

**Group of Experts on Action against Violence  
against Women and Domestic Violence  
(GREVIO)**



*AUTOMATED TRANSLATION*

**Comments submitted by Poland  
on GREVIO's final report on the implementation  
of the Council of Europe Convention  
on preventing and combating violence  
against women and domestic violence  
(Baseline Report)**

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**REPUBLIC OF POLAND**  
**MINISTRY OF FAMILY AND SOCIAL POLICY**

Warsaw, 30 August 2021

Ms. Johanna Nelles  
Executive Secretary of the Monitoring  
mechanism of the Istanbul Convention  
Council of Europe

Madam,

Following the invitation to submit comments on the report of the Group of Experts on the Prevention of Violence against Women and Domestic Violence (GREVIO) on the implementation by Poland of the Convention on Preventing and Combating Violence against Women and Domestic Violence, the following is presented.

Sincerely

Joanna Maciejewska  
International Cooperation Department

## **I. GENERAL REMARKS**

### **Implementation by Poland of the principles of the Convention regarding the nature and sources of violence against women**

In accordance with the principles of the Convention, as set out in its preamble and reflected in its provisions, in particular in chapters I, II and III, the Convention defines violence against women as "a manifestation of historically unequal power relations between women and men that have led to the domination over and discrimination of women by men and to the prevention of the full advancement of women" (paragraph 9 of the preamble), as well as stressing that violence against women, considered as gender-based violence against women, has a structural character and "is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men" (paragraph 10 of the preamble). This leads to the recognition that violence is premised, in light of the Convention, on the performance of socially constructed roles, behaviours, actions and attributes that a given society considers appropriate for women or men (constituting the concept of "gender"). The elimination of sociocultural differences in the roles, behaviours, activities and characteristics of women and men from social life is intended to eliminate violence against women.

While the explanatory report to the Convention (paragraph 25) stresses that violence against women and domestic violence can be understood and explained in different ways, that violence against women and domestic violence are complex phenomena, and that it is necessary to use different approaches in combination with each other in order to understand them, the Convention adopts a narrow approach, based on a specific view of society and its functioning. The authors of other concepts of the phenomenon of violence point to other sources of violence or emphasise a much wider range of factors conditioning violence (individual, social). In particular, it is stated that violence is conditioned by many factors (personality, motivation, particular situation, social environment). Reducing the sources of violence to power relations between men and women over the centuries, as the Convention does, is therefore too restrictive.

The general framework for action to prevent and combat violence against women and domestic violence and to protect victims is set out in Article 6 of the Convention, and requires states to take into account the "gender perspective" when implementing the Convention, i.e. by taking action to prevent, prosecute and support victims of violence against women and domestic violence. This means that the concept of "gender", as an expression of certain ideological assumptions, must be adopted as a binding policy framework in areas such as the protection and support of victims of violence, criminal proceedings, education, measures to raise awareness and change social consciousness, and the granting of protection to foreigners.

Compliance with this obligation cannot be reconciled with the principle deriving from article 25, paragraph 2, of the Constitution of the Republic of Poland, which is one of the fundamental principles of the institutional framework of the Republic of Poland. According to this principle, public authorities must be impartial with regard to religion, convictions and philosophical beliefs. According to the Constitutional Court's judgment of 14 December 2009 (K 55/07), the obligation to respect impartiality does not, however, relieve State bodies of the obligation to act in accordance with the axiology reflected in the Constitution of the Republic of Poland, which is organized around fundamental principles such as, inter alia, respect for and protection of the inherent and inalienable human dignity, which is the source of freedoms and rights of man and the citizen.

The principle expressed in article 18 of the Constitution of the Republic of Poland, which stipulates the protection and care that the Republic of Poland gives to marriage as the union of a man and a woman, to the family, to motherhood and parenthood, is also of fundamental importance. The majority of social and cultural roles assigned to women and men are closely related to their functioning within families. There is a risk that measures to combat "gender-based violence" may include, among other things, attempts to reduce the importance of basic social institutions, in particular the family, as the family and the roles of its members associated with it may be wrongly perceived as a source of women's oppression and a space for men's domination.

When ratifying the Convention, Poland made the following declaration: "The Republic of Poland declares that it will implement the Convention in accordance with the principles and provisions of the Constitution of the Republic of Poland". This declaration means that Poland has reserved the right to implement the Convention in accordance with the Constitution of the Republic of Poland, in particular to take measures for its implementation in accordance with the following constitutional principles:

- respect for the obligation of impartiality of public authorities in the field of religion, convictions and philosophical beliefs (Article 25, paragraph 2, of the Constitution of the Republic of Poland),
- the fulfilment of the fundamental obligation of public authorities to respect and protect human dignity and to guarantee the freedoms and rights derived from it (Article 30 of the Constitution of the Republic of Poland),
- the protection of marriage as a union of a man and a woman, the family, motherhood and parenthood (article 18 of the Constitution of the Republic of Poland),
- respect for the right of parents to bring up their children in accordance with their beliefs (article 48, paragraph 1 of the Constitution of the Republic of Poland),
- respect for the right of parents to provide their children with moral and religious education and training in accordance with their convictions (article 53, paragraph 3, of the Constitution of the Republic of Poland).

In presenting the above, it should be firmly emphasized that the Government of the Republic of Poland does not accept violence not only against women, but against any person. The guiding principle for all organs of public administration in their decisions and actions is the principle of the inherent and inalienable dignity of every person, which is a special value possessed by every person by the mere fact that he/she is a human being, irrespective of any other characteristic. The Republic of Poland guarantees special protection to the family, parenthood and marriage, which is the union of a man and a woman.

The legislation in force in Poland and the measures taken for its implementation ensured the protection of all persons against all forms of violence, including domestic violence. The strengthening of this protection is one of the priority tasks of the Government. The solutions in the field of combating violence correspond to the real nature and extent of violence and domestic violence in Poland. They take into account the fact that violence is a multidimensional phenomenon, with

complex and mutually influencing sources, related to the perpetrator, relations between relatives and social relations.

### **Coordinated policies to prevent and combat violence**

The conclusion, contained in several paragraphs of the report, that violence outside the family context has not received much attention in Poland so far, is unfounded. Protection and assistance to victims of violence are provided by numerous provisions of criminal, civil, family and guardianship law, as well as, with regard to domestic violence, in addition to criminal law, by the Act of 29 July 2005 on combating domestic violence and the Act of 12 March 2004 on social assistance. The implementation of the above-mentioned provisions is supported and complemented by programmes for prevention, assistance to victims of violence, education and public awareness.

On the other hand, in order to assess the scope of the Polish policy of combating violence, it is necessary to take into consideration the type and extent of the actual problems in Poland. As stated in the Polish report on the implementation of the Convention and mentioned during the meetings of representatives of public administration with the GREVIO delegation (September 2020), some manifestations of violence, covered by the Convention, do not occur in Poland, in principle (forced marriages, honour-related violence, forced sterilization and abortion).

The allegation of a lack of a comprehensive policy against violence remains unjustified in view of the great attention that the Polish Government continuously pays to this area, as evidenced by the ongoing work on the amendment to the Act on Combating Domestic Violence as well as the beginning of the work on the amendment to the "Anti-Violence Act"<sup>1</sup>.

Furthermore, the relevance of the activities, in terms of their material scope, and the degree of involvement of public authorities in the fight against violence must be assessed by taking into account the whole range of actions undertaken, respectively, in the field of social policy, social assistance, penal policy, health care, education, in the field of family violence, sexual violence, trafficking in men, digital violence. By adopting such a holistic approach, it is possible to use the measures and solutions best suited to the problem in question.

### **Gender-neutral policy documents and legislation on violence**

Poland shall implement the Convention taking into account the principles of the Constitution of the Republic of Poland referred to in the declaration made at the time of ratification of the Convention.

The overriding objective guiding Polish legislation and action programmes concerning the issues regulated in the Convention is the implementation of the fundamental obligation of public authorities to respect and protect human dignity and to guarantee the freedoms and rights of man and citizen deriving from human dignity (article 30 of the Constitution of the Republic of Poland). The content of legal solutions and action programmes meets the basic requirements set forth in the Constitution of the Republic of Poland in terms of guaranteeing the equality of all persons before the law, the right of all persons to equal treatment by public authorities (art. 32, para. 1), non-discrimination on any grounds in political, social or economic life (art. 32, para. 2), equal rights of men and women in family, political, social and economic life (art. 33, para. 1).

Articles 32 and 33 of the Constitution of the Republic of Poland do not prescribe identical treatment or the guarantee of identical rights, nor do they prohibit differentiation of the situation of legal subjects. Equality is to be understood as a prohibition of unjustified differentiation of the position of similar subjects of law or a prohibition of equal treatment of subjects of law who are different<sup>2</sup>.

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<sup>1</sup> The Act of 30 April 2020 amending the Act - Code of Civil Procedure and certain other Acts

<sup>2</sup> Ad. art. 32 of the Order of the Constitutional Court of 24 October 2001, SK 10/01, part III, point 2, [https://trybunal.gov.pl/fileadmin/content/omowienia/SK\\_10\\_01\\_PL.pdf](https://trybunal.gov.pl/fileadmin/content/omowienia/SK_10_01_PL.pdf), ad art. 33 - the judgment of the

The mechanisms and tools for preventing and combating violence, including those contained in the Law on Combating Domestic Violence, treat and protect all victims of violence equally, regardless of their gender. The only group for which specific solutions are provided are children, who must be treated differently from adults.

**The term "gender" used in the Convention and the GREVIO report on the implementation of the Convention by Poland**

The use of the term "gender" in the Convention poses many problems of interpretation. The term is not a legal term and is not rooted in universally binding international mechanisms. Furthermore, because of its ambiguity, it has a forcible character which, in the context of the rights and obligations guaranteed, creates doubts about the correct understanding and application of the legislation.

## II. DETAILED REMARKS

### **Paragraphs 4, 5, 8 and 9 - substantive and personal scope of application of the provisions on domestic violence**

Work has been undertaken to amend the Act on Combating Domestic Violence, the aim of which is to clarify the definitions contained in the Act. It is assumed that the amendment will be adopted by the Sejm of the Republic of Poland by the end of 2021.

The amendment will cover:

- extending the personal scope of the Act to: former spouses and partners who do not live with the victim of family violence, other related or unrelated persons who are in a de facto relationship,
- possible (based on the results of the legal file review) addition of economic violence to the catalogue of acts considered as family violence.

However, it should be noted, as indicated in the Polish report on the implementation of the Convention, that the provisions in force in the field of criminal law and those concerning the fight against domestic violence recognize economic violence as a form of psychological violence.

Economic violence is identified and analysed within the framework of diagnostics provided for in the National Programme for Combating Domestic Violence and subsequently commissioned by the Ministry of Family and Social Policy.

### **Paragraphs 4, 7, 8 and 36 - combating certain forms of violence**

The claims that the Polish authorities do not take measures, on an appropriate scale, against certain forms of violence (forced marriage, female genital mutilation, forced sterilisation) do not seem justified.

