

Justyna Karaźniewicz, Monika Kotowska

Police barring order as a means of protecting victims of domestic violence in polish legal system

Policyjny nakaz opuszczenia wspólnie zajmowanego lokalu jako środek ochrony ofiar przemocy domowej w polskim systemie prawnym

Abstract

Barring order used by the Police is one of the new means of protecting victims of domestic violence. It was introduced to the Act on the Police over two years ago. This allows for a proper evaluation of these regulations. The article concentrates on the analysis of the regulations and using them in practice by police officers. The authors outline historical background and rationale for the introduction of the barring order and explain the essence of an order to vacate premises. The article contains an analysis of available statistical data collected by the Police Headquarters as well as evaluation of the existing regulations and conclusions de lege ferenda.

Keywords: *domestic violence, barring order, Police, victim*

Streszczenie

Nakaz opuszczenia lokalu stosowany przez Policję jest jednym z nowych środków ochrony ofiar przemocy domowej. Został on wprowadzony do ustawy o Policji ponad 2 lata temu. Pozwala to na dokonanie oceny tych regulacji. Artykuł koncentruje się na analizie właściwych przepisów i ich stosowania w praktyce przez funkcjonariuszy Policji. Autorki wskazują historyczne podłoże kształtowania się nakazu oraz jego uzasadnienie jako instrumentu prawnego, a także omawiają

Dr. habil. Justyna Karaźniewicz, Associate Professor; Faculty of Law and Economics, Kazimierz Wielki University in Bydgoszcz, Poland, ORCID: 0000-0003-2276-6640, e-mail: justyna.karazniewicz@ukw.edu.pl

Dr. habil. Monika Kotowska, Faculty of Law and Administration, University of Warmia and Mazury in Olsztyn, Poland, ORCID: 0000-0002-7757-020X, e-mail: monika.kotowska@uwm.edu.pl
The manuscript was submitted by the authors on: 18 January 2023; the manuscript was accepted for publication by the editorial board on: 20 February 2023.

istotę nakazu. Ponadto dokonują analizy dostępnych danych statystycznych, gromadzonych przez Komendę Główną Policji. Artykuł zawiera również ocenę istniejących regulacji oraz wnioski de lege ferenda.

Słowa kluczowe: *przemoc domowa, nakaz opuszczenia lokalu, Policja, ofiara*

1. Introduction

The interest generated by the issue of domestic violence in Poland was a result of the dynamically developing regulations of international law¹. The Act on Counteracting Domestic Violence of 2005 reflected the awareness of the severity of this social problem². Since then, there has been a dynamic development of the “law for the protection of victims of domestic violence”, which in recent years has focused mainly on the introduction of new measures to keep the perpetrator and the victim separate. This evolution began with criminal law measures (the criminal measure of an order to vacate the premises occupied with the victim, new preventive measures) and subsequently extended to civil law regulations (the judicial obligation to vacate a jointly occupied dwelling). However, the legislator deemed the existing regulations insufficient and vested the Police and Military Police officers³ with the independent authority to issue an order to immediately vacate the jointly occupied dwelling and its immediate vicinity or a prohibition on approaching the dwelling and its immediate vicinity. Two years have passed since the introduction of Articles 15aa–15ak of the Act on the Police⁴. This allows for a proper evaluation of these regulations from both a legal and axiological point of view, as well as the extent to which the new powers are exercised in practice. At the same time, it needs to be noted that the identified shortcomings of the regulations continue to constitute a premise for conducting legislative work. It is necessary to point to the Senate bill on the amendment to the Act – the Code of Civil Procedure and some other acts⁵. Due to the ongoing character of legislative work, this paper gives only a cursory reference to the most relevant proposed changes.

¹ See i.a.: UN documents: Convention on the Elimination of All Forms of Discrimination against Women of 18 December 1979 (Journal of Laws 1982, No. 10, item 71), Declaration on the Elimination of Violence against Women Proclaimed by General Assembly resolution 48/104 of 20 December 1993, Optional Protocol to the Convention on the Elimination of Discrimination against Women Adopted by General Assembly resolution A/54/4 on 6 October 1999 (Journal of Laws of 2004, No. 248, item 2484); documents of the Council of Europe: Recommendation R (85) 4 on violence in the family adopted by the Committee of Ministers on 26 March 1985, Committee of Ministers Recommendation R(90)2 on Social Responses to Domestic Violence of 15 January 1990, Recommendation Rec (2002)5 of the Committee of Ministers to member states on the protection of women against violence, adopted by the Committee of Ministers on 30 April 2002; EU documents: Charter of Fundamental Rights of The European Union (2000/C 364/01). For more information, see: A. Olszewska, *Problematyka przemocy w rodzinie w świetle wybranych uregulowań międzynarodowych*, “Nowa Kodyfikacja Prawa Karnego” 2016, No. 39, pp. 167–189.

² The Act on Counteracting Domestic Violence of 29 July 2005 (consolidated text: Journal of Laws 2021, item 1249), further referred to as A.C.D.V.

³ The legal regulations for officers of both services are the same. The further part of this article focuses on using the order by Police officers. However, these considerations can be also applied to Military Police officers.

⁴ Act of 6 April 1990 on the Police (consolidated text: Journal of Laws 2023, item 171, as amended).

⁵ Sejm paper No. 584 of 14 August 2020, IX parliamentary term. As of January 2023 the bill is after the first reading (January 2021), in August 2021 the government’s viewpoint was submitted.

2. Historical background and rationale for the introduction of the barring order

Prior to the entry into force of the Family and Guardianship Code (FGC), the protection of victims was addressed primarily through the provisions of the Criminal Code⁶, especially Articles 207, 197, 217 and 157.⁷ Given the severity and dynamics of this pathology, the legislator decided to comprehensively regulate the counteracting of domestic violence and the support of victims in a stand-alone piece of legislation. Already during the drafting of the Act, it was emphasised that the legal and social consequences of domestic violence should be suffered by the perpetrator and that “the state should not tolerate situations in which the perpetrator of violence stays at home, with the victim and the children fleeing from the offender, fearing for their own life and health”⁸. This very approach led to the introduction of the instrument referred to as “conditional police supervision” already in the original wording of the Act. It made it possible to waive the application of pre-trial detention of a defendant accused of committing a crime of violence or unlawful threat against a family member on condition that the defendant undertook to vacate the premises occupied jointly with the victim on a date set by the court and to stay at a specified address. However, separating the perpetrator from the victim depended, in this case, on the decision of the accused to use violence and was not the result of a court order (Article 14 in the original wording of the Act). This regulation was then transposed into the Code of Criminal Procedure⁹ and added to the catalogue of preventive measures, constituting a specific type of police supervision¹⁰. Section 3 supplemented Article 275 of the Code of Criminal Procedure with the provision that in a situation in which there are grounds for the application of temporary custody to an accused person for an offence committed with the use of violence or unlawful threats to the detriment of a person close to him or her or another person cohabiting with the perpetrator, supervision may be applied instead of temporary custody, provided that the accused person vacates the premises occupied jointly with the wronged party within a specified period of time and defines his or her place of stay. Furthermore, the catalogue of possible restrictions of liberty imposed on an accused person placed under supervision has been extended by expressly stipulating the prohibition of contact with the victim or other persons.

