecessary as our Polish regulations work fine. Thus, we do not need to make any additional commitments.”*. When asked about any constraint to withdraw from the Convention he said: *“You should ask the government representatives about the constraints. If you ask me: first, do not apply”*²⁴.
28. On 13 May 2018 while in Zakopane, Prime Minister Beata Szydło was addressing the City Council referring to the fact that the Council repeatedly refused to adopt a local programme for domestic violence prevention (see Sections 16-17). The Prime Minister approved of their decision saying: *„First of all, I must congratulate you on how brave you are, as you are the only one local authority in Poland which objected. But highlanders are known for their bravery”*²⁵.
29. Declarations of seeking to withdraw from the Istanbul Convention have also recently been repeated. In his public statement made on 13 May 2020, Vice-Minister of Justice Marcin Romanowski criticized the Convention: *“The Istanbul Convention describes religion as a cause of violence against women. We want to withdraw from that queer gobbledygook ratified by Civic Platform and Polish Peasants’ Party. External opinion is of no interest to us. What we favour is an*

²³ Response of the Minister of Justice of 13 February 2017, Ref. DWMPC - III - 053 - 1/17/2/3.

²⁴ Material described i.a. by Oko.Press website in the article titled: Duda about the Istanbul Convention: „first, do not apply”. Polish regulations are „very good”; <https://oko.press/duda-trzeba-stosowac-konwentyprzemocowej-polskie-prawo-dobre/>

²⁵ Material described i.a. by Wyborcza.pl website in the article titled. Government violence against women and domestic violence. So act Szydło, Ziobro and Duda; <https://wyborcza.pl/7,75968,24327738,przemoc-rzadowa-wobec-przemocy-domowej-tak-dzialaja-szydlo.html>



COMMISSIONER FOR HUMAN RIGHTS

*independent national state*²⁶. In a statement submitted to Tok FM Radio the Ministry of Justice denied that the Deputy Minister's opinion is an official opinion of the Polish government. The statement drawn by the Ministry of Justice's Press Team says that *"The opinion expressed by Deputy Minister Marcin Romanowski is not the opinion of the Polish government, it is a political declaration of United Poland (a political party), which since the very beginning has been against Istanbul Convention ratification and has still been promoting withdrawal from the Convention. United Poland regards the Convention to be a political and ideological manifesto promoting harmful values for Poland and Polish society rather than a support measure (...). In its ideological layer the Convention is a feminist manifesto characterized by Marxist and leftist features, in which roots of violence have been identified wrongly. In our opinion, those roots are not gender-based, but they are related with alcoholism, drug abuse or gambling. Real actions, not ideology – that is what is important for us "*.

30. **The Commissioner is very much concerned with the above described actions of central government officials, as in his opinion they point to a lack of understanding of what violence against women and domestic violence are about, and they are a manifestation of disrespect to those who have been harmed because of violence. The Commissioner calls for a stop to undermining the authority of the Convention and urges to give up any actions aimed at withdrawal.**

Recommendations:

- VIII. To evaluate National Programme for Domestic Violence Prevention 2014-2020 and to publish the evaluation results. To consult the assumption for the continuation of the Programme with the stakeholders and social organizations.***
- IX. To complete on time the works on the National Programme for Domestic Violence Prevention [2021-2028] in order to ensure the highest possible standard of protection and support to people experiencing domestic violence and to fully implement the Istanbul Convention.***

C. Financial resources for the implementation of the policy of preventing violence and domestic violence (Article 8 of the Convention)

31. A major role in providing professional support to victims of violence is played by non-governmental organizations. However, in recent years NGOs operating for the

²⁶ A tweet publicized by media.



COMMISSIONER FOR HUMAN RIGHTS

sake of women and violence prevention have been reporting problems with obtaining public funds for carrying out their operations, which funds are normally obtained from the Help for the Disadvantaged Fund and Post-Penitentiary Support Fund.

32. The Commissioner draws attention to the fact that in recent years funds have been refused to the NGOs which have for many years been involved in providing a broad-ranged and comprehensive support for female victims of violence. In response to the Commissioner's letter of intervention²⁷ the Ministry of Justice justified the refusal of a targeted subsidy to the Centre for Women's Rights and Lubuskie Centre for Women's Rights – BABA²⁸ by pointing out that both organizations offered support only to women harmed as a result of the offence. According to the Fund's Manager, offering support only to women discriminates against other groups of harmed persons and undermines the support scheme, as the Ministry pays special importance to enabling the support to all the people harmed as a result of the offence. The Commissioner shares the view of a UN Human Rights Council independent expert group on the issue of discrimination against women in law and in practice, that refusing state funds and a growing atmosphere of intimidation will impair the operations of those organizations²⁹. According to the Commissioner, the above mentioned grounds for the refusal of funding points to a deep misunderstanding of domestic violence phenomenon, the victims of which are mostly women. The Commissioner is also surprised to see that subsidies are provided to organizations which have been established only recently, and which have rather little experience in the area of violence prevention.
33. Urgent changes are also required in regard of the operation of the so called interdisciplinary teams whose members i.a. prepare and implement a plan of support in individual cases of family violence (Article 9b (1) of Domestic Violence Prevention Act). As a result of an audit conducted by the Supreme Audit Office their operations were evaluated positively, but the auditors underline that the positive results are achievable chiefly thanks to individual engagement of persons who participate in the operations. In this context the Commissioner's doubts are aroused by a regulation which provides that members of the interdisciplinary team carry out their tasks as a part of their professional duties, which practically means that the team members do not receive an extra fee for their work, neither does a

²⁷ A letter of Commissioner for Human Rights to the Ministry of Justice of 11 June 2016; Ref. X1.815.29.2016

²⁸ A letter of Ministry of Justice Department of International Cooperation and Human Rights, Ref.: DWMPC-V-5611-33/15 and DWMPC-V-5611-23/15)

²⁹ Visit to Poland - Report of the Working Group on the issue of discrimination against women in law and in practice, A/HRC/41/33/Add.2.



COMMISSIONER FOR HUMAN RIGHTS

municipality provide them with any reimbursement of the cost of business trips if, in order to participate in the team work, they must commute to the Municipal Office from another locality.

34. The Commissioner's view is that work carried out by the members of an interdisciplinary team should be remunerated based on the same principle on which members of municipal committees for alcohol abuse issues are remunerated. The provision of such funds would certainly enable more NGOs' representatives to participate in the „Blue Form” Scheme, which participation has hitherto been rather limited exclusively for financial reasons, which was pointed out by the Supreme Audit Office.

Recommendations:

- X. ***To abolish limitations in access to public funds dedicated for preventing gender based discrimination and combating domestic violence against women.***
- XI. ***To introduce a principle of remunerating members of interdisciplinary teams for their work, on the same terms as those applying to members of municipal commissions dealing with alcohol abuse issues.***

D. Cooperation with non-governmental organizations and civil society (Article 9 of the Convention)

35. The Commissioner received, in recent years, deeply concerning signals about attempts to impede the activities of certain non-governmental organizations that support the protection of women's rights. The organizations have pointed at the issue of numerous statements by public officials treating activities undertaken to defend and promote women's rights as manifestations of an ideology which threatens the family and traditional conservative values. Even the very existence of discrimination against women, as well as the need to fight gender-related stereotypes and prevent domestic violence, are openly questioned.

36. Women human rights defenders have also encountered actions targeted directly against themselves or their organizations. The Commissioner intervened in cases of police searches, including the securing of computers, data carriers and documentation, conducted at the Warsaw, Gdańsk, Łódź and Zielona Góra offices of Stowarzyszenie Centrum Praw Kobiet [Centre for Women's Rights association] and at the office of the BABA association in Zielona Góra. The searches were carried out on the day following the Nationwide Women's Protest. According to media



COMMISSIONER FOR HUMAN RIGHTS

reports, the searches were related to a suspicion of offence, relating to one of the officials.

37. The Commissioner also notes with concern the trend in recent years of excluding women's rights groups from State funding. The Commissioner was also involved in case concerning the requirement for Fundacja Autonomia [Autonomy Foundation] to immediately return funds granted to it by the Ministry of Family, Labour and Social Policy for conducting a project entitled "Zero violence: Engagement, Education, Advocacy against gender-based violence" in the course of the project, without providing a convincing substantive justification. The Commissioner also intervened in cases concerning refusal to disburse public funds awarded, in a competition, by the Ministry of Justice to certain NGOs with multiannual experience in counteracting violence against women and children. In refusing to disburse the grant money, the Ministry accused the NGOs of using discriminatory practices themselves, since they provide legal aid only to a specific group of victims, i.e. women.
38. The Commissioner also notes that human rights defenders are operating in increasingly intimidating atmosphere³⁰. The complaints received by the Commissioner concerned inter alia the initiation of disciplinary proceedings against public school teachers for "detracting from the dignity of the teacher's profession", which occurred, according to the Education Authority, when the teachers supported the nationwide "Black Protest of Women" by coming to work dressed in black and posting their backing of the Protest on a social network portal. The Commissioner is also concerned by ad hoc audits of educational institutions in Wadowice, conducted by the Education Authority in Kraków in connection with planned celebrations of International Girls' Day in 2017. In the Authority's opinion, the organized events (which included, for instance, reading biographies of famous women) violated the principle of educational institutions being apolitical. Ad hoc audits were also conducted in schools that participated in the Rainbow Friday (26 October 2018), a campaign to demonstrate support for non-heteronormative students.
39. The Commissioner is of the opinion that the above mentioned actions of public authorities may result in a "chilling effect" that discourages others to undertake initiatives in support of women's and girls' rights. Another consequence of the

³⁰ See also: *The breath of the government on my back. Attack on Women's rights in Poland*, Human Rights Watch 2019, available at: <https://www.hrw.org/report/2019/02/06/breath-government-my-back/attacks-womens-rights-poland>.