The assessment of the adequacy of legal remedies and other measures taken must take into account the extent of the threat of certain types of violence. As indicated in Poland's report on the implementation of the Convention, acts such as female genital mutilation and forced sterilization do not occur in Poland, in principle, and therefore are not explicitly mentioned in the Criminal Code. If such offences were committed, forced abortion and forced sterilization would be qualified as extortionate abortion (Article 153 of the Penal Code) and serious health damage (Article 156 of the Penal Code) respectively. Female genital mutilation would be classified as a serious health offence (article 156 of the Criminal Code).

Work is in progress on the draft law amending the Code of Civil Procedure and certain other laws, which will include, inter alia, solutions for adapting Polish criminal law to the Istanbul Convention. This work is the result of Poland's withdrawal of the reservation to its article 58 - compliance with the standards of the Convention will be ensured with regard to the statute of limitations for offences committed against minors, listed in articles 37, 38 and 39 (b) of the Convention. This period will expire when the person reaches the age of 30 (amendment of Article 101 § 4 paragraph 1 of the Criminal Code).

The draft amendment also envisages the introduction of a new offence in the Penal Code, the characteristics of which will correspond to the characteristics of the acts specified in article 38 b and c of the Convention (new article 156a of the Penal Code). In addition, another offence will also be added - forced marriage (Article 191b of the Penal Code, corresponding to Article 37 of the Convention), although as a rule such marriages do not occur in Poland.

As for aiding or abetting psychological violence, harassment, sexual violence (including rape), forced marriage, female genital mutilation, forced abortion and forced sterilisation, the court shall impose the penalty for aiding and abetting within the limits of the penalty provided for the given offence (Article 19 § 1 of the Criminal Code). For attempt, in accordance with Article 14 § 1 of the Criminal Code, the court shall impose the penalty within the limits of the penalty provided for the given offence. Public incitement to commit an offence and public praise of its commission are also penalised (Article 255 of the Criminal Code).

The response to non-compliance with the legal provisions in this area and the prevention of such offences are the focus of the activities of law enforcement agencies and judicial authorities.

Even though the above-mentioned offences do not occur in Poland, Poland brings its penal

provisions into line with the requirements of the Istanbul Convention in this area and therefore the reservation to article 58 of the Convention made at the time of ratification has been withdrawn.

**Paragraphs 12 and 15 - adoption and implementation of a coherent national policy or strategy on equal treatment between women and men, linking it to activities and strategies in the field of preventing and combating all forms of violence against women, including domestic violence**

Work on the National Equal Treatment Programme for 2021-2030 is nearing completion. The programme includes activities in the following areas:

- anti-discrimination policy,
- and social security,
- education,
- health,
- access to goods and services,
- awareness,
- data collection and research,
- coordination.

The programme will cover a wide range of actions aimed at the effective prevention of unequal treatment and discrimination and at raising public awareness. The majority of the actions will be targeted at all groups exposed to discrimination in any area of social and economic life.

The programme will be implemented by the government administration at the central and voivodship levels, in cooperation with non-governmental organizations and social partners.

With regard to combating violence, including domestic violence, the programme provides for the implementation of a number of activities

- raise awareness of the phenomenon of violence against women, raise awareness of the phenomenon of domestic violence,
- Disseminate knowledge about support and assistance for victims of violence,
- to protect minors from the harmful influence of violent content in broadcasts and transmitted by other media,
- to disseminate content on the development of pro-social and altruistic attitudes, respect for the dignity of all persons and diversity, and the development of positive relationships with peers and in school.

**Paragraph 16 - principles for the implementation of the Convention**

The assertion in the last sentence of the paragraph that discrimination against certain groups of women, for example by law enforcement agencies and the judiciary, was widespread did not appear to be based on fact. In particular, paragraph 53 of the explanatory report, cited in footnote 20, refers only to unspecified research, the results of which would indicate that such discrimination persists, and on a significant scale. Nor can this be taken to refer to the situation in Poland.

**Paragraphs 17, 18, 21 and 22 - barriers for certain groups of women to accessing support and protection, scope of activities (protection and support) directed at certain groups of women-victims of violence**

As regards the content of legal provisions concerning, inter alia, protection against violence, Poland approaches the protection of the rights of individuals in a holistic and complementary manner, guided by the requirements of human rights protection and respect for various internationally adopted principles, such as the principle of non-discrimination. It should be strongly emphasized that LGBT persons, like all other persons, are protected against discrimination and violence, fully and under the same conditions as all other persons. The

Polish legal provisions of general applicability are sufficient to guarantee protection to any victim of any form of violence. These provisions may be used by all victims of violence, including the groups identified in paragraph 17, depending on the violence suffered.

### **Paragraph 21 - discrimination against LGBTI women**

It should be noted that the so-called "LGBT-free zones" mentioned in footnote 24 are part of a campaign by an individual against whom a lawsuit for defamation of gminas is pending.

The information contained in footnote 25 concerning the gminas' resolutions which, according to this information, prohibit the promotion of equal rights for persons of different sexual orientation, is not supported by the facts. These resolutions are, in fact, opposed to the promotion in schools of a model of child-rearing that is incompatible with the beliefs of parents. The control of the resolutions of gminas is carried out by independent administrative courts, acting on the basis of complaints of persons with a legal interest in challenging the mentioned resolutions. It follows from the case law that resolutions adopted by gmina assemblies are statements reflecting the world view and views on moral issues of the members of these assemblies. They do not create any new rights or impose any obligations on citizens, nor do they deprive them of any rights. These resolutions are not the acts of local law establishing rights and obligations of a general nature, universally binding and addressed to an indefinite number of recipients. Nor are resolutions acts of public administration that would constitute a manifestation of the authority of public law exercised by public administrative authorities, including entities of local self-government.

Referring to the last sentence of this paragraph, it should be mentioned that whenever the public debate takes an unnecessarily harsh tone, the Government administration insists on the obligation to be guided in public statements by the respect for the dignity of each person, from which it follows that it is impossible to separate the person from the dignity conferred upon him. The escalation of the political conflict affects various social groups, as evidenced by acts committed also by persons belonging to the LGBT community, e.g. blocking the passage of an ambulance, combined with the blocking by demonstrators of one of the busiest multi-lane roads in Warsaw. Such acts hinder the work of the emergency services and delay rescue. The destruction of places of worship, which are often historical buildings and buildings that serve the whole community, accompanying such demonstrations is increasingly observed.

### **Paragraphs 29-31 and 48 - coordination of the actions of institutions responsible for combating violence, coordinating institution**

Since violence, including violence against women, has various aspects and takes many forms, general and comprehensive solutions would not be as effective as specialized measures. This applies both to the content of legal solutions and to the institutional environment.

The institutional structure and the way of shaping links between institutions with regard to combating violence, including domestic violence, correspond to the way the Polish administration is organized and functions. The competences of individual state institutions in the field of preventing and combating violence, including domestic violence, are unambiguously defined and transparent, as well as sufficient for the effective implementation of state policy in the field of combating violence.

There is no evidence to support the statement (second sentence of paragraph 31) that there are no links and structures for cooperation between the ministries responsible for legislation and action programmes concerning the various forms of violence and that this lack may constitute an obstacle to the formation of a coherent and coordinated approach. This thesis is contradicted by the organizational structure of the government administration as well as the principles of its functioning and cooperation between different bodies, defined by law (in particular, the Law of 8 August 1996 on the Council of Ministers, the Resolution of the Council of Ministers of 29

October 2013 Regulation of the work of the Council of Ministers).

Furthermore, such an assertion should not be made in general terms and indicate problems that might only occur (in the report: "may remove consistency" and "[may] prevent a comprehensive and coordinated response"). The report does not indicate which solutions adopted by departments are inconsistent. If inconsistent solutions have not been identified, it should not be assumed that they will occur in the future.

Draft legislative acts and action programmes are subject to the inter-ministerial consultation procedure in order to eliminate possible inconsistencies in the proposed solutions. In addition, the law defines the rules for conducting inter-ministerial and public consultations.

### **Paragraphs 35 and 43 - one-year period of implementation of the national violence prevention programme**

The period of implementation of the current programme (programme for 2021) is a result of the ongoing work on the amendments to the Law on Combating Domestic Violence. These changes will affect the tasks in the field of combating domestic violence, therefore a new programme will be developed after the adoption of the new legal solutions.

It is assumed that the amendment to the law will be adopted by the Sejm of the Republic of Poland by the end of 2021.

The omission of this information, already presented in the comments on the draft GREVIO report (May 2021), leads to unfounded conclusions as to the intentions of the Polish Government with regard to the fight against domestic violence.

### **Paragraph 37 - funds allocated to combat violence**

The report incorrectly states that the budget for the implementation of the National Programme for Combating Violence in Families for 2014-2020 (2020 - 23 252 000 zł) includes the funds in the amount of 3 million zł (approximately 700 000 EUR) that are allocated for the implementation of projects within the framework of the governmental programme "Support for local authorities in creating a system for combating violence in families". The funds for this purpose are a separate position in the state budget, they are additional funds to the funds allocated for the implementation of the national programme.

### **Paragraph 38 - remuneration of members of interdisciplinary teams and working groups**

The status and powers of interdisciplinary teams and working groups are specified in the Law on Combating Family Violence. The Act explicitly states that the members of the interdisciplinary team and working groups perform tasks resulting from the operation of interdisciplinary teams and working groups within the scope of their official or professional duties, regardless of whether they are employed by local government units or by non-public units. They receive remuneration for work performed for the employing entity. Working in an interdisciplinary team or task force is not - in the eyes of the law - additional work, beyond their ordinary professional duties.

### **Paragraph 39 - anti-violence expenditures**

The suggestion that failure to earmark special funds for combating violence against women amounts to a failure to allocate sufficient financial resources to combating violence is unfounded. The determination of how to finance the fight against violence and how to organize the expenditure is a matter for the state. The solutions in this respect depend strictly on the way in which the public administration is organised and the way in which it carries out its tasks.

As stated in the Polish report on the implementation of the Convention, it is not possible to distinguish the expenditures specifically for activities in the field of combating violence of different branches of government administration (justice, internal affairs, public administration, family, social security, labour, health, education, rural development, higher education and science). This fact alone does not lead to the conclusion that the expenditure is not carried out in sufficient quantities or that the expenditure is not effective.

#### **Paragraphs 40 and 41 - financing of activities of non-governmental organizations**

The assertion that non-governmental organizations have limited opportunities to come forward with aid because of lack of access to public funds is not factually correct - the number of entities offering aid is growing, as is their diversity and the funds allocated to finance their activities.

In 2017, 16 million zł were transferred from the Justice Fund to non-governmental organizations of aid to aggrieved persons, in 2018 - 25 million zł, in 2019 - 75 million zł, in 2020 - 84 million zł. For 2021, 96 million zł have been planned.

The number of contracts with non-governmental crime victim organizations is increasing from 31 contracts in 2017, 42 contracts in 2018, 58 contracts in 2019 to 60 contracts in 2020.