At this point, it is worth pointing out that as early as 2008, in the course of the first efforts to amend the Act towards strengthening the protection of victims of

⁶ The Criminal Code Act of 6 June 1997 (consolidated text: Journal of Laws 2022, item 1138, as amended).

⁷ See also Article 185a of the Code of Criminal Procedure, which introduced a special mode of interrogation of a minor aggrieved in cases of crimes against family and care - Act of 3 June 2005 amending the Act - Code of Criminal Procedure (Journal of Laws 2005, No 141, item 1181).

⁸ For more information, see: The justification of the government bill on The Act on Counteracting Domestic Violence, Sejm paper No. 3639 of 28 December 2004, IV parliamentary term.

⁹ Code of Criminal Procedure of 6 June 1997 (consolidated text: Journal of Laws 2022, item 1375, as amended).

¹⁰ Act of 5 November 2009 Amending Criminal Code, Code of Criminal Procedure, Executive Penal Code, Fiscal Penal Code and some other acts (Journal of Laws 2009, No. 206, item 1589). This Act repealed Article 14 of the A.C.D.V. and amended Article 275 of Code of Criminal Procedure.

family violence, there was a proposal to provide the police with a new competence involving the imposition of a prohibition on a person suspected of domestic violence from contacting the victims or an order for that person to vacate a dwelling occupied jointly with the victims for a period no longer than ten days¹¹. The necessity to facilitate and improve the isolation of perpetrators of violence from victims by strengthening the role of the police, whose officers should have the power to immediately and effectively stop the violence and ensure the safety of the victims, was emphasised¹².

Eventually, however, this solution was abandoned in favour of alternative measures dedicated to the protection of victims of domestic violence. At the same time, four new regulations were introduced in 2010¹³ to fulfil this task¹⁴. Among them, it should be stressed that the catalogue of preventive measures in criminal proceedings has been expanded to include an order for the person charged with an offence committed with violence to the detriment of a cohabiting person to vacate a dwelling occupied jointly with the victim (Article 275a of the Code of Criminal Procedure). The application of this measure was conditioned upon the existence of evidence indicating a high probability that the accused had committed the offence and the demonstration of a well-founded fear of re-offending using violence against the victim. The order could be imposed for a period of no more than three months, with the possibility of an extension for further periods of no more than three months. In general, the introduction of the new preventive measure was met with approval on the part of the doctrine, which stemmed primarily from the critical assessment of the practice of the application of conditional police supervision. It was pointed out that “the role of this measure was limited to that of a substitute for pre-trial detention, and in view of the strict definition in the Code of Criminal Procedure of the prerequisites for pre-trial detention, the courts used this possibility only exceptionally”¹⁵. However, attention needs to be drawn to the fact that the new regulation has also been subject to substantial objections, the most noteworthy

¹¹ Deputies’ bill on Amending the Act on Counteracting Domestic Violence and some other acts, Sejm paper No. 1789 of 30 May 2008, VI parliamentary term. This regulation was to be the content of the new Article 244 § 5 of Code of Criminal Procedure.

¹² The justification for the deputies’ bill on The Act on Counteracting Domestic Violence and some other acts, Sejm paper No. 1789 of 30 May 2008, p. 7.

¹³ Act of 10 June 2010 amending the Act on Counteracting Domestic Violence and some other acts (Journal of Laws 2010, No. 125, item 842).

¹⁴ Except from the means presented in this paper, the Act also introduced the Article 15a to the Act on the Police, which reads as follows: “The Police has the right to detain perpetrators of domestic violence posing direct threat to human life or health according to the procedure laid down in Article 15”. The Article 244 of the Code of Criminal Procedure was also supplemented with § 1a (“A person may be detained by the Police if there are justified grounds to suspect that this person committed an offence with the use of violence against a member of his household and it is feared that such an offence may be repeated, especially if the suspected person is threatening to do so”) and § 1b (“The Police detain a person suspected of the offence, if the offence referred to in § 1a was committed with the use of a firearm, a knife or any other dangerous item and there is a fear that an offence with the use of violence against a member of the suspected person’s household may be repeated, especially if the suspected person is threatening to do so”).

¹⁵ E. Zielińska, *Opinia prawna dotycząca Sprawozdania Komisji Polityki Społecznej i Rodziny (druk 2776) o rządowym projekcie zmiany ustawy o przeciwdziałaniu przemocy w rodzinie oraz niektórych innych ustaw (druk 1698) oraz o poselskim projekcie ustawy o zmianie ustawy o przeciwdziałaniu przemocy w rodzinie oraz o zmianie niektórych innych ustaw (druk nr 1789)*, of 15 March 2010, p. 6. See also A. Sakowicz, *Opinia prawna o sprawozdaniu*

of which is the formulation of constitutional doubts as to the legitimacy of granting these powers to the public prosecutor and not to the court alone¹⁶. The inconsistency of the existing legislation was also acknowledged, as it manifested itself in the existence of provisions that served the same purpose and whose scopes overlapped at least partially (notably Article 275 § 3 of the Code of Criminal Procedure and Article 275a thereof)¹⁷. Despite the objections raised over the years, the conditional police supervision and the order to vacate the premises occupied with the victim continue to exist concurrently in unaltered form to this day.