COMMISSIONER FOR HUMAN RIGHTS

reduction of the financial support is impeded access of victims of gender discrimination, including domestic violence, to specialized support that has largely been provided to date by non-governmental organizations.

40. Also, attention has to be drawn to the process of the government's drafting of a report on actions taken in order to implement the Istanbul Convention. To the best of the Commissioner's knowledge, consultations with leading organizations supporting women's human rights have been given up. Public consultations of the draft report have not been announced. According to the report concerned, comments submitted in fact otherwise than as a result of public consultations by an organization which is openly sceptical about the Convention and which casts doubt upon some of its provisions, or even challenges them³¹, have actually been taken account of by the government.

Recommendations:

- XII. *For the State to acknowledge a vital and active role of NGOs in developing and implementing policies or other solutions aimed at ensuring violence-free lives to individuals.***
- XIII. *To abolish restrictions in the access to public funds earmarked for preventing gender-based discrimination and combating violence against women.***

E. Data collection and analysis (Article 11 of the Convention)

41. The Istanbul Convention requires the Parties thereto i.a. to collect³² (disaggregated) statistical data, broken down to relevant categories and at regular intervals, concerning cases of all forms of physical, mental, sexual and economic violence against woman. The State-party is also obliged to support research in the field of all forms of violence in order to study its root causes and effects, frequency of occurrence and penalty, as well as effectiveness of actions taken in order to implement the Convention. Population-based surveys in regular intervals, to assess the prevalence and trends in all forms of violence, should also be conducted. The Explanatory Report to the Convention underlines that collection and analysis of data concerning violence against women is of key importance, as it enables current

³¹ See section: Introduction to the Report of the Government of the Republic of Poland, *in fine*.



COMMISSIONER FOR HUMAN RIGHTS

improvement of the system of support of those harmed and it enables monitoring the dynamics and prevalence of violence against women³³.

42. **Solutions in the scope of data collection and analysis, which are currently functioning in Poland, are greatly insufficient.** Methods of data collection do not take account of specific features of domestic violence phenomenon, as they are based on the assumption that violence – as a gender-neutral phenomenon – affects females and males on equal basis, which is contrary to the fundamental principles of the Convention.
43. The evaluation of experts from the European Institute of Gender Equality (EIGE)³⁴ points to the fact that a relation between a victim and a perpetrator in case of intimate partner violence is not recorded in statistics as one of the mandatory variables at all stages of criminal procedure. Moreover, the systems of collecting data on violence by law enforcement bodies and the justice system are incompatible and make it impossible to make necessary data compilations. As a result, Polish law enforcement and judicial bodies are able to fully achieve only one of the thirteen indicators of effective statistical data collection concerning violence against women in case of intimate partner violence.
44. As a consequence, it is impossible to assess an annual number of i.a. women-victims of violence in case of intimate partner violence, a general number of women-victims of particular types of violence in case of intimate partner violence (i.e. physical, mental, sexual, economic violence) committed by men; reported cases of violence committed by man towards women in case of intimate partner violence or the percentage of male perpetrators of violence. Those statistics do not enable to assess the number of homicides, in which a woman was a victim and her partner/husband was the perpetrator³⁵.
45. Major shortcomings have also been revealed in the area of data collection by judicial bodies, in particular there is no statistics on the number of the submitted motions for isolation of female victims of violence from male perpetrators (in case of intimate partner violence) or the number of motions admitted (i.e. a court order for a perpetrator to vacate the residence, a restraining order); a number of males charged with violence inflicted on their female partners and convicted for that offence.

³³ See: *Explanatory Report...*, op.cit., pp. 74-77.

³⁴ EIGE, Data collection on intimate partner violence by the police and justice sectors: Poland, published July 2018, <https://eige.europa.eu/publications/data-collection-intimate-partner-violence-police-and-justice-sectors-poland>

³⁵ EIGE Report uses the term *femicide*, which does not exist in the Polish legal system (kobietobójstwo).



COMMISSIONER FOR HUMAN RIGHTS

46. While supporting the results of EIGE evaluation, the Commissioner addressed the Ministry of Family, Labour and Social Policy³⁶ and the Government Plenipotentiary for Equal Treatment³⁷ pointing to the need to adjust the current measures to the standards resulting from the Istanbul Convention. In response the Ministry admitted to have noticed the need for changes and informed that it has been conducting analysis in this respect³⁸.
47. The Government Plenipotentiary for Equal Treatment indicated that, according to the information obtained in 2017, Central Statistical Office does not conduct its own research on domestic violence and violence against women, and data on this subject is acquired from external information systems, i.e. from the police and from the Ministry of Home Affairs. Harvesting data on violence is hindered because of system shortcomings, i.e. divergent definitions of certain offences, which makes it impossible for data from various institutions to be identical. The Plenipotentiary declared that since 2017 that issue had been within the area of his interest, and he was going to organize an inter-ministerial meeting dedicated to the subject, which, however, has hitherto not taken place³⁹.

Recommendations:

- XIV. *To implement EIGE recommendations in the scope of effective collection of statistical data on intimate partner violence against women.***

F. Research on domestic violence (Article 11 of the Convention)

48. The government refers to the results of a survey conducted in 2014 by the EU Agency for Fundamental Rights and highlights that Poland belongs to a group of countries featuring the lowest percentage of women above 15 years of age who experienced physical and/or sexual violence from their current or former partner or another person (19% for Poland against 33% of the EU average). In respect of the above the Commissioner wishes to point to a reservation made by the authors of the survey report, that in case of certain Member States, i.a. Poland and Austria, female respondents tended to reveal only those cases of violence which were serious and as such were reported to the law enforcement bodies. The authors of the report note that Polish and Austrian women rarely tended to call themselves

³⁶ Letter of intervention of the Commissioner for Human Rights to the Ministry of Family, Labour and Social Policy on statistical data concerning intimate partner violence, Ref: III.518.21.2018.

³⁷ Letter of intervention of the Commissioner for Human Rights to Government Plenipotentiary for Equal Treatment on EIGE recommendations; Ref.: XI.518.19.2019.

³⁸ Response of the Ministry of Family, Labour and Social Policy of 27 December 2019, Ref.: DPS.VII.071.4.2018.

³⁹ Response of Government Plenipotentiary for Equal Treatment of 25 April 2019, Ref.: DOB.WRT.452I.3.2.2019.MD.



COMMISSIONER FOR HUMAN RIGHTS

victims of violence, but it is further noted that in more than 60% of cases, an instance of domestic violence resulted in injuries⁴⁰. This is a significant comment of the authors of the report, which must be taken account for while analysing the survey results.

49. In reference of the information included in the government's report, the Commissioner notes that **the list of surveys conducted does not take account of the results of the most recent „Nationwide Diagnosis of Domestic Violence” commissioned by the Ministry of Family, Labour and Social Policy and carried out in August 2019**, which is a continuation and complementation of the hitherto action to investigate the phenomenon of domestic violence. The survey covered the whole area of Poland and thus was representative. It was complemented by in-depth interviews with experts working in the field of domestic violence prevention. **The Commissioner notices with regret that the survey results have not been posted on the website of the Ministry of Family, Labour and Social Policy.**
50. In an attempt to complement information presented by the government, the Commissioner decided to quote the main conclusions of the governmental report⁴¹. The Commissioner draws attention to one conclusion, according to which, in the opinion of respondents, domestic violence is a relatively frequent phenomenon – according to 9% of the Poles it occurs in almost every household, and according to 25 % of Poles, it occurs in a great majority of households, i.e. in more than half of them. According to 8% of respondents, [domestic] violence is a very rare or non-existing (2%) phenomenon. When asked about the experience of violence in their childhood – every third respondent admits that they experienced physical or emotional abuse. Almost every fourth respondent witnessed emotional abuse in their childhood; almost the same percentage (23%) of respondents were victims of violence at their own homes.
51. As much as 57% of Poles surveyed experienced some kind of violence in their lives (recently or in the past). More than one instance of violence was experienced by 47% of Poles. The survey points, however, to the fact that those who experienced domestic violence usually (in most cases) do not look for any help whatsoever. If they finally decide to seek support – most of them are victims of physical, emotional and economic abuse (from 31 % to 24%), less often they are victims of sexual abuse (11%).