The number of aid providers is increasing. In 2017 there were 28, in 2018 - 37, in 2019 - 51, and in 2020 - 55 non-governmental victim assistance organizations.

#### **Paragraph 44 - possibilities for action by non-governmental organisations**

As regards the comments on the proceedings in relation to the women's strike in 2016 (third sentence of the paragraph), it should be stressed that "the search of four women's NGOs" (in the report in its English version "police raids") was an ordinary procedural act, consisting of the temporary seizure of documents and data carriers on the premises of non-governmental organisations. This act was carried out within the framework of the investigation conducted by the Poznań Regional Prosecutor's Office concerning the excess of power or failure to perform duties, from 2012 to 2015, of the officials of the Ministry of Justice during the allocation, control of expenses and settlement of the funds of the Victims' Assistance Fund. The acts at the premises of non-governmental organizations resulted from the request to hand over items that could be evidence in this case. All the evidence was handed over voluntarily. It should be emphasized that the organizations concerned did not raise any objections to the protocol of seizure of the objects. The electronic media, after being copied, were returned to their owners. The documents were also secured in public institutions.

This information proves that none of the actions had the character of a "search" (ang. "police raids"), were taken arbitrarily, and were not directed against persons identifying themselves with the protests or any non-governmental organization. These actions were essentially aimed at irregularities in the sphere of public administration. Evidence of the lack of violation of the rights of non-governmental organizations is the fact (as mentioned above) that no organization raised objections to the protocol of seizure of property.

In view of this explanation of the facts, there is no reason to assume that the activities were intended to influence the activities of women's organizations. The terminology used in the report to describe the activities of State bodies seems inappropriate.

#### **Paragraphs 44 and 46 - cooperation with non-governmental organizations**

Non-governmental organizations working in the field of anti-violence have the right to contribute to the legislative process - they have the right to express their opinions, for example, on draft laws and policy documents.

Attempts to consult with organizations remain unanswered. For example, the draft National Programme against Family Violence for 2021 was sent to non-governmental organizations for their opinion, but they did not submit any opinion or position on it.

#### **Paragraphs 51 and 56 - statistical data**

The National Programme to Combat Domestic Violence for 2021 has modified the indicators for the implementation of the "Blue Sheet" procedure so that it is possible to accurately determine the number of victims of domestic violence and the number of families affected by different types of violence (psychological, physical, sexual). In addition, data on violence against children, the elderly and persons with disabilities, as well as data on services provided to victims of violence, disaggregated by gender, are now collected.

Data on the relationship between the perpetrator and the victim of violence are collected through surveys on family violence commissioned separately by the Ministry of Family and Social Policy. Such surveys have been conducted every two years, in accordance with the National Programme on Combating Family Violence 2014-2020, the programme for 2021 provides for a diagnosis of the phenomenon of violence.

#### **Paragraph 57 - data collected by the National Agency for the Resolution of Alcohol Problems**

The collection by the National Agency for Alcohol Resolution of information on the interventions of the gminas commissions for the resolution of alcohol problems in cases of domestic violence related to alcohol consumption results from the tasks of the Agency defined in the Act of 26 October 1982 on education in sobriety and the fight against alcoholism. It would therefore be futile for another institution to collect data on family violence experienced by people who contact the gminas commissions for the resolution of alcohol problems. The word "only" in the fourth sentence of the paragraph may be misleading in suggesting that other institutions should collect the same data.

#### **Paragraph 59 - population surveys**

The last survey was conducted in 2020, not, as the report states, in 2018 and 2019. The surveys conducted in 2020: "Study of the effectiveness of psychological and therapeutic programs for perpetrators of family violence" and "Evaluation of the National Program against Family Violence for 2014 - 2020".

Contrary to the assertions made in the report, the research commissioned by the Ministry of Family and Social Policy has a broad personal and material scope. Qualitative and quantitative data are collected, including the gender and age of the victims of violence, the forms of violence experienced/applied and the extent of the help provided. The variables taken into account result in a wide range of information available on victims of violence and those who resort to violence.

#### **Paragraphs 71, 74 and 78 - awareness campaigns**

Within the framework of the project "Combating violence against the elderly and persons with disabilities", a national campaign on violence against the elderly and persons with disabilities, who are among the groups that are particularly vulnerable and exposed to cross-discrimination, is planned to be conducted in 2022 and 2023.

In 2020, the Ministry of Family and Social Policy ran a national campaign "Building a house takes a lot of care. Don't let it fall apart" The aim of the campaign was to:

- to increase the motivation to act in order to improve the situation of persons suffering from domestic violence, to increase the knowledge about domestic violence, including the symptoms that indicate that in a given family violence occurs, to indicate the possibility to contact the competent services,
- to increase the sense of security of children and young people threatened or affected by family violence - to increase knowledge about family violence and the destructive influence of violence on victims and witnesses, to make them aware that violence can be resisted by seeking professional help, to inform them about the possibility of contacting the competent services

The campaign was aimed at society as a whole and in particular at victims of domestic violence, including: children, the elderly and people isolated due to the COVID-19 pandemic, as well as witnesses of domestic violence, people who resort to domestic violence.

As part of the :

- posters were designed and displayed on advertising spaces in Citylight format in the 16 capital cities of the voivodeship,

- short animated films for elementary school children were produced and given to the school superintendencies and social policy departments of the voivodeship offices for distribution to schools and local communities.

The Ministry of Justice, within the framework of the International Day of Crime Victims, celebrated annually on 22 February, takes measures for crime victims and their relatives. Within the framework of the "Week of Assistance to Crime Victims" (21-28 February 2020), the Ministry focused on providing free legal and psychological counselling throughout Poland, in courts, prosecutors' offices, police stations, seats of professional self-governments of lawyers and non-governmental organizations.

### **Paragraph 73 - awareness campaigns**

With funding from the Justice Fund, an extensive campaign was carried out in 2019 to inform victims of their rights and what help they can get. Stories of victims of crime, including domestic violence, were presented. One of the commercials made direct reference to the possibility for victims of domestic violence to get support from the Justice Fund.

### **Paragraphs 80 and 81 - teaching content**

The contents of equality of women and men, non-stereotyped roles for men and women, non-violent conflict resolution in interpersonal relations, gender-based violence against women and the right to personal integrity are included in the curricula of such courses as "Civic Education", "Ethics" and "Family Life Education". Within the framework of "Education for family life", emphasis is placed, among other things, on the formation of the ability to adopt an integral vision of the person, the ability to show respect for others and to appreciate their efforts and work, to choose and implement values that serve personal development, to undertake an effort of self-development, to solve problems and conflicts (so that the student is able to identify the source of conflicts and determine their causes, as well as to understand how interpersonal relationships are built, their importance for social and emotional development, including respect, help, cooperation, empathy), to defend sexual intimacy and integrity and to respect the body of others, to prevent and fight against threats such as : chemical and behavioral addictions, sexual pressure, pornography, cybersex, underage prostitution.

The allegation of the "presence of negative stereotypes of women in school textbooks and the subject of 'Family Life Education'" and the recommendation to eliminate "discriminatory representations of women and men, such as images that systematically depict women in private and family life instead of showing their participation in public life ..." (paragraph 81, first and fourth sentences) are unfounded. (paragraph 81, first and fourth sentences) are unfounded. The way in which women and men are presented in the mentioned textbook is strictly related to the content of "Family Life Education" and is not an expression of any discrimination, and can in no way be considered as "fertile ground for violence against women" (paragraph 81, fourth sentence). The content taught results from the Act of 7 January 1993 on Family Planning, Protection of the Human Foetus and Conditions of Eligibility for Abortion, which states: "Content on (...) the value of the family, of life in the prenatal phase is introduced into the school curriculum". Therefore, women and men are shown, in the context of "Family Life Education", mainly in the context of family life and not in the context of public life. The auxiliary material (exercises and lesson plans) deals with gender equality, peaceful conflict resolution in interpersonal relationships, violence (also against women), non-stereotypical gender roles and the right to personal integrity. As mentioned above, other subjects taught in schools include content on other aspects of social life and the lives of women and men.

### **Paragraph 82 - participation of non-governmental organizations in school education**

The involvement of external entities in the work of the school, in order to enrich the educational offer, has a basis in the Law of 14 December 2016 - Law on Education, and is based on the principle of equal and non-discriminatory treatment of all entities (foundations, associations, scout organizations, sports associations). With the consent of the school council, the parents' council and the principal, entities whose object of statutory activity is the education, extension and enrichment of the forms of didactic, educational, care and innovative activities of the school, may carry out activities in the

school. The launching of an activity in the school requires an agreement with the headmaster on its framework.

Each school develops its educational and preventive programme, taking into account the results of the annual diagnosis of the developmental needs of the pupils. This programme is adopted by the parents' council (a body representing all parents of pupils in a given school), in agreement with the pedagogical council. Such a programme includes educational activities for pupils as well as preventive activities for pupils, parents, teachers and other school staff.

Therefore, it can be concluded that the content (or the manner and scope of its presentation) proposed by the organizations indicated in the report did not meet the needs of the particular school communities and was not part of the educational and preventive activities planned by a particular school and, therefore, was not authorized by the principal, who is responsible for the overall activities of the school.

### **Paragraph 83 - ad hoc monitoring of actions in schools concerning women's rights and non-discrimination of lgbt persons**

This paragraph may wrongly suggest that schools cannot organise activities to promote women's rights or to combat discrimination - on this point see the comments on paragraph 82.

School superintendents take action on the basis of requests from parents who have not consented to their children's participation in certain school activities.

In order to assess the extent to which the right is respected (including the constitutionally guaranteed right of parents to bring up their children in accordance with their beliefs and the right of parents to provide their children with moral and religious education and training in accordance with their beliefs), the superintendents of schools have asked the principals of the schools indicated by the parents to provide information on the organization of the projects and/or inspections have been conducted.

The Ministry of Education and Science does not collect data on ad hoc inspections of the daily work of schools.

On the other hand, the data provided to the Minister of National Education by the Human Rights Defender indicates that nationwide these inspections are incidental. On April 4, 2019, the Office of the Human Rights Defender requested the school superintendents to provide data on ad hoc inspections. It was noted that in the 18 months prior to the Human Rights Defender's request, 32 ad hoc inspections were conducted, at the request of parents only. These inspections took place in 7 of the 16 voivodeships:

- zachodniopomorskie - 1 ad hoc control,
- warmińsko-mazurskie - 1 ad hoc control,
- lubuskie - 1 ad hoc control,
- mazowieckie - 8 ad hoc controls,
- wielkopolskie - 1 ad hoc control and visits by officials of the school superintendence,
- śląskie - 19 ad hoc controls,
- łódzkie - 1 ad hoc control.

