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***Kryminologiczna ocena orzecznictwa sądowego w sprawach dotyczących  
przemocy w rodzinie***

***(Criminological assessment of judicial decisions in cases involving domestic  
violence)***

**SUMMARY**

A doctoral thesis written  
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Judicial system is part of the system enabling prevention of domestic violence. Its proper functioning has its impact on other elements of the whole system. Complementary and consistent set of legal norms plays a crucial role in combating pathological phenomena, including crime relating to domestic violence. This set of standards creates a system of criminal law response to violence in the family, which is part of the criminal policy of the State. Criminological assessment of court decisions in cases involving domestic violence is an extremely important issue from the point of view of implementation of penal policy in this respect.

Because of the changing legal and social reality and more intensive cooperation of services and institutions in this area it is extremely important to examine whether the reaction of law enforcement agencies and the judiciary, in particular decisions of common courts of law have also changed. Nowadays, it no longer raises any doubt that the justice system should protect those who are at risk of criminal acts, not only in public but also in the private sphere, in their own homes, where acts of violence are committed by persons closest to them. It follows on from international regulations as well as from the decisions of the European Court of Human Rights, which emphasizes the positive obligations of the state, and thus also of the judiciary, that we have to ensure everybody's safety and protection against violence, also from the partners and family members, mostly cohabiting with them.

What is needed then is a system to counteract domestic violence, which will be able to function effectively on many stages and levels, ranging from prevention, formation and promotion of healthy non-violent patterns of behaviour and relationships between family, through the reaction to actual violence, including protection of the victims, working with the perpetrators of violence e.g.: therapy and education, to further possible assistance and support to families. Judiciary is a necessary and extremely important component of the system, but we should be aware that it is one of many. It cannot replace the other roles, because it does not have the right tools and the purpose of its operation is different.

This thesis has been devoted to the study of jurisprudence of common courts concerning harassment of family and household members, which is a clear and spectacular example of domestic violence. The purpose of this work is to look at how jurisprudence of common courts in this area is shaped. In particular how the courts approach and how they view acts involving the harassment of family members, in particular through their decisions about the penalties imposed; whether it is acknowledged at all, and if so, what is penal policy of courts in this respect, as well as what courts' decisions are based on and how the final form of jurisprudence is shaped.

Therefore, the objective of this study is to gain knowledge about the reaction of the judiciary to criminal acts against family members through evaluation and critical analysis of judicial decisions, including the severity of sentencing, terms of probation, or other decisions of courts, as well as possible causes and motives for such reactions. Additional objectives were to obtain information on issues relating to, among others, the accused, family circumstances, employment situation, addictions, the perpetrators' tendency to reoffend,

possible isolation of the victims during criminal proceedings in the form of arrest and applied preventive measures, the defendants' viewpoint concerning the charges and their actions during the proceedings. It was also vital for this study to gain knowledge about the victims, their legal and factual relations with the perpetrators, their attitude towards the proceedings, their use of the right to refuse to testify and their actions during the proceedings. From the point of view of the functioning of the judiciary, as well as the violence prevention system in general, it was important to examine the impact of the public prosecutor on the final shaping of the judicial decision, the duration of the proceedings, the functioning of the "Blue Card" procedure and the activities of system participants in the criminal proceedings. The practical aim of this study was to propose organizational, institutional and legislative measures aimed at improving the legal response to domestic violence.

The dissertation consists of two parts: theoretical (Chapters I to VIII) and devoted to research (Chapters IX to XVI).

The first chapter discusses the concept and scope of the term "domestic violence". In particular, legal definition of domestic violence contained in Article 2 paragraph 2 of the Act on counteracting domestic violence of 29 July 2005 (Journal of Laws of 2015. No. 1390) was analysed. Furthermore, the author also discusses the understanding of the definition and the scope of domestic violence in Polish and foreign doctrines.

Chapter Two discusses the phenomenon of domestic violence in the light of statistical and criminological research. It includes the analysis of available statistical data collected by various public services and institutions. These are in particular data collected by the police, social workers, prosecutors and the judiciary.