⁴⁰ FRA, Violence against women: an EU-wide survey Main results, https://fra.europa.eu/sites/default/files/fra_uploads/fra-2014-vaw-survey-main-results-apr14_en.pdf p. 63

⁴¹ Report made available upon the Commissioner's request of 30 December 2019, Ref.: XI.518.1.2019.



COMMISSIONER FOR HUMAN RIGHTS

52. As much as 30% of the respondents admit they have ever been perpetrators of domestic violence – in case of 9% it happened only once, 17% inflicted violence several times and 3% are multiple perpetrators (this accounts for 9 million people). The most frequent types of violence used included emotional (24%) and physical (11%) abuse. In-depth interviews indicate that perpetrators feature common attitudes: a desire for power and control, a feeling of impunity and refusal to admit their guilt.
53. At a declarative level, a vast majority of Poles are able to identify a type of behaviour which points to the occurrence of violence. The problem is, however, that 10% of Poles perceive various types of violent behaviour as normal (this accounts for 3 million people). In particular this is common in case of manifestations of economic violence – according to 14% of respondents, „controlling [women’s] access to money and controlling all the expenses are manifestations of partner’s thriftiness”. In case of sexual abuse it is quite concerning that 10 % of respondents (13 % of males and 7% of females) agree that „when it comes to sex, a wife should always agree to what her husband wants”, and 9% of the respondents – including 11% males and 6% females – admit that „rape does not happen in marriage”. Attention is drawn to the fact that as much as 40% of Poles agree with the statement that „victims of domestic violence accept their fate”.
54. The Commissioner is concerned about the survey results, according to which, in the opinion of the majority of Poles, **the legal regulations provide insufficient protection to victims of domestic violence** – this is the opinion of **72% of respondents**. Moreover, **79% of respondents are convinced that many families do not receive the necessary support** (from institutions, but also from relatives, neighbours or friends). At the same time, according to a widely prevalent opinion, violence is a private matter of a family – this is manifested by a huge percentage (18%) of respondents admitting that they have not taken any action to help a victim of violence because they did not feel like interfering with somebody else’s business or they did not want to interfere⁴². In the Commissioner’s opinion the above mentioned data show that the prevalence of violence in Poland is underestimated and social awareness of the Polish citizens in this respect is insufficient.

Recommendation:

⁴² Report entitled Ogólnopolska diagnoza zjawiska przemocy w rodzinie [Nationwide diagnosis of domestic violence phenomenon] compiled by Kantar Polska for the Ministry of Family, Labour and Social Policy, October 2019, pp. 16-31,41-43.



COMMISSIONER FOR HUMAN RIGHTS

- XV. To publicize state-funded surveys on domestic violence and violence against women as much as possible.**

Chapter III – Prevention

A. Awareness-raising (Articles 12 and 13 of the Convention)

55. The Commissioner welcomes information about social campaigns conducted by i.a. the Ministry of Justice, the Ministry of Internal Affairs and Administration, Government Plenipotentiary for Equal Treatment, Polish Agency for Enterprise Development as well as local government units. The Commissioner approves of the fact that actions which raise awareness of violence are targeted at various social groups and representatives of various walks of life.
56. According to the Commissioner, campaigns targeted at uniformed service representatives are particularly important. The Commissioner wishes to point out that the existence of civil institutions, NGOs or schemes (e.g. „Blue Form” Scheme) which aim at helping victims of violence does not release from the obligation of combatting of violence against women and domestic violence among uniform service officers themselves.
57. The Commissioner’s analysis results in a conclusion that inappropriate atmosphere within the service, a need to function in a hierarchical structure or reduced possibilities to question orders/assignments may – if accompanied by a lack of training on stress handling – trigger undesirable behaviour which can be manifested by e.g. being violent towards family members. In addition, the nature of service (of e.g. a policeman), knowledge of how to manoeuvre in the existing system of support to victims, knowledge of procedures and of those responsible for implementation thereof, may create difficulties for a given formation to identify officers of uniformed services who perpetrate domestic violence at their homes.
58. The Commissioner is concerned that the **majority of uniformed services do not have any anti-violence policy in place. It could be followed as a part of institutional culture by all the employees, who should be trained appropriately by their HR Department representatives. Each member of uniformed services should realize that perpetrating domestic violence is against the interest of the service they represent/armed forces, etc.** Perpetrating domestic violence when off duty should be deemed violation of professional code of ethics of an officer/soldier and each instance of committing domestic violence should be a



COMMISSIONER FOR HUMAN RIGHTS

sufficient basis for opening disciplinary procedure against the perpetrator. A refusal to stop abusive and violent behaviour, a refusal to follow the recommendations of an individual corrective plan, or injuring an intimate partner should result in administrative dismissal due to committing an act which is against vital interests of a given uniformed service. Thus, a review has to be done of the existing regulations concerning disciplinary liability of particular formations and necessary modifications should be introduced – in particular if a disciplinary procedure cannot be instituted just because a mere violation of ethics or soldier's dignity and honour are insufficient reasons for starting such a procedure⁴³.

59. In addition, the Commissioner recommends conducting standing screening of candidates to work in uniformed services for domestic violence acts committed by them (e.g. in classified databases), imposing an obligation on each and every soldier and officer to notify their superiors of criminal procedure or tax evasion procedure instituted or closed against them and of each and every conviction. The problem of domestic violence perpetrated by soldiers/officers should be included into the existing disciplinary databases and registers of complaints. Data collected in this way should be verified from time to time against the currently applicable assumptions of human resources management and training policies.

Recommendations:

- XVI. To intensify educational actions aimed at raising social awareness of violence against woman and domestic violence, in particular in the scope of types of violence and manifestations thereof.***
- XVII. To eliminate all the procedural constraints which make it impossible to open disciplinary proceedings against an officer/soldier for perpetrating domestic violence.***
- XVIII. To develop comprehensive policies of zero tolerance to perpetrating violence off duty. Such policies to be developed by Heads of the uniformed services should include an establishment of a point of contact for domestic violence victims from the families of officers/soldiers, a support scheme for victims as well as individual corrective plan for an officer/soldier who perpetrates violence – the implementation of which should be monitored by his superior.***

B. Education (Article 14 of the Convention)

60. Over the past few years, the Commissioner has repeatedly notified the Ministry of National Education and the Prime Minister about the necessity of conducting anti-

⁴³ See: Article 17.4 of Military Discipline Act, Journal of Laws of 2019, item 1508, consolidated version.



COMMISSIONER FOR HUMAN RIGHTS

discrimination education in schools in order to promote the ideas of human rights, equal treatment, democracy and state ruled by law. The current curriculum does not include content directly referring to equal treatment of women and men as well as counteracting discrimination, nor does it prepare children and teenagers to function in a multicultural society.

61. The preschool curriculum has almost no content referring to human rights, anti-discrimination education or multicultural education. At the primary school level, pursuant to the Regulation of the Minister of National Education of 14 February 2017⁴⁴, this type of content may be conveyed during geography class or ethics class (the latter is not obligatory and frequently not offered in Polish schools). Much the same problem affects post-primary education – the latest regulation issued by the Minister of National Education on 30 January 2018⁴⁵ largely ignored the Commissioner’s critical remarks formulated in recent years. The core curriculum does not include anti-discrimination education as a separate subject. Content concerning discrimination is conveyed during the teaching of other subjects, often in a fragmentary manner devoid of essential context. For instance, the topic of discrimination to the secondary school students may be presented during history class (e.g. when discussing the Third Reich and the Holocaust), also during physical education classes. The problems of racial discrimination and xenophobia may be taught only to secondary school students with extended geography curriculum.
62. Topics left outside the core curriculum include gender equality, combating harmful gender stereotypes, and discrimination based on sexual orientation or sexual identity, religion or faith. In practice, these topics have been taught only in interested schools thanks to cooperation with NGOs engaged in the defense of human rights, after obtaining the consent of the school’s headmaster and the parents' council. In recent years, however, such cooperation has met with decidedly negative reactions from the Ministry of National Education and the education departments subordinate to it. The NGOs have also found that obtaining permission to conduct such classes is much harder now than it was in previous years.
63. The Commissioner points out that increasing efforts in the area of anti-discrimination education and preventing gender-based stereotypes have been recommended to Poland for years by international human rights protection bodies,

⁴⁴ Journal of Laws of 2017 item 356.

⁴⁵ Journal of Laws of 2018 item 467.



COMMISSIONER FOR HUMAN RIGHTS

i.a. the Committee on the Elimination of Discrimination against Women⁴⁶, Commissioner for Human Rights of the Council of Europe⁴⁷, Human Rights Committee⁴⁸, European Commission against Racism and Intolerance⁴⁹. The recommendations have not yet been followed.