Under the Act of 26 January 1982 - Teachers' Charter, teachers are liable to disciplinary action for offences against the dignity of the teaching profession or the following duties

- to carry out in an honest manner the tasks inherent to the position entrusted and to the basic missions of the school (teaching, education and care), including tasks related to the safety of the students during the courses organized by the school,
- support each student in his or her development,
- to seek the fullness of his personal development,
- improve their professional skills according to the needs of the school,
- to educate and bring up young people in the love of the Fatherland, in the respect of the Constitution of the Republic of Poland, in the atmosphere of freedom of conscience and respect for every man,
- To be concerned with the formation of moral and civil attitudes in students in accordance with the idea of democracy, peace and friendship among people of different nations, races and creeds.

Expressing support for or participating in a worldview event during class time is not part of fulfilling the duties of educating young people, nor is it part of the honest performance of the teacher's job.

In view of the comments made in the second sentence of the paragraph, it should be made clear that the women's strike had nothing to do with plans to abolish sexual and reproductive health education. The Government had not announced any plans to discontinue sexual and reproductive health education. Therefore, the report presents information that is not based on fact. In fact, the women's strike was linked to plans to amend the legislation concerning the conditions for terminating pregnancies. The participants in the strike demanded the introduction of an unlimited possibility to perform abortions. The analysis of the speeches of the participants of the strike indicates that the use of the term "sexual health" was intended to avoid the use of the term "abortion", so it was misinformation about the real objectives of the strike. The identification by some sectors of society of the term "abortion" with "sexual health" or "reproductive health" is an abuse.

The educational objectives and teaching contents in the field of sex education, included in the common core curriculum implemented in schools, cover a wide range of topics, which is why they are included in various subjects and courses (emotional development, nature, biology, physical education, family life education). The detailed contents of the common core for the different stages of education correspond to the age, abilities and cognitive needs of the students.

It seems that the opinions presented in the report have not been sufficiently balanced. GREVIO states that only those teachers who expressed support for the so-called black pro-abortion demonstration of women, could face disciplinary measures against them. However, it is worth noting the use of serious disciplinary measures, for example against a professor at one of the Polish universities - an experienced researcher with the title of professor was accused by the students of preferring a scientific approach incompatible with the students' preferences and opinions. In this specific case, there is a suspicion of heterophobic circumstances. Such discriminatory behaviour was not reflected in the report.

#### **Paragraph 84 - need to address more broadly gender inequalities that lead to health risks**

The practice of female genital mutilation had never been recorded in Poland.

Cases of forced marriage occur in the Roma ethnic group. This group, thanks to the implementation of the Programme for the Integration of the Roma Community in Poland, which has been going on for years, is becoming more and more culturally integrated, nevertheless the practice of early marriages - traditional and against the law - is still present.

In view of various manifestations of domestic violence, legal provisions against perpetrators of domestic violence have recently been strengthened, including solutions for immediate isolation of the perpetrator from the victim (the "Anti-Violence Act"). These legal solutions counteract the development of attitudes that increase the exposure of women and girls to violence.

#### **Paragraph 84 - possible negative impact of proposed solutions to criminalise actions promoting or praising sexual intercourse or other sexual activities of minors**

The report does not support the conclusion that the criminalization of actions that "promote or condone the sexual act or activities of minors" could have a negative impact on the ability to raise awareness about violence against women, in particular sexual violence.

Poland is of the opinion that the priority in the fight against violence is not only to react to cases of violence, but also to prevent them effectively. The building of anti-discriminatory and tolerant attitudes, based on the principle of the inalienable dignity of every human being, should concern first and foremost the younger generation. Schools are an important part of this educational process, while preserving the right of parents to bring up their children in accordance with their convictions.

Permissive sex education does not correspond to this mission because, in practice, it contains content that reduces human identity to sexuality alone, while omitting the complexity of human personality and interpersonal relationships. The content of sex education also affects private life and, for this reason, such education must be based on respect for the right of parents to bring up their children in accordance with their opinions and conscience.

#### **Paragraph 88 - inclusion of specific content in curricula, textbooks and teaching materials**

Actions in favour of national minorities are not covered by the provisions of the Convention, in particular its article 14, therefore recommending cooperation with non-governmental organisations dealing with national minorities does not seem to be sufficiently well-founded.

### **Paragraph 90 - limited scope and focus of family violence training**

Strengthening the skills of services and representatives of entities working in the field of combating domestic violence, including employees of organisational social assistance units, Police officers, representatives of the education system, the health care system, the judiciary and gmina commissions for the resolution of alcohol problems, is one of the priority tasks envisaged for the consequent national programmes for combating domestic violence. The trainings mainly concern:

- the establishment of local anti-violence systems, based on the work of interdisciplinary teams,
- implementation of corrective and educational programs against perpetrators of violence, mediation, victim support, work with multi-problem families, work with abused children, work with victims of violence, diagnosis of violence, the "Blue Card" procedure, legal aspects of violence prevention.

The project "Counteracting violence against elderly and disabled people" (2020-2024), co-financed by Norwegian funds, provides for the training of professionals working in the field of counteracting violence at the local level, in particular "first contact" professionals. The main objective of the project is to improve the functioning of the system for combating violence against elderly and disabled people.

### **Paragraphs 93 and 97-98 - training of professionals**

The observations contained in the report concerning the subject matter of the training courses organized by the National School for the Judiciary and the Public Prosecutor's Office (initial training, training for judges, court assessors, prosecutors, prosecution assessors, judicial referendaries, assistants to judges, assistants to prosecutors professional probation officers and clerks of courts and prosecution offices), as well as on cooperation, when organizing them, with non-governmental organizations working with women and offering specialized support to women victims of violence, will be forwarded to the School to be taken into account when developing training programmes for the coming years.

Domestic violence and violence against women are elements of the initial training programmes for trainee judges and prosecutors, although these programmes do not include courses devoted exclusively to the Istanbul Convention. The initial training of judges covers: domestic violence, including violence against women, especially in the light of the Law of 19 August 1994 on the Protection of Mental Health and the Law on Education for Sobriety and the Fight against Alcoholism, offences against life and health, honour and the inviolability of the body, family and guardianship, freedom, freedom of conscience and religion, sexual freedom and morality, as well as, with regard to the law of family and guardianship, on: parental authority, administration of the child's property, decisions on important affairs of the child, removal of the child, regulation and execution of contacts with the child. Constant elements of the initial training of trainee prosecutors include: offences against the family and guardianship, the provisions of the Law on Combating Domestic Violence, the rights of a crime victim (also in the light of the Istanbul Convention), guardianship of minors, including the removal of a person under guardianship or subject to guardianship, procedures under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction.

The National School for the Judiciary and the Public Prosecutor's Office will organize training courses on domestic violence and violence against women, including in the context of article 31 of the Convention, from 2019 to 2021. The trainings shall take into account factors that result from gender differences (women and men). Trainings :

- "Cross-border aspects of parental abduction" (2019),
- "Child Protection Standards" (2019),
- "Contact with the child - legal and practical aspects" (2019),
- "Adult probation officers' actions in executive proceedings" (2019),
- "Actions of family probation officers - selected issues" (2019),

- "Good practices in regulating contact with a minor. Cooperation between a judge and a probation officer" (2020),
- "Offences against family and guardianship committed against a minor - selected issues" (2021),
- "Situation of a child in the context of the conflict around divorce of parents - civil and criminal aspects" (2021).

The Ministry of Justice has developed the framework for the training of prosecutors "Combating Family Violence, Interdisciplinary Approach" in March 2021, this training will be included in the calendar of trainings organized by the National School of Judges and Public Prosecutors. The interdisciplinary training program for probation officers on prevention of family violence is also being developed.

#### **Paragraph 95 - qualifications of doctors and nurses to recognize violence and family violence**

The basic knowledge and professional skills are acquired by a physician during pre- and post-graduate education. During the course of study, topics such as violence, forming a doctor-patient relationship, and identifying violence against adults and children are widely covered. This includes, but is not limited to:

- diagnostic and therapeutic methods adapted to specific pathological conditions,
- forms of violence,
- models explaining violence in families and violence in selected institutions,
- social determinants of various forms of violence and the role of the physician in its diagnosis,
- identification of the risk of occurrence of violence,
- identification of violence and the appropriate response,
- child abuse and sexual abuse,
- The importance of verbal and non-verbal communication when dealing with an abused patient,
- trust in the doctor,
- Ethical, social and legal determinants of medical practice, legal provisions concerning patients' rights and medical confidentiality.

198,206 medical officers have been trained in this area.

Physicians further develop this knowledge through specialty training, continuing education, e-learning or self-study.

As regards the education of nurses and midwives, content on the prevention and detection of violence is included in the pre-diploma educational standards for nurses and midwives, set out in the Regulation of 26 July 2019 of the Minister of Science and Higher Education on the educational standards preparing for the practice of medicine, dentistry, pharmacy, nursing, midwifery, laboratory diagnostics, physiotherapy and paramedicine. In the post-graduate training of nurses and midwives, issues such as prevention, recognition and response to cases of family violence are included in selected training programmes.

#### **Paragraph 96 - insufficient training of the staff of the Aliens Office**

The recommendation concerning the training of the staff of the Aliens Office is already sufficiently implemented. The training courses take into account the issues referred to in article 15 of the Convention, and officials can take advantage of the training course prepared by EASO, which includes training modules such as: EASO: Interviewing Vulnerable Persons, Interviewing Children, Gender, Gender Identity and Sexual Orientation, Trafficking in Human Beings.

Social workers undergo training both in working with victims of violence and with perpetrators. The training courses are organized individually, at the request of particular officials, as well as in groups, for all officials of the given centre for foreigners.

The assertion that the insufficient number of training sessions has a negative influence on the quality of decisions ending procedures for the granting of international protection may raise questions. It is not clear from the report on what basis this assessment was made - whether it was based on an analysis of the quality of the content of the decisions or an analysis of the reasons why the decisions of the Head of the Aliens Office were overturned by the Refugee Council or the administrative courts.

### **Paragraph 109 - image of women in the media, presentation of content related to violence against women**

The GREVIO observation that the current Regulatory Strategy (2017-2022), unlike the previous one, does not contain a set of targeted actions to promote equality between women and men in the media, was made without due consideration of the clarifications provided at the meeting of 30 September 2020 between the representatives of the National Broadcasting Council and the GREVIO delegation. The Polish side then stressed that the omission of such actions explicitly defined in the Strategy does not mean that they have been abandoned. The Act of 29 December 1992 on broadcasting explicitly prohibits any discrimination, including on the basis of sex, in all broadcasts and the finding of a violation of this prohibition entails the imposition of a penalty on the audiovisual service provider. The Strategy does not mention all the statutory obligations of the regulatory body, but this does not mean that the regulatory body has no obligations in this respect - they are a direct result of the law and it is not necessary to recall them all in the documents created by the National Broadcasting Council. Their implementation takes place under the law itself and does not depend in any way on their inclusion in a document adopted by the Council.