The third chapter is devoted to the previously conducted research and public opinion surveys in the field of domestic violence. In particular, it discusses the studies and reports commissioned by the Ministry of Labour and Social Policy for the purpose of implementation of the National Programme for Prevention of Domestic Violence in individual years. Therefore, it presents research on domestic violence in the strict sense, domestic violence against children, domestic violence against the elderly and disabled. It also discusses research on the diagnosis of domestic violence in Poland against women and men, as well as research on a national diagnosis on people using violence in the family. The chapter contains analysis of the research on tasks performed by interdisciplinary teams / working groups, as well as the implementation of "Blue Card" and the research on the evaluation of the local system to counteract domestic violence. There is also included research and comparisons of the scale of domestic violence and evaluation of the effectiveness of measures taken to combat domestic violence. Finally, there follows a presentation of issues relating to domestic violence in Poland compared to other European Union countries.

Chapter Four assesses theories explaining the aetiology of domestic violence. It presents theories which use risk factors and discusses various concepts explaining causes of violence, including sociological, psychological and biological approach.

Chapter Five is devoted to the discussion of the Polish laws relating to domestic violence, including the provisions of the Polish Constitution, the Act on counteracting domestic violence and other laws relating to domestic violence. It also presents the provisions of the regulations, directives and guidelines on the issue of domestic violence. Finally, there is a description of local regulations relating to the issue.

Chapter Six presents international laws on domestic violence. The chapter is divided into three parts, the first of which concentrates on detailed discussion of legal regulations of the United Nations system, the second contains an analysis of the laws and regulations of the Council of Europe bodies, and the last contains a presentation of the most important legislation on domestic violence created by the European Union institutions.

Chapter Seven contains a detailed discussion of the provisions of Polish criminal law on domestic violence, including harassment, as well as an analysis of comparative legal notion of harassment and violence in the family.

Chapter Eight is devoted to the research methodology applied, this shows the purpose and object of the study, research problems and the organization of the research process, as well as methods, techniques and research tools used.

Chapter Nine discusses common types of domestic violence, including physical or psychological harassment, and economic and sexual abuse, duration of domestic violence and phases of this type of violence: growing tension, severe violence and reconciliation - honeymoon.

Chapter Ten is devoted to issues related to the stage of preparatory proceedings in cases involving domestic violence. This includes the current Attorney General's guidelines for common units of the prosecutor's office for dealing with domestic violence. Issues related to the detention of perpetrators of domestic violence were also analyzed, the initiation of preparatory proceedings in such cases, forms of proceeding, issues connected with refusal to initiate proceedings. The issue of questioning minor victims and witnesses of domestic violence under Article 185a and b of Criminal Code was particularly important. There are also presented selected preventive measures applied to perpetrators of domestic violence, including the police supervision, the interim injunction to leave the premises, detention, police supervision applied instead of the detention on condition of the accused leaving the premises jointly occupied with the victim (conditional police supervision). Finally, the questions of discontinuance of preliminary proceedings, bringing indictment and the duration of the proceedings are included here.

Chapter Eleven gives a presentation of characteristics of the people accused of domestic violence discovered during my own research, including their sex, age, nationality and place of residence, education, profession, employment, source of income and marital

status. Further analysis concerns children in the household, their family relations with the accused, the accused cohabiting with the victims in a common household, addictions of the accused, their state of mental health, their prior criminal record and the interventions of the police in the site of residence.

The following chapter concentrates on victimological aspects and presents information about disclosed victims, both adults and minors. In particular, it encompasses the data on sex, age, nationality and place of residence of victims, as well as their education, occupation, employment, and sources of income of adult victims. It shows the marital status of victims, as well as family relationships and the degree of kinship between and the victims and the accused. In case of minor victim there is additional consideration of their family relationships with the accused.