Recommendations:

- XIX. To extend the current basic curriculum to include education in the field of preventing violence against women and domestic violence in the form of anti-discrimination education classes.***
- XX. To ensure that a school book is admitted for use based on a criterion of compliance of the book contents with the principle of equal treatment, including equal treatment of all genders.***

C. Media (Article 17 of the Convention)

64. 64. Individual complaints addressed to the Commissioner regularly highlight a problem of discriminatory contents of TV commercials. The complainants point to women frequently being objectified. These are cases of treating women as a sex object (e.g. advertisements of sexual enhancers), assigning them with an unequivocally stereotypical social role (e.g. advertisements of household equipment or groceries), or with a task to promote a distorted sense of health and beauty (e.g. advertisements of cosmetics and clothes). While seeking to achieve marketing objectives, advertisers make use of different means of expression which, the Commissioner admits with regret, handle the issue of violence against women and domestic violence in a simplified way, which often strips victims of violence of their dignity.

65. In this context the Commissioner points out a major problem, namely lack of effective legislative measures to eliminate such contents from public domain, including TV and the Internet. Having regard to his limited possibility of action towards private entrepreneurs, the Commissioner has repeatedly indicated the need for action to be taken by appropriate bodies, i.a. the President of National

⁴⁶ Committee on the Elimination of Discrimination against Women, Concluding observations on the combined seventh and eighth periodic reports of Poland, 14 November 2014.

⁴⁷ Report by Nils Muižnieks Commissioner for Human Rights of the Council of Europe following his visit to Poland from 9 to 12 February 2016, point 135.

⁴⁸ Human Rights Committee, Concluding observations on the seventh periodic report of Poland, point 16 f i 22 c, 23 November 2016.

⁴⁹ ECRI Report on Poland (fifth monitoring cycle), point 101, adopted on 20 March 2015, published on 9 June 2015.



COMMISSIONER FOR HUMAN RIGHTS

Council for Radio and TV in respect of TV commercials⁵⁰. Looking at extremely low number of proceedings conducted by the National Council for Radio and TV (merely 2 cases in 2018) it is difficult to admit that its actions represent a systemic response to the problem of broadcasting contents which discriminate women and which create tolerance for violence.

66. The Commissioner has also addressed the President of the Office for Competition and Consumer Protection⁵¹ pointing out that advertisements which strip women of their dignity may, based on the Competition and Consumer Protection Act⁵², constitute a forbidden practice which infringes collective consumer interest. In his response, the President of the Office for Competition and Consumer Protection did not share the Commissioner's view and refused to initiate any action to this end.
67. The Commissioner underlines that, based on the currently applicable legislation, there is only a limited possibility to forbid entrepreneurs to broadcast sexist contents, as the provisions of the Act of 3 December 2010 implementing certain provisions of the European Union concerning equal treatment does not apply (due to exclusion provided for in Article 5(2)). Neither do the sexist communications concerning women as a social group fall under the Civil Code Act of 23 April 1964⁵³ in the scope of violation of personal rights.
68. Certain possibility for action is enabled by Unfair Competition Act of 16 April 1993⁵⁴, which provides for a financial liability of an entrepreneur for committing an act of unfair competition, including for promoting advertisements which are contrary to the applicable legislation, morality, or which destroy human dignity. One has to point out, however, that such a suit may be filed only by an entrepreneur whose interests have been threatened or violated or by a nationwide or regional organization whose mission is to protect the interests of entrepreneurs⁵⁵.

Recommendations:

XXI. To develop effective mechanisms to combat sexist contents, contents which promote gender-based violence and which reinforce the belief in inferiority of women.

⁵⁰ Letter of intervention of the Commissioner for Human Rights of 16 January 2012, Ref.: RPO - 628976 - I/09.

⁵¹ Letter of intervention of the Commissioner for Human Rights of 9 April 2014, Ref.: I.505.17.2014.

⁵² See: Article 24.2 of Competition and Consumer Protection Act of 16 February 2007, Journal of Laws of 2019, item 369, as amended.

⁵³ Journal of Laws of 2019, item 1145, consolidated version.

⁵⁴ Journal of Laws of 2019, item 1010, consolidated version.

⁵⁵ Pursuant to Article 18.1 and Article 19.1(2) of Unfair Competition Act.



COMMISSIONER FOR HUMAN RIGHTS

XXII. *To amend the Act implementing certain provisions of the European Union in the scope of equal treatment and to extend a possibility to file a suit for violation of equal treatment principle in all social domains, including in media.*

Chapter IV – Protection and support

A. Access to information about support system (Article 13 of the Convention)

69. In reference to the communication about access to information about institutions which provide support to victims of violence, the Commissioner points to certain shortcomings which occurred as a result of SARS-CoV-2 pandemic.

70. In March 2020, the Commissioner drew attention of the Minister of Family, Labour and Social Policy to a real risk of a significant increase in the number of domestic violence cases during the pandemic as a result of quarantine measures introduced by the Polish government⁵⁶. Considering that the need to contain SARS-CoV-2 escalation changed the hitherto procedures of work of central and local government institutions, including also agencies providing support to victims of domestic violence, the Commissioner appealed for compiling a precise list of support measures for victims of domestic violence to be available nationwide. He also recommended updating of databases posted on the Ministry's website to include current information such as e.g. whether a given shelter is open, whether a given centre keeps providing psychological, social, vocational and family counselling by means of remote communication devices. Moreover, the Commissioner called for the interdisciplinary teams and task forces to operate by means of remote communication and to monitor the situation of families affected by domestic violence, suspected of domestic violence or in respect of which the „Blue Form” procedure has been completed. The Commissioner appealed to the Minister for issuing relevant instructions and guidelines to all the units on how to support victims in the time of pandemic.

71. The Ministry responded after five weeks⁵⁷. The Commissioner's recommendations have been taken account of only partially – the Ministry recommended for task forces to work from home, and appointed one representative of each task force to monitor the situation in a family in which domestic violence has occurred.

⁵⁶ Letter of Intervention of 30 March 2020 to the Minister of Family concerning individuals subjected to domestic violence, Ref.: XI.518.13.2020.

⁵⁷ Response of the Ministry of Family, Labour and Social Policy of 5 May 2020, Ref.: DPS-VII.5130.40.2020.



COMMISSIONER FOR HUMAN RIGHTS

Ministry's instructions which concentrate on the implementation of a strict sanitary regime rather than on creating environment to facilitate continuing support to victims raised the Commissioner's doubts. The needs of the people experiencing domestic violence have been ignored, which is manifested i.a. by the fact that the **Ministry ordered shelter providing institutions to suspend all the forms of support provided on appointment and to reduce the number of on-site workers to the minimum. In respect of the recommendation concerning the list of services available the Ministry limited itself to forwarding the Commissioner's request to provincial administration offices. The Ministry's website has still not been updated to include current information about possible support, account taken of information about operating procedures during the pandemic.**

Recommendations:

XXIII. To work out adequate forms of operation to ensure support to victims of domestic violence in the period in which hitherto procedures of support have been limited or unavailable due to public health emergency. To publicize updated information about available support, account taken of the procedures of operation during the pandemic.

C. General support services and legal aid (Articles 20 and 57 of the Convention)

72. The Commissioner welcomed the passing of the Act of 5 August 2015 on free-of-charge legal counselling services and education in law⁵⁸, which creates the foundations of a system of free legal counselling services for those who cannot afford such services for a fee. Since the entry into force of the Act, the Commissioner has been focusing his attention around monitoring its implementation and around collecting information on possible irregularities which might appear in practice.

73. The Commissioner keeps receiving complaints that the system of free legal counselling is not sufficiently effective. The system is evaluated negatively by NGOs, Supreme Audit Office⁵⁹ and the Ministry of Justice itself. The subject matter covered by the Act is too narrow – the Act does not provide for a possibility to receive counselling at the stage of court proceedings and it does not provide for a

⁵⁸ Journal of Laws of 2015, item 1255, as amended.

⁵⁹ Information of Supreme Audit Office concerning the results of audit P/17/090 Operation of the system of free legal advice, LOP 430.001.2018, ref.: 4/090/LOP.



COMMISSIONER FOR HUMAN RIGHTS

possibility to have letters of process written either in preparatory proceedings or in court or administrative proceedings under way⁶⁰.

74. Regardless of the above, the Commissioner points to a problem of low social awareness concerning an opportunity to use the counselling based on the Act concerned. This might be also one of more important reasons why free legal counselling system enjoys such a low public interest. In a survey commissioned by the Institute of Public Matters the respondents most often indicated lack of awareness that such a possibility exists as the cause of not seeking free legal counselling at places specially organized for this purpose nationwide. Media have also highlighted the argument that the citizens simply do not know about such a support scheme.