Secondly, the positive results of the National Broadcasting Council's survey on the way women are portrayed in the media (the Report on the Image of Women in the Media is a contribution to the implementation of the gender equality indicators recommended to regulators and media service providers by the European Regulators' Group on Audiovisual Media Services (ERGA) Gender Diversity Subgroup) indicate that there is no need to address recommendations to the media sector on combating negative stereotypes of women. The survey is representative for the entire media market, covered the largest media service providers, both public and licensed broadcasters, and included the most popular Polish TV series of various genres, available not only on TV, but also as VoD. With regard to the statement (third sentence of the paragraph) that the National Broadcasting Council issues only a few decisions per year, it should be emphasized that, in the Council's view, this is a rather positive phenomenon, as it proves that the law is being respected. The number of decisions issued depends on the number of violations found. In the event of non-compliance, it is not possible to withdraw from the decision, as the procedure is based on the law and there is an obligation to issue the decision.

### **Paragraph 111 - ethical principles of journalism**

In view of the comments on the content of the codes of conduct adopted by the media and journalists' associations, it should be mentioned that the Constitutional Court in its judgment of 23 March 2006 (K 4/06) stated that the body of public authority such as the National Broadcasting Council should not be empowered to define the principles of journalistic ethics and to enforce them. In the opinion of the Constitutional Court, the general nature and high degree of vagueness of the journalistic ethics clause, coupled with the absence of institutional and procedural safeguards, would make it dependent on each arbitrary assessment by the Council of what constitutes journalistic ethics and whether a given conduct complies with the principles of journalistic ethics. This would create a real threat of uncontrolled and unconstitutional restriction of freedom of expression. The Constitutional Court concluded that entrusting the Council with the task of "initiating and undertaking measures to protect the principles of journalistic ethics" would go beyond the role and position of this body in light of the Constitution. It is not the role of public bodies implementing broadcasting licensing policy to set or enforce professional ethical standards.

These considerations mean that the National Broadcasting Council has, in principle, no right to influence the activities of broadcasters in terms of creating codes of journalistic ethics or to control such activities. In terms of ethical principles of journalism, the decision as to their form and scope rests with the media and journalists themselves.

### **Paragraph 112 - restrictions on the freedom of the media to report and express views on gender equality and violence against women**

The observations and conclusions presented in this part of the report are of a general nature and the basis on which they have been formulated has not been indicated. Moreover, such issues as media independence and freedom of information are beyond the substantive scope of the Convention.

We cannot agree with the statement in the report that there is a risk of limiting the freedom of the media in Poland. Freedom of the media is guaranteed both by the Constitution of the Republic of Poland (in particular Article 54) and by ordinary legislation (the Act of 26 January 1984 - the Press Act). The amendments to this Act introduced in recent years have contributed to an increase in the freedom of journalists, including the provisions concerning the authorisation of press statements have been made more flexible and the prohibition of termination of the employment contract with the journalist who violates the editorial line of a given publisher has been introduced.

As an expression of good practice, it is necessary to mention the programmatic solutions adopted as a response to the negative impact of contents sexualizing the image of women, in order to stop the dissemination of contents that degrade or exploit women's characteristics.

With regard to the image of women, often raised by GREVIO, it is recognized that there is a need to amend legislation to reflect in the law that the promotion and presentation of pornographic content, as well as other forms of sexualization of the image of women and girls, is a manifestation of their discrimination, deprivation of their dignity and a form of exploitation, as well as an element of sexual violence. Consequently, research and analysis have been undertaken, the results of which will serve as a starting point for legislative work.

### **Paragraph 118 - participation of representatives of the judiciary in the implementation of the "Blue Card" procedure**

The assistance provided to victims of domestic violence, within the framework of the "Blue Card" procedure, is based on an individual assistance plan elaborated with the victim of domestic violence. Such a plan provides for actions to be undertaken by various services: organisational units of social assistance, gmina commissions for solving alcohol problems, the Police, entities of the education and health care system, as well as other services acting in the field of law, therapy, health care, social support and legal aid and child support. The fact that the participation of representatives of the judiciary in the work of interdisciplinary teams and working groups is optional does not have a negative impact on the quality of support provided to victims of violence. Whenever their participation in the implementation of the "Blue Sheet" procedure is necessary, the representative of the justice system (competent unit) joins a team or group.

### **Paragraphs 121, 122, 277, 278 - risk assessment**

In the context of activities aimed at monitoring the safety of a victim of violence, participating in the "Blue Sheet" procedure, it is possible to assess the risk of recurrence of violence and to adapt the forms of assistance and support to the particular situation. The use of standard questionnaires to define the needs of victims of violence could have negative consequences, i.e. result in the omission of important facts that should guide choices regarding the extent and form of assistance provided in a particular case. Excessively detailed and rigid regulations on how to assess the needs of victims of violence could lead to the use of schematic solutions that do not take into account the actual threat in each particular case of violence.

As for the recommendation to systematically assess the risk and safety of victims of violence, especially when implementing the "Blue Card" procedure, it should be noted that the list of actions taken under the "Blue Card" procedure is open. The type and extent of the measures

taken depend on the situation of the individual or family in which the violence occurs. Each case is considered individually, as there are no universally applicable guidelines as to the methods and measures to be taken in each case of domestic violence.

The Regulation of the Council of Ministers of 13 September 2011 on the "Blue Sheet" procedure and the "Blue Sheet" forms specifies in detail the procedure to be followed, both towards the victim of violence and the perpetrator, as well as the list of acts to be carried out in the procedure.

Members of interdisciplinary teams and working groups representing various institutions and implementing the "Blue Sheet" procedure are obliged to cooperate and keep informed the chairperson of the interdisciplinary team who coordinates the activities of the team/group members. The obligation to cooperate and inform relates to the provision of information on the current situation of the family, so that, if necessary, it is possible to modify the type and scope of the measures taken, and to ensure the safety of the alleged victim of domestic violence. The type of means and methods used for this purpose depend on the source and degree of the threat.

### **Paragraph 128 - effective access to assistance and support**

In accordance with the Law on Combating Domestic Violence, the tasks related to combating domestic violence are performed by the organs of government administration and by the local authorities, according to the rules defined in the Law on Social Assistance and the Law on Education for Sobriety and Combating Alcoholism. All services, at all levels, have the obligation to provide multidimensional and comprehensive assistance to women victims of domestic violence. In the event of a threat of violence or in the event of violence, they are obliged to undertake actions specified in legal acts. Therefore, the claim that the scope of assistance under the "Blue Card" procedure depends on the discretion of social workers is unfounded.

### **Paragraph 132 - individualisation of assistance**

Victims of violence are assisted through actions carried out by interdisciplinary teams, which implement the "Blue Sheet" procedure. Assistance is provided taking into account the particular situation of the victim of violence, his/her resources and possibilities, on the basis of an individual assistance plan drawn up in cooperation with the victim of violence. The type of measures taken is determined by taking into account individual circumstances, including gender, age, disability. This approach is derived from the construction of the "Blue Sheet" forms. Therefore, the comment in the report that cross-cutting factors such as disability, homelessness, age and gender are not taken into account when support is provided appears to be unfounded.

### **Paragraph 135 - limited access to health care for certain groups of women**

The information on barriers to access to health care for disabled women, Roma women, lbt women is not supported by any evidence or data. On the contrary, as far as Roma women are concerned, the Programme for the Integration of the Roma Community in Poland for 2014-2020 was designed to ensure easier access to health care for Roma women (within the framework of projects dealing with health care and prevention in a broad sense). The health promotion activities covered more than 6 thousand people of Roma origin (no gender-disaggregated data, but it is understood that the majority of the beneficiaries were Roma women and girls).

### **Paragraph 136 - on the access of Romanian Roma to health care**

Pursuant to the Act of 14 July 2006 on the entry, stay and exit from the Republic of Poland of nationals of the Member States of the European Union and their family members, an EU citizen has

the right to stay in the territory of the Republic of Poland for 3 months, without having to fulfil the conditions of stay, such as sufficient resources to support himself/herself and his/her family members, sickness insurance in Poland or entitlement to benefits on the basis of the EU provisions on coordination of social security systems, or private sickness insurance.

When a Romanian citizen, as a citizen of another EU member state, enters the territory of Poland, he/she must have a European Health Insurance Card in order to be entitled to health care in urgent cases such as sudden illness, accident, threat to life or health. This is provided for in the EU regulations on the coordination of social security systems. If the patient does not have this card, the health care provider:

- may ask the voivodship branch of the National Health Fund to apply to the health insurance institution in the foreigner's place of residence for a certificate to replace the card,
- has the right to charge the patient for the costs of the health care provided, which may then be reimbursed by the home health insurance institution.

Romanian citizens legally residing on the territory of Poland must be in possession of document S1 issued by the Romanian health insurance institution confirming their right to full health care in Poland, at the expense of this institution.

The majority of Romanian citizens of Roma origin staying in Poland do not have health insurance in their country of origin, nor do they have sufficient resources to pay for their treatment in Poland. In addition, they usually do not have health insurance in Poland (e.g. due to their employment or self-employment) and have the status of irregular residents.

If Roma migrants do not meet the conditions for legalizing their stay (no means of subsistence, no employment, ineligibility for health care) or if legalization of stay is not possible due to the impossibility of confirming their status as EU citizens, and yet they continue to stay (illegally) on the territory of Poland, the Polish health care system cannot, in accordance with the legislation in force, provide them with full access to health care financed from public funds. They have the right to free health care (financed from public funds) in the context of treatment of alcohol, drug and narcotics addiction, mental illnesses, infectious diseases. They are also entitled to free health care provided by medical rescue teams in case of threat to their health or life. They also have the right to medical assistance in urgent cases where their health or life is threatened. This ensures that their humanitarian rights are respected.

The right to publicly funded health care is granted to refugees and other persons lawfully staying in a given state if objective criteria are met, in accordance with the legislation of the host state.

The implementation of solutions giving full access to health care to all persons, including foreigners staying illegally in a given state, could entail a potentially huge financial and organizational burden for the national health care system. Moreover, it would be incompatible with the very essence of the Polish health care system, which is based on the principle of solidarity and, in general, on the principle of insurance to which the obligation to pay contributions is linked.

Polish legislation provides foreigners with several ways to legalize their stay and, consequently, to have the right to health care.

### **Paragraph 139 - specialized support centres for victims of domestic violence**

The information contained in the penultimate sentence of the paragraph that the principle of working with a victim of violence is to reunite women with their violent partners is not based on fact. The activities carried out in collaboration with the victim of violence are mainly interventional in nature and are aimed at ensuring her safety through, for example, the immediate isolation of the perpetrator. At the same time, victims of violence have access to a wide range of forms of help and support in order to cope with traumatic experiences and regain a sense of safety.

On the other hand, the last sentence of the paragraph indicates the "general lack of professionals specifically trained to provide post-trauma care and support to women victims of intimate partner violence". The justification for such a statement has not been indicated in the report. In view of this, it should be emphasized that specialists working in the field of combating violence have the necessary professional knowledge and skills, as well as high-level interpersonal skills for the proper performance of functions in the field of assistance to victims and combating violence, acquired in the course of study and further training. Information on the training of professionals was presented in the

Polish report on the implementation of the Convention, during the GREVIO visit to Poland (September 2020) as well as in the comments on the draft GREVIO report (May 2021).