The second new measure aimed at ensuring the isolation of the perpetrator from the victim of domestic violence introduced in 2010 was the barring order, a new civil law measure (Article 11a of the A.C.D.V.). In a situation where a family member jointly occupying a dwelling makes cohabitation particularly oppressive due to his/her behaviour involving domestic violence, the civil court may, at the request of the person affected by the violence, oblige the perpetrator to vacate the dwelling. An order to this effect is to be issued within one month of the receipt of the request and becomes enforceable upon publication. The need for civil measures arose from the fact that many victims failed to report the crime out of fear of the perpetrator, making it impossible to isolate the perpetrator under the provisions of the Code of Criminal Procedure¹⁸. This solution was evaluated positively, pointing out that measures of a civil law nature tend to be more effective, especially when the legislation provides for a specific procedure, characterised by short deadlines for issuing an order and immediately enforceable execution for vacating the premises¹⁹.

The above-mentioned regulations confirm the dynamic evolution of legislation regarding the protection of victims of domestic violence. They give rise to two conclusions. Firstly, the co-existence of both criminal law and civil law measures is necessary because it is not always the behaviour of a violent person that warrants a criminal

Podkomisji nadzwyczajnej do rozpatrzenia rządowego projektu ustawy o zmianie ustawy o przeciwdziałaniu przemocy w rodzinie oraz niektórych innych ustaw (druk nr 1698) oraz poselskiego projektu ustawy o zmianie ustawy o przeciwdziałaniu przemocy w rodzinie oraz zmianie niektórych innych ustaw (druk nr 1789), of 8 February 2010, p. 9.

¹⁶ L. Bosek, *Opinia na temat legislacyjnej spójności oraz zgodności z Konstytucją RP projektu ustawy o zmianie ustawy o przeciwdziałaniu przemocy w rodzinie oraz niektórych innych ustaw (druk 2776), of 15 March 2010, pp. 10, 12.*

¹⁷ Compare i.a.: P. Starzyński, *Funkcja ochronna środków przymusu procesowego*, [in:] *Zgwałcenie. Definicja, reakcja, wsparcie dla ofiar*, L. Mazowiecka (ed.), Warszawa 2016, pp. 104–105; S. Spurek, *Komentarz do ustawy z dnia 10 czerwca 2010 r. o zmianie ustawy o przeciwdziałaniu przemocy w rodzinie oraz niektórych innych ustaw*, [in:] *Przeciwdziałanie przemocy w rodzinie. Komentarz*, Warszawa 2012, available at: sip.lex.pl [accessed on: 20 December 2022]; J. Kosonoga, *System nieizolacyjnych środków zapobiegawczych*, "Ius Novum" 2014, No. 2, p. 96; R.A. Stefański, *Środek zapobiegawczy nakazu opuszczenia lokalu mieszkalnego zajmowanego wspólnie z pokrzywdzonym*, "Wojskowy Przegląd Prawniczy" 2010, No. 3, p. 89; K. Dudka, *Praktyka stosowania nieizolacyjnych środków zapobiegawczych w polskim procesie karnym*, Warszawa 2015, available at: sip.lex.pl [accessed on: 20 December 2022]. More: J. Karaźniewicz, *Zakres prewencyjnego stosowania środków przymusu procesowego – próba oceny tendencji rozwojowych*, [in:] *Proces karny w dobie przemian. Zagadnienia ogólne*, S. Steinborn, K. Woźniwski (ed.), Gdańsk 2018, pp. 551–552.

¹⁸ S. Spurek, *Isolacja sprawcy od ofiary. Instrumenty przeciwdziałania przemocy w rodzinie*, Warszawa 2013, available at: sip.lex.pl [accessed on: 15 December 2022]; P. Wiktorska, *Zmiany w kontrolowaniu przemocy domowej – aspekty prawne, kryminologiczne i społeczne*, "Archiwum Kryminologii" 2021, No. 43, p. 260; P. Wiktorska, *Procedury prawne związane z możliwościami odseparowania sprawcy przemocy domowej od osoby doświadczającej przemocy*, "Prawo w Działaniu" 2021, Vol. 45, pp. 82–84.

¹⁹ E. Zielińska, *Opinia prawna...*, p. 13.

law response, not least because of the victims' fear of reporting the act to the law enforcement authorities or the evidentiary problems arising from the victim's lack of cooperation in such a situation. Secondly, from the outset of the development of the policy on the protection of victims of domestic violence, attention was drawn to the importance of measures enabling the immediate separation of the perpetrator from the victim²⁰. The promptness of the response is of fundamental importance to the effectiveness of the protection of victims, and it contributes to their sense of security and influences the decision to initiate criminal proceedings or to use other measures of a long-term nature. Therefore, the evaluation of the current solutions, proposals for their modification, as well as calls for the introduction of new measures concentrate precisely on the need to provide immediate protection to the victim as soon as the use of violence is discovered. At the same time, it deserves to be noted that the new proposals refer less and less to criminal law solutions and put more emphasis on civil law solutions and the search for administrative law measures. The changes (especially procedural ones) to the civil obligation to vacate a jointly occupied dwelling on the basis of Article 11a of the A.C.D.V. are a clear expression of this trend²¹. Indeed, it has been proven in practice that the processing of cases under Article 11a of the A.C.D.V. is lengthy and usually takes considerably longer than the one month indicated in the law²². This was attributed, *inter alia*, to issues such as notification to the parties and serving notices, the time required for bailiff proceedings²³, proceedings for exemption from court costs, the appointment of *ex officio* representatives and the often lengthy

²⁰ See also conclusions of the Supreme Audit Office contained in the report on the audit results: "Helping domestic violence victims" (No. 48/2016/P/15/046/KPS), p. 26. Available at: <https://www.nik.gov.pl/plik/id,10943,vp,13290.pdf> [accessed on: 15 December 2022].

²¹ These are the changes introduced by the Act of 30 April 2020 amending the Code of Civil Procedure and some other acts (Journal of Laws 2020, item 956). Firstly, they refer to the scope of protection provided to victims of domestic violence: the obligation to vacate the dwelling occupied jointly with the person affected by the violence was extended to its immediate vicinity; the obligation might be combined with a ban on approaching the dwelling and its immediate vicinity; the protection was extended to the persons affected by domestic violence who left the jointly occupied dwelling due to violence against them; the protection was also extended to the situation when a person using violence has left the dwelling occupied jointly with the victim or he only periodically or irregularly stays in the dwelling. Secondly, the changes in law relate to the proceedings conducted by a civil court: a separate regulation of this procedure was introduced in the new Section Ia of the Code of Civil Procedure of 17 November 1964 (consolidated text: Journal of Laws 2021, item 1805, as amended); specific provisions on securing a claim were introduced. Therefore, the security may also consist in extending the order or prohibition issued by the Police or the Military Police (article 755² of the Code of Civil Procedure).