Recommendations:

- XXIV. To amend the Act on free legal counselling services and education in law, to broaden the range of those entitled to receive such support, account taken in particular of victims of domestic violence.***
- XXV. To conduct actions publicizing a possibility to receive legal counselling for free.***

D. Specialist support services, shelters and support for victims of sexual violence (Articles 22, 23, 25 of the Convention)

75. The Commissioner points out that the scope of assistance offered to victims of violence is currently defined by Article 3(1) of Domestic Violence Prevention Act. It lists actions taken in respect of victims of violence, starting from counselling (in the area of medicine, psychology, law, social, vocational and family matters), through crisis intervention and assistance, advice on measures protecting against further violence (restraint orders, making the perpetrator vacate the residence), to a medical examination and issuing a certificate of being subjected to violence. Assistance also includes support in providing accommodation to a victim of violence in the form of a separate accommodation or a shelter dedicated to victims of domestic violence. One has to bear in mind, however, that **due to a general nature of Article 3, the list provided in its paragraph 1 is only a declaration of actions to be taken rather than a legal standard.**

⁶⁰ Letter of intervention of the Commissioner for Human Rights to the President of the Republic of Poland of 6 January 2017, Ref. IV.510.9.2014.



COMMISSIONER FOR HUMAN RIGHTS

76. Specialized centres of support for victims of domestic violence are institutions, the scope of operations of which is focused on assistance in overcoming crisis situation related with domestic violence. Establishing and managing such centres is vested, pursuant to Article 6.4(1) of the Act, with government administration. This is the task of a country authorities which use state funds for the purpose. In the Commissioner's opinion, specialized support centres are one of key elements of the system of assisting victims of violence, which should ensure comprehensive assistance at professional level, which is so important after going through such a traumatic experience.
77. Because of that the Commissioner is concerned that the **number of specialized support centres for victims of domestic violence is inadequate, account taken the prevalence of domestic violence**. The Commissioner points out that in the period 2015-2017 there were 35 specialized support centres in Poland which could accommodate only 591 victims. In 2018 one new centre was opened, and the number of places for victims increased by 15. The average per province is 2-3 specialized support centres, although in some provinces, namely łódzkie and Lubuskie, there is only one such centre⁶¹.
78. The Commissioner welcomes the fact that in 2018 the number of centres increased to 36, but he is still of the opinion that this number is greatly insufficient considering the scale of the violence phenomenon in Poland, especially in light of the Explanatory Report to the Istanbul Convention⁶². To illustrate the problem, the Commissioner points to the data collected by the National Police Headquarters, according to which the number of individuals suspected to be victims of violence in 2019 amounted to 88,032⁶³.
79. The Commissioner points out that the problem of insufficient number of support centres was noticed i.a. by Human Rights Commissioner of the Council of Europe in her Report on Human Rights in Poland⁶⁴. A recommendation that Poland increase

⁶¹ Information available on the website of the Ministry of Family Labour and Social Policy: <https://www.gov.pl/web/rodzina/baza-kontaktowa-specjalistyczne-osrodki-wsparcia-dla-ofiar-przemocy>

⁶² Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence, Istanbul, 11.V.2011, section 135.

⁶³ Report on implementing „Blue Form” Scheme in 2019. <http://www.statystyka.policja.pl/st/wybrane-statystyki/przemoc-w-rodzynie/137709,Sprawozdania-z-realizacji-procedury-quotNiebieskie-Kartyquot.html>

⁶⁴ Council of Europe Commissioner for Human Rights Dunja Mijatović. Report following her visit to Poland in the period 11 - 15 March 2019.



COMMISSIONER FOR HUMAN RIGHTS

the number of centres for support of victims of domestic violence was also voiced by the Committee on Economic, Social and Cultural Rights⁶⁵.

80. Moreover, it is necessary to ensure that each centre has got sufficient human and financial resources to ensure full range of support. Here the Commissioner points to conclusions included in the report by the Supreme Audit Office⁶⁶, according to which the access to services guaranteed by applicable legislation is limited. The main problems centred around a lack of providing legal advice, advice on psychological and family matters, as well as limited access to full-ranged specialized counselling services at the support centre, as those centres did not organize assistance on-site. Also, support in the form of creating support groups and therapeutic groups was not rendered to the extent guaranteed.
81. Apart from support available at specialized centres of support, victims of domestic violence should have a possibility to use safe shelters available at support centres operating round the clock and at crisis intervention centres. The obligation to provide this type of support is vested with local government units: municipality⁶⁷ and county⁶⁸.
82. The Commissioner points out that in 2018, from among 856 institutions rendering support to victims of domestic violence 559 were run by municipalities and 297 were run by counties. A vast majority of them (500) operated in the form of consultation centres (58%), 220 operated as crisis intervention centres (26 % - including 58 crisis intervention points), 36 of them were specialized support centres (4%), 17 functioned as support centres (2%), and 19 as shelters for mothers with minor children and for pregnant women (2 %). According to the Commissioner, the number of municipal and country support centres is also insufficient. Moreover, the Commissioner is concerned to observe that year after year their number has been decreasing: in 2015 there were 24 such institutions, in 2016 - 22, in 2017 - 20, and in 2018 – 17. It also has to be pointed out that six provinces had no such centres whatsoever, despite the fact that establishing them is mandatory. A similar situation is with shelters for mothers with minor children and for pregnant women. In 2018 there were 19 such shelters, and although their number increased by 6 in comparison with 2017, there are still provinces in Poland

⁶⁵ Committee on Economic, Social and Cultural Rights, Concluding observations on the sixth periodic report of Poland, 26 October 2016.

⁶⁶ Information of 26 April 2016 pointed to shortcomings in access of victims of domestic violence to specialized support in the scope guaranteed by applicable regulations.

⁶⁷ Article 6.2(3) of Domestic Violence Prevention Act.

⁶⁸ Article 6.3(3) and (4) of Domestic Violence Prevention Act.



COMMISSIONER FOR HUMAN RIGHTS

where such service is unavailable at all, namely Podlaskie, Kujawsko-Pomorskie, Wielkopolska, Opolskie and Małopolska provinces.

83. The Commissioner is concerned with a conclusion of the Ministry of Social Policy included in the report on implementing the National Programme for Domestic Violence Prevention, according to which the Ministry has been observing a decline in the number of support centres since 2007, but it has no influence on the increase of the number of such centres because, according to the legislation in force, the establishment of such centres is an internal task of local governments. The Commissioner reminds that according to the Act, the Province Governor supervises the implementation by local government of tasks resulting from Domestic Violence Prevention Act.
84. It needs to be underlined that a vast majority of support institutions is not accessible to persons with disability who are victims of domestic violence. In light of information collected in 2014⁶⁹, out of 35 specialized support institutions for victims of domestic violence operating in Poland merely 8 are located in buildings which are adjusted to the needs of persons with physical disability (lift or wheelchair ramp to the building entrance, appropriate width of corridors, WC adjusted for the disabled). 32 centres have never been visited by a person with hearing loss, only one centre started standing cooperation with a branch of Polish Association of the Deaf which provides sign language translators. None of the centres declared launching a website available to people who are blind, or providing a videotelephone to enable people who are deaf to contact the centre. The Commissioner notices that the Reports on the implementation of the National Programme for Domestic Violence Prevention do not include evaluation of the degree of the centres' adjustment to the needs of people with disability, they merely indicate the number of people with disabilities who applied for support (in 2017 – 78 individuals, in 2018 – 84 individuals). This is particularly important in light of indications that domestic violence is exceptionally often experienced by people with disabilities, especially women, whose access to support measures is very limited, which was pointed out by i.a. the Committee on the Rights of Persons with Disabilities in Final Comments to an initial report of Poland on the implementation of the Convention on the Rights of People with Disabilities⁷⁰.

Recommendations:

⁶⁹ Based on telephone interviews conducted on 25 August 2014 by the Commissioner's staff with workers of specialized centres for supporting victims of domestic violence. See: CHR Report entitled *Przeciwdziałanie przemocy wobec kobiet [Preventing Violence against Women]*, *op. cit.*

⁷⁰ Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of Poland, *op. cit.*



COMMISSIONER FOR HUMAN RIGHTS

- XXVI. To conduct a nationwide analysis of needs and access to specialized centres for support of victims of domestic violence and to update the analysis from time to time.**
- XXVII. To introduce more effective supervision over the implementation by local government units of tasks resulting from Domestic Violence Prevention Act.**
- XXVIII. To ensure that Domestic Violence Prevention Act is more specific as concerns the principles and procedure of admission to specialized support centres of victims of domestic violence, and as concerns minimum standards of fundamental services rendered by specialized support centres for victims of domestic violence.**

F. Preventive intervention and treatment programmes (Article 16 of the Convention)

85. According to the Commissioner, effective prevention of domestic violence is impossible without appropriate measures in place to exert influence on the perpetrators of violence to change their attitudes. The benefits of such actions are indisputable – their effectiveness is confirmed by results of a nationwide survey commissioned by the Ministry of Labour and Social Policy⁷¹. According to the above mentioned data, 67% perpetrators participating in the correction and educational scheme declared that during that period time they stopped using violence. Moreover, 12% of those who had previously participated in such schemes stated that following its completion they did not use violence for more than one year, and 34% said they stopped using violence completely. The schemes have also been evaluated positively by the coaches, 94% of which approved of the schemes' effectiveness because of changes in behaviours observed in participants.