A part of Chapter Thirteen discusses issues related to the proceedings before the court in cases involving domestic violence. It elaborates the issues of court proceedings initiation, an analysis of the mediation during proceedings in such cases, the activity of the victim as an auxiliary prosecutor, hearing of evidence, the activity of the court concerning the application of preventive measures, as well as issues related to the completion of the procedure, including the judgment in the case. Additionally, the form a judgment, place and mode of issue, type of decision, legal qualification of the act and its possible change by the court were analysed here. Finally, the analysis focuses on the duration of the court proceedings and issues related to the appeal proceedings.

Chapter Fourteen is devoted to the issue of penal policy in cases involving domestic violence. Presented in here is general data concerning decisions in all crimes related to domestic violence, as well as the crime of harassment under Article 207 paragraph 1 of the Criminal Code. It discusses in detail issues related to the ruling of solely-imposed fines, restriction of liberty and imprisonment. It contains analysis of the way how the decisions taken by courts were formulated and the reasoning behind them, together with the factors influencing the severity of the punishment, including the duration of the violence, education of the accused, the prior criminal record of the accused, addictions of the accused, as well as sentencing procedures and preventive measures taken. Similarly, there is an analysis of the factors influencing the decision of conditional discontinuance of the proceedings, including the duration of violence, education of the accused and his addictions. Further on, it discusses selected punitive measures adjudicated against perpetrators of domestic violence, including punitive and maintenance payments, temporary eviction from the premises, restraining orders, prohibition from entering certain places, prohibition of contact with certain people. The chapter also presents selected probation measures imposed on the perpetrators of domestic violence, such as abstaining from alcohol or taking other drugs, leaving the premises jointly occupied with the victim, refraining from contacts with the victim or other persons in a given way, refraining from approaching the victim or other persons, participating in correctional and educational activities, refraining from staying in certain environments or locations.



Chapter Fifteen discusses the system of crime prevention in cases of domestic violence within the executory proceedings. As part of the presentation of the system, opportunities related to the establishment, extension or change in the terms of probation have been identified. The chapter outlines the institution of execution of conditionally suspended prison sentence and a conditional early release of the perpetrator of domestic violence and its possible revocation. Additionally, there is discussion on the executive procedure under Article 12d of the Act on counteracting domestic violence. The operation of the prison system in relation to the perpetrators of domestic violence is of great importance, and it is also presented here. Of crucial importance are the initiatives and activities of probation officers within the system of counteracting domestic violence, including the executive proceedings against the perpetrator of domestic violence. In particular, the thesis discusses in this chapter operations of probation officers as part of the "Blue Card" procedure, the supervisory collaboration between the judiciary and police officers, as well as supervisory activities of probation officers in cases involving domestic violence. In this regard, the chapter presents issues related to the work with the perpetrator of domestic violence under probation, work with the victims of domestic violence, the oversight of the probation measures concerning the perpetrator of domestic violence and the execution of punitive measures against perpetrators of domestic violence.

Chapter Sixteen presents recommendations resulting from the diagnosis of the problems, including the ones related to unduly gentle approach to rulings in cases of acts of harassment of family members, courts inactivity regarding application of preventive measures or lack of full and professional pre-trial personality diagnosis of the suspect. In this chapter the author indicated, among others, existing practical solutions for judges, prosecutors and probation officers such as access to the information regarding corrective and educational activities for the perpetrators of violence, or institutions providing aid to the victims of such violence. Also presented here are practical proposals of formulating judgements on individual punitive or probation measures, which can be used in current practice of law enforcement and judicial decisions. Recommendations also include proposals relating to needed regulatory changes, which may be used in the legislative work undertaken.

Criminological assessment of the case law of common courts in cases involving domestic violence, carried out in the context of the operation of the system of counteracting domestic violence, built from scratch over the past few years, is made for the first time. So far, there has been no such research, which was particularly evident during the search for academic literature for this thesis. It should be emphasized that the subject of domestic violence in Poland in many of its aspects has not yet been investigated and identified. In the area of common courts' decisions, this work represents the beginning of a further, in-depth work, especially related to the enforcement of judgments, assessment of their effectiveness, especially in terms of reversion of the perpetrators to violent behaviour, as well as their influence on the functioning of the entire system of counteracting domestic violence.