²² In the years 2013–2018, the duration of proceedings in civil cases for obliging the perpetrator of domestic violence to leave the apartment occupied jointly with another family member affected by violence in the first instance in district courts ranged from 131 to 181 days. Compare data presented in the justification of the government bill on Amending Code of Civil Procedure and some other acts, Sejm paper No. 279 of 11 March 2020, IX parliamentary term. See also detailed analysis based on file research regarding the time of the hearing and the duration of the proceedings before the civil court in: F. Manikowski, *Postępowanie w sprawie o zobowiązania osoby stosującej przemoc w rodzinie do opuszczenia wspólnie zajmowanego mieszkania i jego bezpośredniego otoczenia lub zakazania zbliżania się do mieszkania i jego bezpośredniego otoczenia – analiza badań aktowych*, "Prawo w Działaniu" 2022, Vol. 50, pp. 21–24, 35.

²³ A. Różycka, *Zasadność nowych środków ochrony osób doznających przemocy domowej*, "Prawo w Działaniu" 2020, Vol. 41, p. 203; M. Strus-Wołos, *Uprawnienia i obowiązki funkcjonariuszy Policji w zakresie wydawania względem osób stosujących przemoc w rodzinie nakazu natychmiastowego opuszczenia wspólnego mieszkania oraz*

evidentiary proceedings²⁴. The existence of the civil barring order has also practically reinforced calls for the introduction of new instruments allowing for the immediate isolation of perpetrators from victims. Consequently, together with the amendments to Article 11a of the A.C.D.V., new powers of police officers were introduced, as set out in detail in Articles 15aa–15ak of the A.C.D.V.²⁵ The legislator considered it necessary to introduce a measure that would be independent of criminal proceedings and would be more effective and faster than a civil injunction and would ensure an efficient, immediate response to the violence that had been discovered. Arguments in favour of the legitimacy of such regulations were also sought from solutions found in other countries²⁶. What is equally significant is that the legislator has recognised the links between the different measures and has addressed the relationship between the order to vacate the premises issued by the police and the decisions of the civil court and the detention of the person. Although certain doubts have remained, this is certainly an important step towards bringing order to the existing regulations of the various branches of the law and ensuring systemic consistency in terms of the protection of victims of domestic violence.

3. The essence of an order to vacate premises

Regulation of the Act on the Police effective from 30 November 2020 (Articles 15aa–15ak) provides the legal basis for the new competencies of the police²⁷. This was justified by the fact that the aim of the new regulations is “to supplement the legal order with comprehensive solutions for prompt isolation of the person affected by violence from the violent person in situations where he/she poses a threat to the life or health of household members”²⁸. As regards the current state of the law, the existing regulations were considered “insufficiently effective in providing protection to a person experiencing violence when there are no criminal proceedings pending in relation to domestic violence”²⁹.

zbliżania się do jego bezpośredniego otoczenia lub zakazu zbliżania się do takiego mieszkania i jego bezpośredniego otoczenia, “Przegląd Policyjny” 2022, No. 2, p. 91.

²⁴ Reply of the Ministry of Justice (5 July 2016) on the request of Commissioner for Human Rights (29 April 2016) on the length of cases for an order to vacate the premises by the perpetrator of violence (DSO-I-072-6/16), available at: <https://bip.brpo.gov.pl/pl/content/rzecznik-pyta-resort-sprawiedliwosci-o-przyspieszenie-spraw-nakazu-dla-sprawcy-przemocy-by-opuscil-lokal> [accessed on: 20 December 2022].

²⁵ In relation to Military Police officers, analogous solutions are included in the Articles 18a–18k of the Act of 24 August 2001 on Military Police and Military Law Enforcement Bodies (consolidated text: Journal of Laws 2021, item 1214, as amended).

²⁶ For more information see: E. Melaniuk, *Praktyka stosowania instytucji nakazu natychmiastowej izolacji sprawcy przemocy domowej w wybranych krajach*, Warszawa 2020, pp. 15–32; E. Mikołajczuk, *Praktyka stosowania instytucji nakazu natychmiastowej izolacji sprawcy przemocy domowej w wybranych krajach, “Prawo w Działaniu” 2020, Vol. 44, pp. 99–113; A. Różycka, Zasadność nowych środków ochrony osób doznających przemocy domowej, “Prawo w Działaniu” 2020, Vol. 41, pp. 204–205.*

²⁷ Act of 30 April 2020 Amending Code of Civil Procedure and some other acts (Journal of Laws 2020, item 956).

²⁸ The justification of the government bill Amending Code of Civil Procedure and some other acts, Sejm paper No. 279 of 11 March 2020, IX parliamentary term, p. 1.

²⁹ The justification of the government bill Amending Code of Civil Procedure and certain other acts, Sejm paper No. 279 of 11 March 2020, IX parliamentary term, p. 1.

It is rightly pointed out that the legislator has vested the police with the right to apply an “immediate eviction” corresponding in its content to a court decision under Article 11a of the A.C.D.V.³⁰ This power includes an order for the violent person to immediately vacate the dwelling and its immediate vicinity occupied jointly with the person affected by the violence or an order restraining the violent person from entering the dwelling and its immediate vicinity³¹. Incidentally, the Act introduces a broad understanding of a dwelling, including any premises serving current housing needs. “Immediate vicinity” is specified each time in the order/prohibition either by indicating the area or distance from the jointly occupied dwelling. Both the order and the prohibition may be applied independently of each other as well as in combination. It should be emphasised that the issuance of a barring or restraining order is not subject to the principle of complaint. It may therefore be issued both following a report (e.g. from the victim of violence, a probation officer or social worker, a neighbour, an employee of an educational institution, or a health care facility) as well as *ex officio*, in particular, during an intervention in the co-occupied dwelling or its immediate vicinity.

The issuance of a barring or restraining order depends on the fulfilment of several conditions. Firstly – it is crucial to establish a person resorting to domestic violence³², understood as a single or repeated intentional act or omission violating the rights or personal goods of a family member, in particular exposing that person to the risk of loss of life, health, violating his/her dignity, bodily integrity, freedom, including sexual freedom, causing damage to his/her physical or mental health, as well as causing moral suffering and harm to such person (Article 2(2) of the A.C.D.V.). A family member, and therefore a “person affected by violence”, means the person closest to him or her within the meaning of Article 115 § 11 of the Criminal Code (a spouse, ascendant, descendant, sibling, relative in the same line or degree, a person in an adoption relationship and his/her spouse, as well as a person in a cohabitation relationship), as well as any other person cohabiting or living together with the person using violence.