86. According to the Commissioner, **Domestic Violence Prevention Act does not define precisely what corrective and educational actions are to look like.** Guidelines for development of model corrective and educational schemes for perpetrators of domestic violence have been defined in Annex 2 to the National Programme for Domestic Violence Prevention 2014-2020⁷², established by a Resolution of the Council of Ministers of 29 April 2014 although, according to the Constitution of the Republic of Poland, they should be regulated by a statute-like piece of legislation.

⁷¹ Research concerning perpetrators of domestic violence: a survey of participants of correction and educational schemes. Nationwide survey of professionals who conduct correction and educational courses for perpetrators of domestic violence, Research results: MillwardBrown SMG/KRC for the Ministry of Labour and Social Policy – nationwide diagnosis concerning perpetrators of domestic violence.

⁷² Monitor Polski of 2014 item 445.



COMMISSIONER FOR HUMAN RIGHTS

87. **Currently applicable criminal legislation assumes that correction and educational actions should cover only those perpetrators to whom probation measures were applied in the criminal procedure, a court decision about it being optional. Applicable legislation does not provide for participation in correction and educational scheme being obligatory to perpetrators who are sentenced to imprisonment without parole.** Such persons may be offered to participate in such an individual scheme while serving their prison sentence, but it has to be remembered that a convicted person can refuse to participate. If a prisoner serves time in prison without parole, they will leave the prison without being subjected to corrective actions and without an obligation to submit to such actions in the future. Thus, in potentially more drastic cases of using violence (when a court holds that a probation measure will not be sufficient and orders imprisonment without parole), the perpetrator may not be subjected to corrective actions.
88. A positive evaluation of effectiveness of correction and educational schemes and the fact of the measure being hardly used by courts call for a need to modify the applicable criminal law solutions so that more perpetrators of violence are covered by such schemes. To this end **it is justified to apply a principle of referring all the perpetrators of domestic violence to participate in correction and educational schemes.** In case of applying probation measures, imposing an obligation to participate in the scheme should be mandatory (and not applied only in particularly justified cases). An analogous measure should be applied towards perpetrators convicted to a prison time without parole. **To this end it is necessary to introduce an obligation for perpetrators to participate in such schemes and an obligation to courts to apply such a measure in each and every case of convicting a perpetrator of domestic violence to a prison time without parole.**
89. It has to be noted, however, that changes in this direction should be correlated with an extension of the existing number of entities that implement such schemes. This is a very important aspect as the Commissioner receives information that not all counties develop and implement correction and educational schemes, as a result of which persons on whom such an obligation to participate was imposed as well as those who would like to voluntarily participate in such a scheme have difficulties in finding such a scheme in their place of residence, especially in small localities. This problem was also highlighted by Supreme Audit Office in its information of 26 April 2016, according to which in 2014, correction and educational schemes were not available in more than 40 % of counties in Poland, and in 2015 – in 28 % of counties.



COMMISSIONER FOR HUMAN RIGHTS

90. The Commissioner points out that the year 2018 saw a decline in the number of entities conducting correction and educational schemes for perpetrators of domestic violence – from 253 in 2017 to 233. Also, the number of voluntary participants of such schemes declined (in 2017 – 4327 individuals, in 2018 – 4037 individuals). The development of such a form of support is still insufficient. This is visible in particular against the data saying that in 2018 the number of individuals suspected of perpetrating domestic violence amounted to 73,654⁷³.

Recommendations:

XXIX. To include precise definition of „correction and educational actions” in the Domestic Violence Prevention Act, including their detailed scope.

XXX. To conduct a system analysis of access to institutions running correction and educational schemes.

XXXI. To introduce legislative changes as a result of which an order to participate in a correction and educational scheme is issued to each and every perpetrator of domestic violence convicted to a prison sentence, and in particular in cases of being convicted to a prison time without parole.

H. Training of professionals dealing with violence and domestic violence (Article 15)

91. In the Commissioner’s opinion, conducting regular training for judges and prosecutors, and for post-graduate trainees who study to be judges and prosecutors, is an integral element of effective prevention of violence against women and domestic violence. Such training should take account of information on mechanisms of applying violence and stereotypes related with using domestic violence, legal measures and available forms of assistance to victims of those offences.

92. According to an analysis of cases concerning violence, which were reported to the Commissioner, proceedings conducted feature irregularities in many instances, which negatively impacts the rights of those harmed, and which may often lead to secondary victimization of victims of the above mentioned offences.

93. In the process of analysing domestic violence case files the Commissioner found out that the most often irregularities were as follows: domestic violence victims are discouraged from reporting that offence; evidence submitted by victims of

⁷³ Report on the implementation of the National Programme for Domestic Violence Prevention 2014-2020 for the period from 1 January to 31 December 2018, p.111.



COMMISSIONER FOR HUMAN RIGHTS

violence is not taken account of; value of evidence attesting to domestic violence occurrence is depreciated; violence is qualified as an act to be prosecuted based on private prosecution procedure and not based on public prosecution procedure; preventive measures are not applied to those suspected of perpetrating domestic violence; preparatory proceedings are too long.

94. Irregularities also occur after the indictment is submitted to court. Victims are notified correctly of their rights and obligations. However, only in few cases, following the indictment, victims participate in the proceedings as ancillary prosecutors, and thus deprive themselves of the right to submit evidence or to appeal against a court decision; in such case any action to the detriment of the accused may be taken only upon the prosecutor's (i.e. public prosecutor's) initiative. There are also cases of acquitting the perpetrator and the prosecutor agrees with the court arguments and does not appeal against the decision to the detriment of the accused.
95. The Commissioner points out that cases of family violence offences should be conducted account taken of guidelines decoded from the Directive 2012/29/EU⁷⁴. The key objective of which is to ensure that the individual needs of the victims of offences are taken care of and their rights are reinforced so that each victim can receive a minimum level of protection, information, assistance and access to judicial system, regardless of nationality and place of residence in the EU. Additionally, special attention is given to support and protection of victims of some offences, which are particularly prone to secondary victimization, intimidation and recourse by perpetrators, e.g. to victims of gender-based violence, or to victims of intimate partner violence. The Commissioner is of the opinion that the directive has not been implemented correctly yet.
96. In his letter of 3 August 2019 to the Director of the National School of Judges and Prosecutors⁷⁵, the Commissioner recommended that training programmes for judges- and prosecutors-to-be are extended to include issues concerning protection of victims of domestic violence and that judges and prosecutors are subject to on-job training on current measures resulting from the EU law in the scope of protecting victims of offences, including in particular domestic violence.

⁷⁴ Directive of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of offence, and replacing Council Framework Decision 2001/220/JHA (Official Journal of the European Union L 315/57).

⁷⁵ A letter of the Commissioner of 3 August 2019 Ref.: 11.518.2.2019.



COMMISSIONER FOR HUMAN RIGHTS

97. In response⁷⁶ the Commissioner received information that the curriculum of post-graduate prosecution studies includes classes on offences against family and custody and selected issues from Domestic Violence Prevention Act **in the total number of 6 training hours**. In addition, there are classes concerning state compensation to victims of offences and the rights of victims of offences, **in the total number of 4 hours**. Post-graduate studies for judges do not provide for studying domestic violence prevention issues as a separate subject, but it is discussed during general classes concerning detailed part of the Penal Code, substantive law and litigation regulations. The course of post-graduate studies for judges provides that the students are to meet with a court supervisor with whom they will discuss issues concerning domestic violence prevention. The issue of violence also appears during continuous on-job training for judges and prosecutors during a cycle of training sessions on human rights protection.
98. **The Commissioner approves of the efforts of the National School of Judges and Prosecutors concerning domestic violence prevention. However, the length of training on violence is insufficient, and educational cycles do not include any other type of training on the standards stemming from the Istanbul Convention.**

Recommendations:

- XXXII. To increase the number of hours of training in domestic violence in the curriculum for trainees studying to be judges and prosecutors.***
- XXXIII. To include Istanbul Convention standards to the cycle of training for trainees studying to be judges and prosecutors and to continuous training cycles for judges and prosecutors.***

Chapter V – Substantive law

B. Custody, visitation rights and safety and other measures provided by family law (Article 31 of the Convention)

99. The Commissioner draws attention to the fact that proceedings in family law cases are usually quite long – recesses between hearings last for months, the same situation is with waiting for examination by expert witnesses and drawing opinions by them. A right to appeal against decisions issued during the proceedings extends the time even further. The problem of long-lasting proceedings is visible in

⁷⁶ A letter of Director of the School of Judges and Prosecutors of 21 August 2019, Ref.: BD-I.034.7.2019.



COMMISSIONER FOR HUMAN RIGHTS

particular in divorce cases, when the court issues a judgment concerning custody and visitation rights. According to the Commissioner's experience, during a divorce case the court is often forced many times to decide about motions for protection and change of protection in case of custody and visitation rights, which prolongs the date of issuing a judgment of divorce. Long-lasting proceedings matter a lot also in cases concerning child abduction abroad as the time flow may result in a final admittance of the actual (illegal) state of affairs and in adjusting the legal situation to that state of affairs.