#### **Paragraph 140 - access to specialist support**

In view of the inaccurate interpretation of the premises of the launch of the "Blue Card" procedure and the mechanism of its implementation as presented in the report, it should be stated that the victim of violence has recourse to assistance and support on his/her own initiative, by turning to an assistance institution of his/her choice, or within the framework of the "Blue Card" procedure.

The "Blue Sheet" procedure is initiated when, in the course of official or professional activities, the official becomes suspicious that violence against family members is occurring, or as a result of a report made by a family member or witness of family violence. Proceedings may be initiated even if there is only a suspicion of violence, unsupported by evidence or circumstances.

The initiation of the procedure and the implementation of measures within its framework are not dependent on the consent of the victim of violence. The aim is to protect, even if the victim is afraid to act or is unable to take action herself.

The actions taken under the "Blue Sheet" procedure do not at any time involve contact with the perpetrator. In particular, the Regulation of the Minister of Labour and Social Policy of 22 February 2011 on the standards of basic services provided by specialised support centres for victims of domestic violence, the qualifications of persons employed in such centres detailed guidelines on the conduct of corrective and educational measures against persons resorting to domestic violence and the qualifications of persons conducting corrective and educational measures, provides that corrective and educational measures against persons resorting to domestic violence shall not be conducted in places where assistance and support are provided to victims of domestic violence. This provision ensures the isolation of perpetrators of domestic violence from their victims. It is planned to introduce similar solutions with regard to the implementation of psychological and therapeutic programmes for perpetrators of domestic violence.

In addition, the rules of the interdisciplinary teams/working groups should clearly prohibit that the work of the team/group involves contact between the victim and the perpetrator.

The guideline of the Law on Combating Domestic Violence and its implementing regulations, as well as of the national programmes on combating domestic violence, is to ensure the safety of the victim of domestic violence at every stage of the provision of support and assistance. Of course, this guideline should also be taken into account when organizing the assistance institutions and establishing the procedures for their operation.

Closure of the procedure is possible if the violence in the family has ceased or after the completion of the individual assistance plan, or the decision on dismissal has been made (the violence has not been confirmed). The indicator confirming that the violence has ceased is a certain period without the acts of violence, which is established on the basis of the monitoring of the situation in the family by the representative of a given service (district police officer, social worker, school pedagogue, probation officer).

The decision to terminate the procedure is taken by the chairperson of the interdisciplinary team after consultation with the members of the interdisciplinary team/working group, thus ensuring that the assessment of the situation is made separately by each member of the team or group.

The decision to terminate or continue the proceedings cannot be made by the person affected by domestic violence, because of the risk that this decision may be influenced by subjective emotions or under the influence of the perpetrator.

#### **Paragraph 142 - health care for victims of certain forms of violence**

Forced sterilization and forced abortion are penalized in Poland, while the reaction to and the fight against violations of the law in this field are the responsibility of law enforcement agencies and judicial authorities.

According to article 68 of the Constitution of the Republic of Poland, everyone has the right to health protection. Public authorities guarantee citizens equal access to publicly funded health care, regardless of their material circumstances. The conditions of entitlement and the scope of benefits are defined in the Act of 27 August 2014 on publicly funded health care. In accordance with the Act of 6 November

2008 on the Rights of the Patient and the Ombudsman for Patients' Rights, the patient has the right to health care that corresponds to the current state of medical science.

Health care is provided in an individualized manner and in accordance with the current state of medical science and corresponds to the health problem of a given patient. This applies to all health care, including that to be provided if the patient is diagnosed as having undergone, for example, female genital mutilation.

#### **Paragraph 146 - places of accommodation not offering a safe stay**

The assertion that shelters for victims of domestic violence do not provide safe accommodation has no legal or factual basis.

Legal provisions impose the obligation to ensure safety for victims of domestic violence. For example, the Regulation on the Standards of Basic Services Provided by Specialized Support Centres for Victims of Family Violence, the Qualifications of Persons Employed in Such Centres, the Detailed Guidelines on the Conduct of Remedial and Educational Measures for Persons Involved in Family Violence and the Qualifications of Persons Conducting Remedial and Educational Measures, explicitly stipulate that the institution is obliged to ensure the protection of the victim of family violence from the person involved in the violence.

Some centres do not make their location (address) public. This is, for example, the case of the Specialized Support Centre for Victims of Domestic Violence in Warsaw, run by the Women's Rights Centre.

#### **Paragraph 155 - qualifications of physicians and nurses**

Primary care physicians, emergency room and hospital physicians, gynecologists, pediatricians, and forensic scientists, among others, are qualified to assess the patient's condition as a result of the violence he or she has suffered. The assessment is made on the basis of the medical history and a physical examination. If the doctor finds violence and rape, he or she is obliged to inform the competent authorities of the identified situation. Cases of violence against children are always reported. On the other hand, adults may not want to admit that they are victims of violence or may refuse to be examined, thus exercising the patient's right to decide whether or not to submit to the examination.

#### **Paragraphs 155, 158 and 159 - restrictions on reproductive health choices**

The mechanisms and legal provisions in place that guide the assistance provided to women who have suffered violence, including sexual violence through rape, do not interfere with the rights that women have or should have. It is difficult to deduce from the GREVIO report what changes should be undertaken by the Polish legislator to ensure specific guarantees for effective rape prevention. The report contains general formulations, apparently stressing in particular the need to ensure unreflective access to preventive abortion, including rapid abortion methods. Poland takes this opportunity to emphasize the particular importance of judicious balancing of the measures taken, in order to exclude the automatism of actions which, in the field of human sexuality, can be the source of significant damage.

All existing legal provisions in Poland imply the need to regularly increase the skills of police officers, medical personnel and personnel of other services involved in assisting victims.

Furthermore, it should be stressed that international law does not provide any basis for the so-called right to abortion. On the contrary, the Convention on the Rights of the Child guarantees every child, even before birth, the right to life.

One could not share the view that women in Poland are stigmatised by "pro-life" policies. In view of such views, it is important to point out that more and more people who defend the right to life from conception to natural death feel discriminated against by many pro-abortion activists.

Both the Convention and the GREVIO report appear to promote solutions that favour access to abortion, including the promotion of information campaigns on the possibility of abortion, rapid abortion methods and other methods that directly inhibit the development of the human foetus. Such an approach runs counter to the legal guarantees for the protection of the life of every human being, taking into account its dignity. Furthermore, it may pose a serious risk to the health and life of women in certain situations.

#### **Paragraphs 158-161 - health care for rape victims**

Abortion is permitted in Poland under certain circumstances and is regulated by the Act on Family Planning, Protection of the Human Foetus and Conditions of Eligibility for Abortion. With regard to the statement (last sentence of paragraph 158) that a victim of rape resulting in an unwanted pregnancy should have access to support services on the same basis as any victim of sexual violence, including when she chooses to terminate the pregnancy, it should be pointed out that under the Law on Family Planning, Protection of the Human Foetus and Eligibility Requirements for Abortion, termination of pregnancy is permitted, inter alia, when there is a reasonable suspicion that the pregnancy is the result of a prohibited act.

The abortion procedure results from the provisions of the Law on Family Planning, Protection of the Human Foetus and Conditions of Eligibility for Abortion. This procedure, to be followed in the cases provided for by law, is part of the guaranteed health care and is offered by hospitals that have concluded an agreement with the National Health Fund for the provision of care in the field of obstetrics and gynaecology.

By signing the agreement with the National Health Fund, the provider undertakes to provide all the health care specified in the agreement. If it is not possible to provide a given care which could not have been foreseen in advance, the service provider is obliged to take immediate measures to maintain the continuity of health care, and informs the Fund at the same time. Such a situation may occur in the case of refusal to provide care by a doctor who refers to the "conscience clause".

The use of the "conscience clause" by physicians is regulated in such a way as to ensure the physician's right to refrain from performing care incompatible with his or her conscience and to enable the patient to obtain the health care to which he or she is entitled, as well as to ensure the patient's right to information. Pursuant to the Act of 15 April 2011 on medical activities, the entity performing medical activities shall publish information on the scope and types of health care provided. If the doctor refuses to provide a given care, referring to the "conscience clause", the obligation to inform the patient about the entity in which such care can be provided to him/her is incumbent on the service provider, i.e. the medical entity in which the doctor refrained from providing the care. This procedure is general in nature - it applies to all health care. The "conscience clause" is a right of the physician and cannot be invoked by a health entity.

With regard to the low number of terminations of pregnancies if there is a reasonable suspicion that the pregnancy resulted from a prohibited act, which is supposed to prove that women have difficulties in accessing termination of pregnancy, it should be emphasized that the Law on Family Planning, Protection of the Human Foetus and Conditions of Eligibility for Abortion specifies the conditions that must be fulfilled in order to carry out termination of pregnancy. However, it should be emphasized that the provisions of the Law entitle to such a procedure, and do not impose an obligation to perform it - the termination of pregnancy in the circumstances entitling to it depends exclusively on the woman's decision. The number of abortions performed in cases of reasonable suspicion that the pregnancy was the result of a prohibited act cannot therefore be taken as an indicator of possible difficulties in obtaining a certificate issued by the prosecutor or of the fear of stigmatization of women. Even if the pregnancy results from rape, not all women decide to terminate the pregnancy, and the reasons for such decisions are strictly individual.

In 2018, one termination of pregnancy was performed due to reasonable suspicion that the pregnancy resulted from a prohibited act, in 2019, 3 such procedures were performed.

#### **Paragraph 168 - physician-initiated "Blue Sheet" procedures**

In view of the remarks on the "Blue Sheet" procedures initiated by doctors, it should be noted that the patient may refuse the examination or to obtain a certificate, and during the medical interview he may

also refuse to disclose information about the mechanism of the injury. This is an expression of the right to personal freedom and self-determination, which is guaranteed by the Constitution of the Republic of Poland. Therefore, GREVIO's suggestions as to the possible causes of the low number of procedures initiated by doctors (third sentence of the paragraph) may raise doubts.

### **Paragraphs 170 and 171 - reporting by professionals**

The assertion that the requirement for professionals to report violence may discriminate against women because it may discourage them from seeking help (para. 170) is unfounded. It should be noted that the "Blue Sheet" procedure is an intervention and support procedure. It is initiated in cases of suspected domestic violence. Its initiation is the responsibility of the representative of the service obliged to initiate it and does not require the consent of the victim of domestic violence. The purpose of initiating the procedure is to ensure the safety of a person suspected of having committed domestic violence. Even if the person does not confirm that he or she is a victim of violence, but the circumstances of the case raise suspicions of domestic violence, the "Blue Card" procedure should be initiated. This solution has been adopted because people who suffer from domestic violence often do not take steps themselves to change their situation, waiting for help to come from "outside", for example out of fear of the perpetrator and the escalation of his or her aggressive behaviour, or out of shame that they are being treated in this way by their closest family member.