The second premise is that the suspected abuser poses a threat to the life or health of a family member. This threat does not necessarily have to be direct but should be real and objective and not based solely on the subjective feelings of the

³⁰ P. Piskozub, *Isolacja sprawcy przemocy w rodzinie*, Warszawa 2021, available at: sip.legalis.pl [accessed on: 20 December 2022].

³¹ It is worth noting that the Senate bill on the amendment to the Act – the Code of Civil Procedure and some other acts (Sejm paper No. 584, IX parliamentary term) provides for a further extension of the scope of the discussed regulations by the institution of the obligation of keeping a certain distance from a person affected by violence because it has been recognized that the essence of the new powers of the Police is not to protect a specific place, but to protect a person affected by domestic violence. The justification for the Senate’s bill on the amendment to the Act – Code of Civil Procedure and some other acts, Sejm paper No. 584 of 14 August 2020.

³² A more appropriate term than the prejudicial statement “a person using violence” would be a term “person suspected of using violence”, analogously to a person suspected of committing an offence in relation to whom law enforcement authorities may take certain actions (e.g. detention), but who is not charged with a specific offence.

person whom the order/prohibition is intended to protect. Therefore, before issuing an order/prohibition, the officer is obliged to assess the risk of danger, taking into consideration both personal and situational circumstances, indicated, for example, in Article 15a(2) of the Act on the Police. The former circumstances relate to the abuser (e.g. mental disorders, abuse of alcohol or other drugs) and to the persons affected by the violence (e.g. age, pregnancy, disability, medical condition or mental disorder). In contrast, situational factors relate to both the assessment of the intervention that may result in an order and a wider analysis of the family situation. These include, but are not limited to: the circumstances at the time of the intervention related to the use of alcohol; threats of violence with the effect of imminent danger to life or health; the perpetrator's access to a dangerous instrument or weapon; information on the severity of the acts of violence, attempts made by the perpetrator or the persons affected by the violence to take their own lives³³. This assessment is reflected in the Life or Health Risk Assessment Questionnaire that accompanies a barring or restraining order that has been issued³⁴.

In order to proceed, it is necessary to collect and verify information on the potential perpetrator, the victim, the family situation and the circumstances of the incident. The officer is therefore obliged to interview the person reporting domestic violence as a witness immediately after receiving the report, at the scene of the incident, if possible. The officer shall also have the right to question other persons as witnesses, in particular all persons affected by the violence who share the dwelling, but with the exception of minors under the age of 15 at the time of questioning, who may only be questioned by a guardianship court. For maximum credibility of the testimony given, before starting the interrogation, the police officer shall instruct the person being questioned about the obligation to tell the truth and not to conceal the truth and about any criminal liability for providing false testimony (Article 233 of the Criminal Code). The police may also carry out other actions to determine whether the grounds for issuing an order/prohibition exist, including, *inter alia*, requesting additional information from other institutions or authorities. An interview with the suspected abuser also constitutes one of the relevant actions. It should be noted, however, that this is not obligatory. For the sake of guaranteeing the protection of the suspected person as well, refraining from interviewing him or her should be regarded as an exception and should only be allowed if it could hinder the immediate issuing of an order or prohibition, e.g. due to his or her condition (e.g. the influence of alcohol) or absence from the place of violence at the time of the officer's verification of the information. Moreover, it should be emphasised that such a person is formally not a witness and is therefore not obliged to testify, nor is he or she criminally liable for

³³ J. Karaźniewicz, *Art. 15a*, [in:] *Ustawa o Policji. Komentarz*, K. Chałubińska-Jentkiewicz, J. Kurek (eds.), Warszawa 2021, p. 156.

³⁴ The Appendix No. 2 to the Regulation of the Minister of the Interior and Administration of 26 November 2020 on an order to immediately vacate the dwelling and its immediate vicinity occupied jointly with the person affected by the violence or an order restraining the violent person from entering the dwelling and its immediate vicinity (Journal of Laws 2020, item 2105).

the content of the statements made during the hearing. On the other hand, they are given the opportunity to comment on the circumstances of the assessment upon which the officer's decision to issue an order/prohibition depends. This entitlement is similar to the detained person's right to be heard, regulated in Article 244 §2 of the Code of Criminal Procedure³⁵.

The order or prohibition issued shall be promptly served to the person against whom it was issued, the person affected by the violence and to the public prosecutor. For the purpose of strengthening the protection of the person affected by violence, the law also imposes an obligation on the police to notify the locally competent municipal interdisciplinary team, which is in charge of integrating and coordinating the activities of various entities and professionals in the field of counteracting domestic violence³⁶. A copy of the issued order/prohibition shall also be forwarded to the police community support officer, who is tasked with the prevention of domestic violence, among others³⁷.

The priority of providing immediate protection to the person affected by violence is expressed, *inter alia*, in the possibility of issuing an order/prohibition despite the absence of the abuser in the jointly occupied dwelling or its immediate vicinity during the police operation. If this is the case, the officer must post a notice on the door of the premises that the order/prohibition has been issued. In doing so, the Act introduces a legal presumption that the placing of said notice on the door means that the order/prohibition is deemed to have been effectively served. An analogous presumption is made in a situation where the person against whom the order/prohibition has been issued refuses to accept it. Undoubtedly, these presumptions constitute an enhancement of the protection of victims and are linked to the immediate enforceability of the order.

Within three days of service of the order/prohibition, the person against whom it was issued has the right to lodge a complaint with the district court, in which he/she may request that the correctness of the conduct, legitimacy and legality of the order/prohibition issued be examined. The court shall consider the complaint without delay but no later than within three days of its receipt by the court³⁸. The consequence of

³⁵ J. Karaźniewicz, *Art. 15ab*, [in:] *Ustawa o Policji. Komentarz*, K. Chałubińska-Jentkiewicz, J. Kurek (eds.), Warszawa 2021, p. 165.

³⁶ Compare: Art. 9a-9c A.C.D.V.