100. Complaints submitted to the Commissioner's Office also point to problems concerning immediate application and enforcement of final court judgments. The Commissioner notes that court supervisors who are to take a child away from its parent (or relatives) and give it over to the parent authorised to custody, do not have effective legislative measures at their disposal to persuade the parent to give the child away or to find a child who has been in hiding (also in cases of child abduction abroad). Moreover, if a child refuses to leave the parent who is not authorised to custody (which may be a result of manipulation and persuasion), the supervisor usually refrains from taking the child away due to child's wellbeing. As a consequence of relying on the *fait accompli* principle, the parent who keeps the child after several ineffective takeovers may successfully apply to a court to determine the child's residence at his/her home, as that home has become a regular residence of the child.
101. Both the length of proceedings and limited effectiveness of the above measures may result in the child's remaining in a violent environment or in a victim of violence being forced to be in constant contact with a perpetrator of that violence. A statutory amendment has been suggested to suspend divorce proceedings more than once (see: Section F).
102. The legal measure concerning visitations may prompt various types of questions. A mere refraining from executing visitation rights or hindering the execution of visitation rights may certainly be an instance of an abusive behaviour, as both a parent and a child have the right to see each other. However, the Commissioner also receives complaints, according to which the above mentioned legal provisions may be applied instrumentally and be a manifestation of economic abuse of the other parent, e.g. if the non-leading parent reports problems with visitations, such as hindering them or making them impossible, which results in the court's charging the leading parent with payment of certain amounts of money. This is problematic in particular if the visitation does not take place as a consequence of a clear wish of the child who is afraid of staying with a violent parent.



COMMISSIONER FOR HUMAN RIGHTS

C. Criminal law (Articles 33-41 of the Convention)

103. The Commissioner highlights that **Polish legislation does not provide for full protection against gender-based violence against women and domestic violence.** Regulations concerning combat of various forms of discrimination and violence against women are dispersed in different statutes and in most cases they are of a general character only.
104. In reference to the standards of criminal law the Commissioner points out that Article 207 of the Penal Code is the one which is most often applied in cases of domestic violence. The Article is included in Penal Code's Chapter XXVI [Offences against family and custody], which demonstrates that it focuses chiefly on family and its proper functioning, as well as on custody.
105. Article 207 § 1 of the Penal Code penalizes physical or emotional abuse of a closest person or a person who is dependent on the perpetrator on standing or temporary basis. This forbidden act carries a prison sentence of 3 months to 5 years.
106. The Commissioner underlines that cruelty – the offence referred to in Article 207 § 1 of the Penal Code, is categorized as *delicta propria* (i.e. an offence which may be committed only by a person having certain distinctive features) in that part, in which a victim is the closest person to the perpetrator (as defined by Article 115 § 15, i.e. a spouse, descendant, ascendant, siblings, a relative in the same line or degree, an adopted person and his/her spouse, as well as a cohabitating person or person in conjugal relationship) or a person which is dependent on the perpetrator. This means that a former spouse or partner cannot theoretically be a perpetrator of the offence defined by Article 207 of the Penal Code. As a consequence of such a wording of the clause, it does not cover all the types of behaviour defined by the Istanbul Convention in its Article 3b. In the part concerning cruel behaviour towards a minor or a physically or mentally disabled person (Article 207 § 2 of the Penal Code) cruelty is categorized as *delicta communia*, i.e. an offence which may be committed by any sane person who has criminal capacity.
107. In relation to sexual harassment the Commissioner points to the lack of a specific provision of the criminal law which penalizes that type of behaviour. Article 216 of the Penal Code, indicated by the government, is a general provision which penalizes all the types of perpetrator's behaviour which are manifestations of contempt for another person, in particular a behaviour aimed at humiliating, destroying dignity of another person, or behaviour which offends another person.



COMMISSIONER FOR HUMAN RIGHTS

108. The Commissioner reiterates that in terms of civil law Polish legislation provides protection against sexual harassment only within the area of access to publicly offered services, social protection and broadly understood employment area, pursuant to the Labour Code and an Act implementing certain EU provisions on equal treatment. Sexual harassment in other areas of public life, e.g. at universities, in public domain etc. (see Section 3-4) is not included in the regulations.
109. The Commissioner does not challenge the fact that in case of sexual harassment it is possible to claim that a certain amount of money be paid as compensation for infringing personal rights pursuant to Articles 23 and 24 in relation with Article 448 of the Civil Code⁷⁷. However, the Commissioner highlights, that the principle of reversed burden of proof, so characteristic of discrimination proceedings, shall not apply in such cases.
110. As far as sexual abuse is concerned, the Commissioner welcomes changes in the hitherto procedures of hearing witnesses of victims of rape and forced sexual act (Article 197 of the Criminal Code), sexual abuse of insane or helpless person (Article 198 of the Penal Code) and sexual abuse of a dependent person (Article 199 of the Penal Code) introduced as Articles 185c - 185d of the Code of Criminal Procedure.
111. The Commissioner welcomes the fact that following his data analysis, according to which in practice a significant period of time passes (even more than 90 days) since the date of reporting an offence by a victim until the victim's being heard by a court, since 5 October 2019 a new obligation has been introduced to the Code of Criminal Procedure, according to which no more than 14 days should pass between the date of reporting the offence by the victim and the victim's being heard by a court.
112. Nevertheless, the Commissioner points to the fact that, according to the Polish legislation, rape is called an offence only if sexual activity is forced by a perpetrator by coercion, threat or deception (Article 197 § 1 of the Penal Code). This prompts questions as to the definition of rape fulfilling the requirements of Article 36 of the Istanbul Convention, which provides that the definition of offence against sexual freedom should be based on the lack of consent of the complainant, not the use of force, threat.
113. Moreover, there are reservations as to practical handling by law enforcement bodies of cases concerning sexual violence. In their motions to the Commissioner concerning preparatory proceedings, victims of sexual violence accuse law enforcement bodies of the following: not believing in the accounts made by victims

⁷⁷ Act of 23 April 1964 Civil Code, Journal of Laws of 2019 item 1145, consolidated version.



COMMISSIONER FOR HUMAN RIGHTS

of sexual abuse, in particular when they say that they did not agree to sexual contact; negative attitude of prosecutors and judges to victims, which is manifested i.a. by depreciating victims' testimony, lack of empathy; lack of training of law enforcement officers (the Police) in conducting proceedings in cases of suspected use of a rohypnol-like substances by perpetrators; failure of the Police to ensure that the victim of rape is heard and handled by an officer of the same gender. The complaints addressed to the Commissioner reveal a huge degree of prejudice against women and harmful beliefs concerning victims of sexual violence.

114. Forced sterilization – although, as the government admits, prohibited by law (art. 156 of the Penal Code) – in practice may affect especially women and girls with disabilities⁷⁸. This issue is not well documented, although recent research suggests that women with intellectual disabilities deprived of their legal capacity, placed under guardianship and living in institutions, might be sterilized against their will or without their informed consent, as the CRPD pointed out⁷⁹.

Recommendations:

- XXXIV. To amend the Penal Code to make its definitions coherent with the definitions of violence against women and domestic violence as provided by Article 3 (a) (b) (d) of the Istanbul Convention.***
- XXXV. To amend the Penal Code in relation to rape offences and other offences against sexual freedom so that to penalize all non-consensual instances of sexual behaviour towards a harmed person.***
- XXXVI. To monitor practical implementation of Article 185c§2 of the Code of Criminal Procedure in the context of victim's first hearing.***
- XXXVII. To amend the Act implementing certain EU provisions concerning equal treatment and to extend the possibility to file a suit for violation of equal treatment principle, including abuse, in all aspects of social life.***
- XXXVIII. The State should fund academic research on the topic of forced sterilization and take steps to eliminate this practice.***

F. Prohibition of mandatory alternative dispute resolution processes or sentencing (Article 48 of the Convention)

⁷⁸ See: Submission of Association of Women with Disabilities ONE.pl and Women Enabled International to the CRPD Committee for its Review of Poland, July 31, 2018.

⁷⁹ Committee on the Rights of Persons with Disabilities Concluding observations on the initial report of Poland, 29 October 2018, CRPD/C/POL/CO/1, points 30-31.



COMMISSIONER FOR HUMAN RIGHTS

115. The Commissioner notes an alarming trend of legislative changes proposed by the Ministry of Justice in the area of divorce proceedings. As an example the Commissioner wishes to invoke a proposal to introduce a new information procedure about quasi-obligatory mediation, which is to precede a substantial examination of a petition for divorce or separation. This proposal has not become a law.

Chapter VI – Investigation, prosecution, procedural law and protective measures

B. Immediate response, prevention and protection, risk assessment and risk management (Articles 18, 49, 50, 51 of the Convention)

116. Pursuant to Article 8a of the Domestic Violence Prevention Act of 29 July 2005, the tasks of the General Prosecutor include development and publication, at least once per two years, of guidelines concerning the procedures of common organizational units of the prosecutor's office in the scope of domestic violence prevention. The Commissioner notices with concern that new guidelines have not been published in recent years – the latest applicable guidelines were issued by the General Prosecutor on 22 February 2016.