With regard to the suggestion to review the obligation of professionals to report cases of violence against women and their children, it should be pointed out that the term "serious act of violence" (paragraph 171, second sentence) seems rather inappropriate, especially when one takes into account the assumptions of the Convention, which does not distinguish between serious and less serious violence. This contradicts the idea of protecting the victims of every incident of violence. Making the initiation of the "Blue Card" procedure conditional on the prior consent of the victim may lead to a situation in which the victim is denied access to measures to ensure her safety and protection from further harm. Decisions made by the victim may depend on her emotional state, including fear of the abuser's reaction.

At the same time, there is a certain inconsistency in the recommendations made in the report - in paragraph 118 it is stated that protection and risk assessment measures taken by law enforcement or social services are not sufficiently linked to the "Blue Card" procedure, and that without an assessment of the risks to which a woman who is a victim of domestic violence and her children may be exposed, assistance providers are not in a position to offer adequate support and protection. In contrast, in paragraph 171, GREVIO suggests that measures to provide protection and support should be taken ex officio only in cases of "serious violence".

### **Paragraphs 187-193, 195 - guardianship and contact procedures**

The measures taken in the context of the monitoring by the Minister of Justice of the administrative activity of the courts and the activity of the judicial advisory teams do not provide reasons for the finding that judges and members of the judicial advisory teams who prepare opinions in family matters do not have knowledge of the negative impact on children of violence by one parent on the other. The report does not provide any statistical or other information, based on a review of judicial practice, that would demonstrate that judges are not adequately trained in this area.

### **Paragraphs 191, 193 and 194 - right of the child to maintain contact with parents**

There is no basis for the assertion (paragraph 191) that courts give priority to preventing parental alienation and allow absolute enforcement of the domestic violence parent's right to maintain contact with the child. The court, in evaluating the evidence, carefully examines the situation of the given family in terms of the possibility of domestic violence. If the court finds such violence and determines that the parent's continued contact with the child poses a serious threat to the child's welfare or is detrimental to the welfare of the child, the court shall prohibit such contact. An application to prohibit contact may also be made by the child's other parent.

In support of the assertion (paragraph 193) that the court does not take into account, when regulating parent-child contact, the rights and safety of victims of violence and their children, no studies or court decisions in custody cases or disciplinary decisions against judges have been cited. On the contrary, Polish courts are very sensitive in this matter, which is why they are sometimes accused of bias and of favouring women and discriminating against men. Fathers' associations point to the need to combat the phenomenon of "parental alienation", describing it as psychological violence.

When regulating a parent's contact with a child, the court shall take into account all the circumstances of a given case, including cases of domestic violence.

If the parent who uses violence against the other parent remains correct in his or her contact with the child, does not threaten the child and does not present the other parent in a bad light, then there is no reason to restrict such contact. If the abused parent does not wish to have contact with the other parent during, for example, the "handover" of the child and reports this during the court proceedings, the child can be "handed over" by a third party or a probation officer.

If there is a concern about the abusive parent's behaviour during contact with the child, contact is arranged on a case-by-case basis, for example, in the presence of the guardian or in child-safe locations, without allowing the child to stay overnight with that parent.

The third sentence of paragraph 194, which states that women are fined for making it impossible for the child to have contact with the other parent, when it is the child who refuses to comply, has no basis in fact. The purpose of contact enforcement provisions is to ensure that the child maintains contact with his or her parents and to mobilise the parent who has day-to-day custody of the child to enable the child's right to maintain contact with the other parent to be exercised. Often, one parent takes advantage of his or her position and, in an effort to "punish" the other parent for the breakdown of the relationship, uses the child to that end by teaching the child a negative attitude towards that parent. The provisions for enforcing contact are not intended to force abused parents to contact the abuser.

### **Paragraphs 199, 203, 209 and 212 - criminal provisions relating to the use of psychological violence and harassment**

The report states (paragraph 199) that article 207 of the Criminal Code does not apply to harassment (including psychological violence) against former or current partners and former spouses, unless they live together. Such an interpretation has no basis in the current legislation.

Under article 207 of the Criminal Code, it is a punishable offence to ill-treat the person closest to the perpetrator or another person who is in a permanent or transitory relationship of dependence with the perpetrator. The definition of the closest person in Article 115 § 11 of the Criminal Code indicates that it is a spouse, ascendant, descendant, brother or sister, relative of the same lineage or degree, a person in an adoptive relationship and his/her spouse and a person in cohabitation.

The Penal Code does not define the notion of a cohabiting person. As indicated in the case law, the term "cohabitant" contained in Article 115 § 11 of the Criminal Code describes a person in a de facto relationship with another person, this relationship consisting of both spiritual (emotional), physical and economic (shared household) ties between these persons. Establishing the existence of such a relationship, i.e. the relationship of "cohabitation", is possible even in the absence of a certain type of bond, if this is objectively justified (Supreme Court resolution of 25 February 2016, ref. I KZP 20/15). Therefore, living together is not a constitutive condition for cohabitation - even if the partners live separately, it is possible to establish cohabitation as defined in Section 115 § 11 of the Criminal Code. Polish case law (Resolution of the Supreme Court of 9 June 1976, ref. VI KZP 13/75) gives a very broad interpretation of the relationship of dependence of the offender. It is stated that such a relationship exists when the victim is unable to resist the abuse of his own free will and suffers from it because of fear of deterioration of his present living conditions (e.g. fear of losing work, means of subsistence or housing, separation or termination of cohabitation with the offender). The concept of a dependent relationship means that one person's fate depends on another person, who has a physical, psychological or moral advantage over the other. The relationship of dependence may also result from the factual situation, which creates an opportunity for the perpetrator to abuse, using his advantage over the weaker victim (judgment of the Administrative Court in Katowice of 13 November 2008, ref. II AKa 303/08).

In view of the above, we cannot agree with the finding in the report (paragraph 198) that the necessary condition for the application of Article 207 of the Criminal Code is the common residence of the victim and the perpetrator, and that Article 207 of the Criminal Code does not cover former partners or spouses. On the contrary, victims may, depending on the factual circumstances, be considered either as persons closest to or dependent on the offender.

### **Paragraphs 215-217 and 219 - definition of rape**

With regard to the lack of consent of the victim to sexual acts as an element of the definition of rape and other sexual offences, Poland considers that the definitions contained in the Penal Code are in line with the requirements of the Istanbul Convention.

It is an offence to cause another person to engage in sexual intercourse or other sexual activity without that person's knowing and freely given consent, that is, by means of :

- violence, unlawful threat or deception (Article 197 of the Criminal Code),
- taking advantage of another person's helplessness or inability to recognize the meaning of the act or to direct his or her behaviour, resulting from a mental disability or mental illness (Article 198 of the Criminal Code),
- abuse of the relationship of dependence or taking advantage of a critical situation (Article 199 of the Penal Code),
- (b) To take advantage of the young age of the victim (article 200 of the Penal Code).

These circumstances include every conceivable case where consent was not informed or free.

Polish legal doctrine indicates that rape can only take place in the absence of the person's actual consent to specific conduct. The Prosecutor General's guidelines of 18 December 2015 on the rules of procedure in cases of rape offences are essential for the trial practice in rape cases. They are binding on law enforcement agencies.

In order to effectively combat attacks on sexual freedom, it is necessary to address the protection of women from violence in the form of the use of their images in a sexualized or pornographic manner. The harmfulness of degrading sexual content is clear. The dissemination of such content is associated with a range of activities that deprive women of their inherent dignity by treating them as objects (sexualisation of their image). This, in turn, is undoubtedly the reason for the escalation of violence against women and girls. Therefore, it is necessary to create mechanisms and legal solutions aimed at punishing sexual abuse taking such a form (criminal sanction also has a preventive dimension, including of a general nature), but further actions are needed to eradicate the causes of such behaviour. GREVIO has an important role to play in this respect, i.e. to define to what extent the public space (internet, advertising, television, radio, music, song texts, fashion, etc.) has an impact on the perception of women as objects. Consequently, specific solutions and protection mechanisms should be proposed.

### **Article 220 - criminalization of sexual violence**

Work is under way on legal solutions to strengthen protection against violence, including analyses of additional mechanisms for the prevention of sexual abuse and the presentation of pornographic content. These analyses are being carried out on the basis of the research of the Institute of Justice and take into account foreign legal solutions, in particular the mechanisms already in force in Sweden and Ireland.

### **Paragraph 282 - ad hoc orders and prohibitions**

Work has been undertaken to introduce into the Polish legal system the prohibition of approaching a person. Under the amendment, currently in preparation, to the Act amending the Act - Code of Civil Procedure and certain other Acts ("Anti-Violence" Act), the catalogue of measures that may be applied immediately by the Police and the Military Police and the catalogue of protective measures that the court may order in proceedings under the Act on Combating Domestic Violence will be extended. Under provisions in preparation, the Police officer and the Military Police officer will have the right to order a person who uses domestic violence endangering the life or health of the person affected by such violence, to keep a distance expressed in metres from that person. Such a ban will be valid for 14 days, and the court may extend it or even impose an indefinite ban.

When considering the application for modification or revocation of a restraining order, the court shall take into account the situation of victims of violence and persons resorting to domestic violence, including information on the course and effects of actions undertaken in the "Blue Sheet" procedure, on participation in corrective and educational measures and its effects, on participation in drug therapy and its effects

The draft amendment also provides for the possibility for the authorities to issue an immediate ban on contact with a person affected by violence, on entering and staying at his or her place of work, on entering and staying on the premises of the educational, health care, artistic or sports institution attended by the person affected by violence. The catalogue of protective measures decided by the court shall be expanded accordingly.

The draft amendment to the Law on Combating Domestic Violence, which is being prepared at the same time, will define the personal scope of application of the prohibition of approaching a person - this prohibition will apply, inter alia, to close relatives, persons living together and in a common household, ex-spouses and ex-spouses.

### **Paragraphs 287 and 288 - isolation of the perpetrator from the victim of violence**

An amendment to the "anti-violence law" is being prepared by the Department of Justice. The proposed amendments provide for, among other things:

- the introduction of a restraining order (see comments on paragraph 282),
- the introduction of a ban on entering and staying on the premises of schools and other educational institutions and workplaces (see comments on paragraph 282),
- the amendment of the provision providing for the punishment of the perpetrator of violence for non-compliance with orders/prohibitions of the Police or Military Police,
- the introduction into the Code of Criminal Procedure of a preventive criminal measure in the form of a restraining order,
- the development of procedures for interviewing victims and witnesses with intellectual disabilities,
- the introduction into the Firearms and Ammunition Act of provisions on the issue and removal of a firearm from a perpetrator of domestic violence.