³⁷ See § 36 (6) Ordinance No. 5 of the Police Commander in Chief of 20 June 2016 on the methods and forms of performing tasks by a district constable and a district constable manager (Official Journal of the Police Headquarters 2016, item 26, as amended). Moreover, when minors live in the apartment - the Police is also obliged to notify the territorial competent guardianship court, which initiates the proceedings and immediately decides on the security in the scope of the custody of minors and contacts with them by the person using violence (see Article 755⁴ of Code of Civil Procedure).

³⁸ The Senate bill on the amendment to the Act - the Code of Civil Procedure and some other acts (Sejm paper No. 584 of 14 August 2020, IX parliamentary term) contains a valid postulate to shorten the time limit for examination a complaint from 3 days to 48 hours. It was rightly pointed out that it is necessary to "correct mistakes faster, which may occur due to the fact that interventions will be carried out in situations characterized by high dynamics and emotional charge" (see: The justification of the Senate's bill on the amendment to the Act - Code of Civil Procedure and some other acts, Sejm paper No. 584 of 14 August 2020).

a court finding that the order/prohibition issued is groundless or illegal is, in the first instance, its revocation.

The police are also responsible for supervising the vacating of the premises. A person has the right to take personal and work items or pets owned by him/her out of the jointly occupied dwelling. However, there may be a dispute as to the extent of the care of the animals or the grounds for taking certain items. In such a case, if the persons sharing the dwelling voice objections, the items or pets that the abuser wishes to take shall be left in the jointly occupied dwelling. A protocol shall be drawn up for the act of leaving the dwelling and its vicinity.

The effectiveness of the protection afforded to a person affected by violence depends to a large extent on compliance with the conditions set out in the order/prohibition throughout its duration. Checks on whether a person violates the conditions set out therein are carried out by the police. The legislator has justifiably left officers some leeway as to the number of checks while indicating that they must be carried out at least three times. The first check is performed the day after the order/prohibition is issued.

In order to strengthen its effectiveness, the legislator decided to introduce penalisation of behaviour consisting of non-compliance with the obligations arising from the order/prohibition issued. Article 66b of the Polish Code of Offences³⁹ penalises non-compliance with any police order or prohibition, providing for the punishment of this offence with the penalty of detention (from 5 to 30 days), restriction of liberty (1 month) or a fine (in the amount of PLN 20 to 5,000). Recognising at the same time that “the reaction to this type of offence should be swift, as the prospect of a punishment being imposed far in advance may induce a feeling of impunity in violent offenders and, consequently, lead them to disobey the order or prohibition issued”, the case for this offence is heard in an accelerated procedure⁴⁰.

The main characteristic of an “eviction” that police officers can order is its temporariness⁴¹. Both a barring and a restraining order are time-limited measures. The order ceases to have effect after 14 days, and this time is calculated from the day it is issued, not from the day the person is served. However, there are two cases in which this time limit may be reduced. Firstly, if the court examining the complaint finds that it is illegal or unfounded and decides to set aside the contested order/prohibition. Secondly, the order ceases to have effect before the lapse of 14 days if, during that period, the person against whom it was issued was arrested on suspicion of having committed an offence and one of the two preventive measures – either pre-trial detention or an order to temporarily vacate the premises occupied jointly with the victim – was subsequently applied against him or her.

³⁹ The Act of 20 May 1971 (consolidated text: Journal of Laws 2022, item 2151, as amended).

⁴⁰ See Article 90 § 2 of the Code of procedure in petty offence cases (consolidated text: Journal of Laws 2022, item 1124).

⁴¹ P. Piskozub, *Izolacja sprawcy przemocy w rodzinie*, Warszawa 2021, available at: sip.legalis.pl [accessed on: 20 December 2022].

4. Practical effectiveness of barring orders

Due to the short duration of the authorisation to issue barring or restraining orders, it is difficult to analyse the data on the number of orders issued. However, several conclusions can be drawn from the data readily available. Examination of the new powers should also be carried out concerning the scale of domestic violence and the number of persons detained. It also reflects the fact that an order/prohibition can be issued in connection with the detention of a person.

In Poland, domestic violence is still considered a serious social problem, as evidenced by the high number of detained persons suspected of committing violence against their close ones. Thus, in 2015, the number of detained persons reasonably suspected of committing violent acts against family members amounted to 15,540. In 2016, the number of such persons increased to 16,881. This number oscillated around 17,000 in the following years, and in 2021, it grew again, reaching 18,240 persons⁴².

The relevant literature indicates that although men are most often the perpetrators of violence⁴³, it should be noted that there has been an increase in the number of women using violence who have been detained on reasonable suspicion of violence – in 2015 there were 465 such detentions, in 2016 – 600, in 2017 – 635, and 661 in 2021. It is worth pointing out, aside from the considerations above, that a similar trend has been observed in Blue Card registrations: in 2015 there were 5,244 women suspected of violence, and in 2021 there were 6,173⁴⁴. There has also been an increase in the number of final judgements enforced against women for a conviction under Article 207 of the Penal Code, which is reflected in the statistics of the Prison Service, although women constitute an exception in this regard. Nevertheless, there has also been an increase in this figure in recent years: there were 71 sentences enforced against women in 2015, followed by 86 in 2016, and it reached 100 in the following year, while as of 31 December 2021, 134 women were registered against whom judgments were executed for a conviction under Article 207 of the Penal Code⁴⁵.

However, based on the statistics made available by the National Police Headquarters, it can be concluded that the number of victims of domestic violence has generally decreased in recent years, although the reported figures are still high. In 2015, 97,501 individuals were registered against whom there was a reasonable suspicion that violence had been used against. A year later, their number dropped to 91,789, in 2020 to 85,575 and in 2021 to 75,761. It is worth noting that the decrease

⁴² Data obtained from the National Police Headquarters under the Act on Access to Public Information.

⁴³ A. Grygorczuk, K. Dzierżanowski, T. Kiluk, *Mechanizmy psychologiczne występujące w relacji ofiara-sprawca przemocy*, "Psychiatria" 2009, Vol. 6, No. 2, p. 62; A. Witkowska-Paleń, *Rola programów edukacyjno-korekcyjnych w kształtowaniu postaw i przekonań skazanych sprawców przemocy domowej*, "Journal of Modern Science" 2018, Vol. 4/39, p. 54.

⁴⁴ Prevention Bureau of the Police Headquarters, Prevention Department, Information on the implementation of the "Blue Cards" procedure by the Police for 2015 and 2021, available at: <https://policja.pl> [accessed on: 20 December 2022].