Recommendations:

- XXXIX. General Prosecutor should develop urgently new guidelines concerning the procedure of common organizational units of prosecutor's office in the scope of domestic violence prevention.**
- XL. General Prosecutor should observe a deadline for drafting guidelines, as indicated in Domestic Violence Prevention Act.**

C. Emergency barring orders, restrain and protection orders (Articles 52, 53 of the Convention)

117. The Commissioner welcomes the fact of the Sejm's passing an act introducing measures in the scope of immediate isolating a violence perpetrator from a victim⁸⁰.

⁸⁰ Act of 30 April 2020 amending the Code of Civil Procedure Act and certain other acts, Journal of Laws of 2020 item 956.



COMMISSIONER FOR HUMAN RIGHTS

The Commissioner wishes to highlight that this postulate has been fulfilled thanks to strong determination and huge engagement of civic society organizations.

118. The Commissioner welcomes changes which enable Police officers to make the perpetrator vacate a jointly occupied residence, its immediate surroundings or issues a restraint order to prevent the perpetrator from approaching the residence and its immediate surroundings. According to the amended provisions, the order to vacate the residence also includes situations where a victim of violence does not occupy an apartment, if a family member perpetrating violence has temporarily vacated the apartment, as well as situations where a perpetrator stays in the apartment temporarily or irregularly together with a victim.
119. The Commissioner also positively assesses that similar measures of immediate isolation of the perpetrator from the injured person may be used by a soldier of the Military Police against a violent soldier performing active military service.
120. The Commissioner also approves of a change providing that the Police officer may issue an immediate order to vacate the residence by the perpetrator (i.e. during the intervention or upon receiving information about occurrence of domestic abuse) and that the order may be demanded by a victim of domestic violence regardless of whether the perpetrator is actually charged with the offence. The Commissioner also approves of a change that the new measures are applicable in cases of Military Police soldiers.
121. **The Commissioner points out that although the new regulations extend significantly the scope of protection of a victim of domestic violence, they still seem not to fulfil the requirements provided by Article 52 of the Istanbul Convention.** Firstly, one has to point out that **the new regulations do not provide for a possibility to issue a temporary restraint order barring a perpetrator to approach a victim of domestic violence unless criminal proceedings are under way, under which such a measure may be applied.** Thus, there is a major gap in the protection of a victim of domestic violence, which should be eliminated by the legislator as soon as possible. Criticism should also be voiced about a measure adopted in the amended Article 11a.3 of Domestic Violence Prevention Act of 30 April 2020, according to which a person of age who stays in the apartment following its being vacated by the perpetrator, must pay rent and fees for the apartment (unless the perpetrator was ordered to pay alimony to that person). The Commissioner points out that the fact of vacating the apartment does not deprive the perpetrator of a title to it, and so it should not impact the perpetrator's liability to pay rent for the apartment, which payment is in many cases based on joint and several liability with the victim. It also has to be pointed out that very often victims



COMMISSIONER FOR HUMAN RIGHTS

of domestic violence depend economically on the perpetrator and the prospect of a statutory obligation of taking over the burden to maintain the apartment may discourage them to file a motion to the court.

Recommendations:

- XLI. To introduce a possibility to issue a temporary bar on approaching the victim, regardless of criminal proceedings under way.***
- XLII. To change the act in the scope of paying rent and maintenance of the apartment by a victim of domestic violence.***
- XLIII. To take urgent information and training actions addressed to the services which are to apply new measures.***

D. Investigations and evidence, measures of protection (Articles 54 and 56 of the Convention)

122. Cases examined by the Commissioner's employees revealed a problem of practical implementation of Article 185c § 2 of the Code of Criminal Procedure (in the wording applicable by 4 October 2019), which provides that victims of sexual offences are heard by court. According to the data collected by the Commissioner, it happened that a long period of time passed (even more than 90 days) between the date of reporting the offence by a victim until the victim was heard by the court. Because of that, the Commissioner sent a Letter of Intervention to the Minister of Justice, in which he recommended actions to improve the situation of victims by eliminating the shortcoming revealed. As a result of the Letter of Intervention, an amendment to the Code of Criminal Procedure has been in force since 5 October 2019, according to which the victim must be heard by court within 14 days of reporting the offence. The Commissioner welcomes the above mentioned amendment, but points out that it is necessary to monitor its application in practice.

Recommendations:

- XLIV. To monitor practical application of Article 185c § 2 of the Code of Criminal Procedure in the context of the first hearing of the victim of offence by a court.***

E. Ex parte and ex officio proceedings (Article 55 of the Convention)



COMMISSIONER FOR HUMAN RIGHTS

123. The Commissioner points out that as a consequence of the reservation made by Poland as to the Convention, certain petty offences, which could fall under the rigour of Article 35 of the Convention, are not prosecuted by state, but are handled under private prosecution procedure initiated by victims. This relates in particular to offences involving causing impairment of a body function or an incapacitating condition which lasts not longer than 7 days (Article 157§ 2 of the Penal Code) or hitting or otherwise violating bodily integrity (Article 217 § 1 of the Penal Code). Proceedings in such cases may be opened ex officio if, in a prosecutor's opinion, this is required due to public interest (Article 60 § 1 of the Code of Criminal Procedure). In practice, however, a prosecutor's taking over a private prosecution case is quite infrequent.

Recommendations:

XLV. To change the law concerning prosecution of offences described in Article 157§ 2 and Article 217§1 of the Penal Code for those offences to be prosecuted ex officio if the forbidden act suits the description of domestic violence or to change practices by obliging prosecutors to prosecute such offences ex officio (e.g. by appropriate clauses in the General Prosecutor's guidelines concerning the operation of common organization units of the prosecutor's office in the scope of domestic violence prevention).

Chapter VII – Migration and asylum

B. Gender-based asylum claims (Article 60 of the Convention)

124. Since 2015 the Commissioner has been receiving numerous complaints from foreigners who have been trying in vain to enter the territory of Poland via border check points in Terespol (with Belarus) or Medyka (with Ukraine) with the intention to apply for international protection in Poland. As a rule, a declaration to apply for international protection in Poland, which is made on the border, should result in such foreigners being allowed to enter the Polish territory, their applications being accepted by the Border Guard officers. However, according to the complaints received by the Commissioner and according to observations made during visits made to the check points by the Commissioner's employees, in many cases the Border Guard officers do not accept foreigners' declarations of intention to apply for international protection in Poland, they prevent them from filing such an application and as a consequence, they refuse those foreigners the right to enter



COMMISSIONER FOR HUMAN RIGHTS

Poland. In the group of foreigners who are refused to apply for international protection there are women who justify their declaration to apply for the protection with gender-based violence experienced in their country of origin. In such cases, according to the Commissioner's representatives' observations of interviews conducted by Border Guard officers with the foreigners, gender-based violence is not deemed by Border Guards to be a form of persecution, even if a woman concerned is not likely to receive any administrative support in her home country.

125. Every time when, following a border control completion, a Border Guard official sees no basis for granting entry to Poland to a foreigner, an official report of an interview with the foreigner is made. The report, however, is only an internal document and it is usually quite short, no more than three sentences. According to the practices observed during the on-site visitation, instead of relaying the whole course of an interview with the foreigner and writing down all their statements, Border Guard officer notes down only information which in his/her opinion is vital for determining the cause of the foreigner's coming to Poland. The contents of the report depend totally on the Border Guard officer who interviews the foreigner. The interviews are not recorded in any way, and the reports concerned are not read out to the foreigners. Thus, they are not in a position to verify or correct information therein. Due to the same reason, the contents of the reports cannot be verified by other Border Guard officers, including by the superiors of interviewing officers.

126. As a result of a lack of any possibility to verify the course of interviews with foreigners, which are of key importance in identifying them as individuals seeking international protection in Poland, foreigners who belong to that sensitive group are not ensured effective access to procedures of handling international protection applications. The need to ensure such guarantees are in place arises from recital 25 of the Preamble and Article 6.2 of Directive 2013/32/EU on common procedures for granting and withdrawing international protection. This is why, in the Commissioner's opinion, it is necessary for the legislation to define in detail the Border Guard officers' obligation to record interviews conducted with foreigners on the border. Reporting those interviews on standardized forms should be the basic procedure, including a mandatory question about an intention to apply for international protection in Poland. The Commissioner has addressed i.a. the Ministry of Home Affairs to introduce relevant regulations to the Polish law.

Recommendations:

XLVI. To define by statute Border Guard service obligations in the scope of making records of interviews conducted with foreigners during border checks, under the so called second line border check procedure.



COMMISSIONER FOR HUMAN RIGHTS

- XLVII. To introduce a standardized forms for recording interviews, together with obligatory question about the intention to apply for international protection in Poland, and to read out these reports to the foreigners in a language which they understand.***
- XLVIII. To organize training to Border Guard officers and to the employees of the Office for Foreigners on interpretation of assumptions for seeking international protection, which are provided for in the Convention.***