### **Paragraph 305 - strengthening the protection of victims of violence during legal proceedings**

The Ministry of Justice has taken initiatives to strengthen the position and interests of minors - victims and witnesses of crimes, as well as adults - victims of crimes against sexual freedom and decency (amendments to the Criminal Procedure Code and the Executive Criminal Code). The changes will include:

- improving and adapting the form of the declaration of rights and information to minors concerning their rights and obligations,
- protection of respondents,
- the possibility for the court to waive questions to the victim about his or her sex life in proceedings concerning certain offences, where such questions are not necessary for the resolution of the case,
- the exclusion, by operation of law, of public hearings in all cases involving offences against sexual freedom and modesty,
- the content of the training of judges on the questioning of minors,
- clarification of the provisions concerning the guardian representing the child in criminal proceedings,
- mandatory reporting on the release from prison of persons convicted of offences committed with the use of violence or unlawful threats, as well as for all offences where the victim was a minor,
- establishment of a plenipotentiary for a minor who is a victim of sexual freedom and morality, if he or she does not have a representative of his or her choice.

### **Paragraph 306 - legal aid**

The comments in the report on the low awareness and ineffectiveness of the free legal aid and civic advice system seem to ignore the fact that the system is relatively new and, moreover, has a general character.

The legislation provides for the possibility of setting up specialised branches within the system for certain areas of assistance. For example, in the future, specialised units for violence against women may be established.

Legal aid is currently provided by 365 units of free legal aid and free civic advice (2017 - 77, 2018 - 95). Support is provided to any victim of a crime who is on the territory of Poland. It is offered without bureaucratic obstacles, both at the stage before and during the criminal proceedings.

The Justice Fund has financed an Internet platform (<https://www.funduszsprawiedliwosci.gov.pl/>) which allows access to the assistance of the Justice Fund via a hotline (telephone hotline for injured parties, e-mail, messaging). The platform is also available in English and Ukrainian.

The report also omits the fact that this system operates in parallel with other support and proxy systems. Legal counselling for victims of domestic violence is provided by crisis intervention centres, specialised assistance centres for victims of domestic violence, counselling points, powiat support centres, powiat family support centres, as explained in Poland's report on the implementation of the Convention.

The powiat authorities are obliged to draw up lists of all the free counselling units available in their region.

#### **Paragraph 322 - asylum procedures - difficulties of access**

The assertion that it is necessary to examine the reasons for restrictions on women and girls' access to the asylum procedure is not supported by evidence of the existence of such restrictions.

#### **Paragraph 324 - interview with claimant**

The conclusions presented in the report regarding the availability of an interpreter raise doubts - in fact, it is extremely rare that the problem of finding a suitable interpreter for the applicant occurs. During the procedure for granting international protection conducted by the Aliens Office, it is guaranteed that an applicant can be interviewed not only by a person of the same sex, but also in the presence of a psychologist, a doctor or an interpreter of the sex indicated by the foreigner. Polish law explicitly provides for the possibility of granting refugee status to a person persecuted on the basis of "gender", which also includes cases of persecution on the basis of the gender identity of the applicant. In practice, a woman who is at risk of persecution on these grounds may be granted refugee status on the basis of her membership of a persecuted social group.

#### **Paragraph 327 - asylum procedures - interviews**

The third sentence indicates that in practice the applicant cannot correct the content of the interview protocol. There is no evidence for this view. The document which the report describes as "a summary" is in fact a record which is read out at the end of each interview so that the applicant has the opportunity to correct its content. The Aliens Office also takes into account comments on the minutes sent by asylum seekers after the interview. Therefore, the recording of hearings would not significantly improve the quality of the evidence.

The information in the fourth sentence of the paragraph about misconduct in the interviewing of wives regarding their willingness to file a separate application is not factually correct. Interviews concerning the intention to file a separate application are conducted by female officers. It is not necessary to use an interpreter to translate the question or to ask the husband to translate it, as the information on the possibility of filing a separate application is contained in a separate booklet. Such a booklet is available at every border guard station in 22 languages, which meets the needs.

It is questionable how the authors of the report have reached the conclusion in the fifth sentence of the paragraph that the applicant's country of origin reports do not take into account the specific situation of women. Indeed, the information on the applicant's country of origin includes, where relevant, information on gender-based persecution.

The international protection procedure is organized in such a way as to respect the obligation to verify that the applicant is not a victim of gender-based violence, which is a legal obligation.

### **Paragraph 328 - recommendations on the asylum procedure**

The current manner of conducting the procedure of granting international protection takes into account elements concerning the gender of the applicant, including the identification of persons in need of special treatment, which according to Article 68, paragraph 1, points 4 and 10 of the Act of 13 June 2003 on granting protection to aliens in the territory of the Republic of Poland may include pregnant women and victims of psychological, physical, including sexual violence, as well as victims of violence based on gender, sexual orientation and gender identity. Such identification may be carried out not only at the time of the initiation of proceedings, but also at any subsequent stage of the proceedings.

### **Paragraph 331 - shelters**

As regards the second sentence of the paragraph (low number of reported cases of violence), it should be stressed that the number of reported cases corresponds to the number of cases detected in the centres and, according to the Polish authorities, corresponds to the actual number of cases of gender-based violence occurring in the centres.

With regard to the statement in the third sentence that a specialized response to domestic violence, such as the "Blue Card" procedure, is not available to women seeking international protection, nor are there specific guidelines or protocols for preventing and responding to cases of forced marriage or honour-based violence, it should be noted that on many occasions "Blue Cards" have been established for women who have sought international protection and have been victims of domestic violence in centres for foreigners.

### **Paragraph 333 - support for persons staying in reception centres**

All foreign nationals applying for international protection who arrive at the reception centres receive a package of information on the health-care system on the first day of their stay. The information is available in the languages most commonly used by foreigners (Russian, Ukrainian, Georgian, Arabic, English). The information includes information on the availability of health care, the place where it is provided, how to proceed in case of a medical emergency, sudden deterioration of health at night, on weekends or holidays, how to obtain prescription drugs and medical products. Within the medical care system, there is a medical operator's hotline, available in English, Russian, Ukrainian and Polish, through which foreigners can make an appointment with a specialist doctor and obtain information on medical and psychological care. In addition, the foreigners' health-care provider employs or cooperates with interpreters of the languages most commonly used by foreigners, such as Russian, Ukrainian, English and Georgian, as well as interpreters of rare languages such as Persian, Arabic, Chechen and Uzbek.

The principle is to organize medical visits for foreign women according to their preferences and taking into account cultural diversity. The provision of gynaecological care by a female gynaecologist is a principle, according to the relevant provisions of the agreement between the Aliens Office and the medical operator. The current medical operator has been cooperating with the Aliens Office for six years and has the richest experience in providing health care and psychological assistance to foreigners seeking international protection in Poland.

Psychological follow-up of foreigners applying for international protection is provided in all centres, and is also available for those living outside the centres. Psychological services include psychological support, educational activities, behavioural psychotherapy, crisis intervention.

In cases deemed exceptional by the officials of the Aliens Office, the medical operator is obliged to provide immediate psychological consultation for children and young people. The need for a psychological consultation for a child must be communicated by an official of the centre by telephone and the time limit for the consultation may not exceed two days from the notification.

Due to the strictly intimate nature of interviews with a psychologist, the centres employ psychologists who speak Russian, which is the language spoken by the majority of foreigners seeking international protection in Poland.

The services are provided on the basis of the current standards of psychological assessment of foreigners applying for international protection in Poland, developed by the Polish Psychological Association.

If the psychological assessment indicates the need for specialized treatment, the patient is referred to a psychiatric clinic.

The individualized approach to the patient and the close cooperation with the psychologist and other medical staff ensures comprehensive psychological care for all persons seeking international protection, especially those with special needs.

The Aliens Office is obliged to identify persons with special needs not only immediately after the application is made, but also at every stage of the asylum procedure.

The assessment of whether a foreigner is a person in need of special treatment with regard to social assistance during the procedure of granting protection in the territory of Poland is made by :

- a doctor, as part of the special three-stage preliminary procedure, in the health filter of the reception centres,
- a psychologist or doctor, if new circumstances arise during the provision of social assistance,
- a psychologist, at the request of the official of the Refugee Procedures Department of the Aliens Office, if new circumstances arise during the procedure for granting international protection,
- officials of the Social Assistance Department of the Aliens Office present in all centres for foreigners, on the basis of their daily interviews and observations.

Since 2015 an internal procedure has been in force (amended in 2018) which defines all stages of providing social assistance to persons with special needs, according to the categories of such persons. Each case is examined individually, depending on the specific needs of the given foreigner.

#### **Paragraph 334 - conditions of detention**

The report cites a judgment concerning a foreigner who remained with her children in a detention centre for several months (footnote no. 246), and on this basis it bases the conclusion that Polish legislation allows for the detention of a victim of violence. Only one case does not prove either a practice or that the law allows it.

As mentioned in the Report, provisions defining negative grounds for detention are in force - Article 88a, paragraph 3, item 2 of the Act on granting protection to aliens in the territory of the Republic of Poland stipulates that an alien whose psychophysical condition may justify the presumption that he/she has suffered violence shall not be detained.

The indication in the report that "children seeking asylum" may be detained is not, to the full extent of the law in force. Detention may only be used for children in the custody of a legal guardian.

Unaccompanied minors may not be placed in a detention centre, as provided for in Article 88a paragraph 3 point 3 of the law.

In view of these explanations, the indication that, despite the provisions containing appropriate safeguards in this area, the judgment referred to in footnote 246 was rendered, seems more appropriate.

#### **Paragraph 335 - treatment of vulnerable foreign nationals**

While GREVIO points out that there is a document - a set of rules for dealing with vulnerable persons and that it was amended in 2019, it adds that these changes do not seem to take into account previously identified challenges, such as the need to conduct medical examinations to reveal mental health problems and to identify asylum seekers who are victims of gender-based violence and therefore excluded from detention. It appears that this assessment is the result of an insufficiently detailed analysis of this document. Moreover, the reference to the 2019 report of the Committee against Torture (CAT) (footnote no. 247) raises doubts due to the fact that the Polish delegation's meeting with CAT took place in July 2019, while the amendments to the document "Rules of Conduct (...)" were made only in June 2019. Therefore, it was difficult for CAT to assess the new guidelines just one month after their introduction, especially since CAT did not have the opportunity to review the document as during the meeting with of the Polish delegation it received only brief information about its amendment.

#### **Paragraphs 340 and 341(b) - principle of non-refoulement**

The claim that Poland does not allow women and girls to freely express their concerns, both at border crossings and in detention centres, has no basis in law or fact.

At the Terespol and Medyka border crossing points, the Border Guard accepts applications in separate rooms that guarantee confidentiality. Applications for international protection are received from persons who declare fear of return, so that there is no refoulement.

In the case of persons detained in guarded centres, all administrative activities are performed in separate rooms. Furthermore, in accordance with article 348 of the Aliens Act of 12 December 2013, in the course of the procedure to compel a foreigner to return to his or her state of origin, the possibility of granting a residence permit on humanitarian grounds is always considered, while taking into account the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms. Such a legal solution guarantees the application of the principle of non-refoulement. In addition, each application for international protection is examined individually, and each decision terminating the procedure for granting international protection is preceded by an objective and comprehensive assessment of the evidence, thus ensuring the practical implementation of the principle of non-refoulement.