⁴⁵ *Information and Statistics Office of the Central Board of the Prison Service*, available at: <https://www.sw.gov.pl/strona/statystyka-roczna> [accessed on: 03 November 2022].

in domestic violence is reflected by the decreasing number of female victims (in 2015 – 69,376 and in 2021 – 55,112), although they still represent the vast majority of victims. In contrast, the number of men suspected of being victims of violence remains at a similar level – more than 10,000 per year, except for 2017, which saw an increase to 11,030, and 2021 which saw a decrease to 9,520.

When addressing the practical functioning of the new police competence, it should be stated that 6,239 orders or prohibitions were issued in the period under review (from 30 November 2020 to 30 June 2022). At the same time, it is worth emphasising that the number of orders or prohibitions issued is systematically increasing. This confirms the practical need for the existence of such an instrument. In the first month of the legislation alone (December 2020), 232 orders or prohibitions were issued. In 2021, there were already 3,524, while in the first half of 2022, there were 2,484. Given the lack of uniform periods, it is difficult to make a simple comparison. However, an upward trend is observable in the above data. It is worth noting, for example, that in the first half of 2021 (from January to June), 1,660 orders/prohibitions were issued, and in the corresponding period of 2022 (I–VI) there were 2,484.

Data obtained from the National Police Headquarters show that the application of prohibitions and orders by individual Voivodeship Police Headquarters in Poland is not consistent. Detailed figures are presented in Tables 1–3.

Table 1. Number of barring orders issued by police officers to immediately leave a jointly occupied dwelling and its immediate surroundings or restraining orders as regards the dwelling and its immediate surroundings in the period 30 November 2020 – 31 December 2020

Police Unit	Number of orders
KWP Bydgoszcz	6
KWP Białystok	40
KWP Gdańsk	15
KWP Gorzów Wlkp.	5
KWP Katowice	25
KWP Kielce	4
KWP Kraków	12
KWP Łódź	19
KWP Lublin	34
KWP Olsztyn	17
KWP Opole	0
KWP Poznań	6
KWP Rzeszów	9
KWP Szczecin	2
KSP Warszawa	6
KWP Radom	15

Table 1

Police Unit	Number of orders
KWP Wrocław	17
Total	232

Source: data from NPH.

Table 2. Number of barring orders issued by police to immediately leave a jointly occupied dwelling and its immediate surroundings or restraining orders issued as regards the dwelling and its immediate surroundings in 2021

Police Unit	I	II	III	IV	V	VI	VII	VIII	IX	X	XI	XII	Total
KWP Bydgoszcz	14	10	10	20	11	13	7	12	9	10	12	14	142
KWP Białystok	36	36	28	31	42	42	44	28	25	51	45	53	461
KWP Gdańsk	12	13	11	6	7	10	11	8	11	13	14	17	133
KWP Gorzów Wlkp.	2	1	3	7	4	9	6	6	4	7	5	6	60
KWP Katowice	21	13	17	37	16	18	27	13	15	17	17	14	225
KWP Kielce	3	6	6	13	10	6	11	6	2	8	9	7	87
KWP Kraków	12	16	18	50	37	47	35	33	29	26	29	31	363
KWP Łódź	19	16	18	20	18	22	19	14	14	12	7	18	197
KWP Lublin	23	27	28	34	29	32	47	30	28	31	30	44	383
KWP Olsztyn	22	20	16	25	18	20	22	19	15	13	26	27	243
KWP Opole	0	2	0	0	3	4	7	1	2	2	1	4	26
KWP Poznań	5	7	7	5	13	21	11	14	7	5	8	16	119
KWP Rzeszów	14	9	6	11	10	14	22	18	13	11	11	35	174
KWP Szczecin	4	4	3	3	2	16	4	2	3	4	14	15	74
KSP Warszawa	11	9	9	23	23	10	16	22	16	17	40	41	237
KWP Radom	12	11	12	24	29	25	43	15	25	23	35	38	292
KWP Wrocław	39	33	18	21	26	31	18	27	23	27	15	30	308
Total	249	233	210	330	298	340	350	268	241	277	318	410	3524

Source: data from NPH.

Table 3. Number of barring orders issued by police officers to immediately leave a jointly occupied dwelling and its immediate surroundings or restraining orders as regards the dwelling and its immediate surroundings in the period 1 January 2022 – 30 June 2022

Police Unit	I	II	III	IV	V	VI	Total
KWP Bydgoszcz	15	37	51	55	42	40	240
KWP Białystok	47	36	50	54	56	42	285
KWP Gdańsk	17	9	21	16	12	14	89
KWP Gorzów Wlkp.	5	2	3	6	2	5	23
KWP Katowice	28	17	13	23	23	23	127

Police Unit	I	II	III	IV	V	VI	Total
KWP Kielce	8	7	27	22	12	14	90
KWP Kraków	30	33	30	32	24	19	168
KWP Łódź	30	15	20	9	13	34	121
KWP Lublin	38	28	34	37	27	40	204
KWP Olsztyn	13	35	16	19	5	31	139
KWP Opole	3	4	7	4	7	8	33
KWP Poznań	5	12	10	14	8	8	57
KWP Rzeszów	18	17	22	26	26	37	146
KWP Szczecin	12	22	13	6	8	10	71
KSP Warszawa	43	50	53	32	53	54	285
KWP Radom	37	41	39	46	42	53	258
KWP Wrocław	27	26	18	38	21	18	148
Total	376	391	427	439	401	450	2484

Source: data from NPH.

Data showing the use of orders in the area subordinated to particular voivodship police headquarters indicate that police officers of the Voivodship Police Headquarters in Białystok most often use this power. During each of the periods under review, the number of orders issued was the highest. From 30 November 2020 to 30 June 2022, 786 orders or prohibitions were issued in the area under VPH in Białystok. In comparison, 59 such decisions were issued in the area covered by the VPH in Opole during this period. These differences are, of course, partly attributable to the size of the areas subordinate to the police forces, yet the differences in the frequency with which this power is used in individual areas of the country are clearly noticeable.

Another issue to be explored is the combination of issued barring orders with a restraining order. It was indicated that the greatest effectiveness is achieved by issuing an order and a prohibition simultaneously. This is confirmed by the data indicated in Table 4.

These data indicate clearly that, more often than not, the effectiveness of protecting victims of domestic violence requires the simultaneous issuing of both a barring order and a restraining order. Only in cases in which the perpetrator of the violence is no longer living with the victim at the time of the decision is the issuing of a restraining order alone justified. On the other hand, the rather large number of stand-alone barring orders is not completely justifiable, as they only provide temporarily limited protection for the victim.

From the victim's perspective, the effectiveness of the measures used is also dependent on the behaviour of the perpetrator of the violence after the order or prohibition has been issued. The assessment should also be based on analysing the breach of the orders or prohibitions. During the studied period, the issued order or prohibition was breached in 1,385 cases. Considering that 6,239 orders or prohibitions were issued during this period, the percentage of violations of issued decisions

Table 4. Number of orders/prohibitions issued by police officers in the period 30 November 2020 – 30 June 2022 with information on applying more than one measure against a person

Police Unit	2020				2021				2022				2022 Total	Orders and Prohibitions Total	
	order (...)	order (...) and prohibition(...)	prohibition (...)	more than one measure against a person	order (...)	order (...) and prohibition (...)	prohibition (...)	more than one measure against a person	order (...)	order (...) and prohibition (...)	prohibition (...)	more than one measure against a person			
KWP Bydgoszcz	1	5	0	0	6	4	135	3	1	142	2	233	5	240	388
KWP Białystok	5	32	3	0	40	19	425	17	23	461	10	272	3	285	786
KWP Gdańsk	0	13	2	0	15	5	119	9	3	133	2	84	3	89	237
KWP Gorzów Wlkp.	1	3	1	0	5	5	48	7	3	60	0	23	0	23	88
KWP Katowice	0	20	5	0	25	13	186	26	5	225	0	117	10	127	377
KWP Kielce	0	3	1	0	4	3	79	5	4	87	2	80	8	90	181
KWP Kraków	1	9	2	0	12	23	283	57	31	363	15	133	20	168	543
KWP Łódź	0	14	5	0	19	9	170	18	5	197	4	107	10	121	337
KWP Lublin	4	25	5	0	34	9	353	21	7	383	1	189	14	204	621
KWP Olsztyn	5	6	6	3	17	22	189	32	14	243	7	121	11	139	399
KWP Opole	0	0	0	0	0	0	19	7	1	26	2	27	4	33	59
KWP Poznań	0	3	3	0	6	6	100	13	1	119	0	55	2	57	182
KWP Rzeszów	0	7	2	0	9	4	160	10	10	174	5	135	6	146	329
KWP Szczecin	0	1	1	0	2	6	63	5	3	74	2	63	6	71	147
KSP Warszawa	0	5	1	0	6	10	216	11	8	237	9	256	20	285	528
KWP Radom	1	12	2	0	15	3	283	6	7	292	6	246	6	258	565
KWP Wrocław	1	14	2	0	17	17	269	22	7	308	7	136	5	148	473
Total	19	172	41	3	232	158	3097	269	133	3524	74	2277	133	2484	6240

Source: data from NPH.

was 22.2%. At the same time, it should be emphasised that in the vast majority of cases, the perpetrators violated the prohibition on approaching the dwelling and its surroundings, thus making attempts to return to the dwelling, probably due to the lack of presence of the police officers after the intervention ended.

Table 5. Number of breached barring orders to immediately leave the co-occupied dwelling and its immediate surroundings or restraining orders

Period	Number of breached barring orders	Number of breached restraining orders	Number of breached barring orders and restraining orders
30.11.2020–31.12.2020	18	39	14
01.01.2021–31.01.2021	3	31	22
01.02.2021–28.02.2021	8	16	16
01.03.2021–31.03.2021	1	24	15
01.04.2021–30.04.2021	3	17	24
01.05.2021–30.05.2021	4	31	17
01.06.2021–30.06.2021	4	40	26
01.07.2021–31.07.2021	6	42	22
01.08.2021–31.08.2021	5	22	19
01.09.2021–30.09.2021	9	19	15
01.10.2021–31.10.2021	6	27	13
01.11.2021–30.11.2021	8	33	25
01.12.2021–31.12.2021	11	53	36
01.01.2022–31.01.2022	7	25	23
01.02.2022–28.02.2022	8	33	19
01.03.2022–31.03.2022	17	37	46
01.04.2022–30.04.2022	9	48	181
01.05.2022–31.05.2022	9	40	28
01.06.2022–30.06.2022	7	71	33

Source: data from NPH.

5. Evaluation of existing regulations and conclusions *de lege ferenda*

Granting the police the power to “evict” a person who uses domestic violence constitutes the realisation of the demand for the existence of an immediate response measure independent of criminal proceedings. Thereby, the third way of responding to family violence has been introduced, which, in addition to criminal and civil law measures, creates a system of protection for victims of violence. The statistics presented demonstrate that police officers are exercising the power granted to them with increasing frequency. Thanks to the minimisation of formalities and the concentration of the decision-making and enforcement stage in the hands of one entity,

this instrument is highly practical. Although this speeds up the response to violence, it also accumulates broad powers in the hands of only one entity.

Despite the practical usefulness of this new tool and the strengthened support of victims of domestic violence, the existing regulations are not perfect. In this regard, it is necessary to take into account the necessity to meet high standards in this case due to the constitutional conditions for the restriction of civil rights and freedoms. Fundamental legal doubts still remain with regard to the transfer of the power to deprive a person of the right to reside in premises (which are his/her property, often fully owned) to police officers. This constitutes a clear departure from the previous policy, according to which the application of such measures was reserved to the exclusive competence of the court (criminal or civil), possibly the public prosecutor in the course of pre-trial proceedings. As indicated, doubts were even formulated as to the prosecutor's authority in this respect (concerning the application of a preventive measure under Article 275a of the Code of Criminal Procedure), while Article 15aa of the A.P. provides for even more far-reaching simplifications, transferring these powers to the police. At the same time, the officer's decision is not subject to any direct control, e.g. in the form of approval by the prosecutor – which is also postulated in the doctrine⁴⁶. Adopting such a solution should also be viewed from the perspective of the person against whom the order/prohibition was issued. Juxtaposing the prerequisites for the application of a preventive measure under Article 275a of the Code of Criminal Procedure and the civil obligation to vacate the premises (Article 11a of the A.C.D.V.) with the conditions for the issuance of a police order or prohibition reveal significant differences, which attest to a substantial reduction in the requirements for interference with civil rights and freedoms. It has been rightly argued that the police order creates an alternative to procedural regulations and makes it possible to circumvent the guarantees provided by the criminal process⁴⁷.

The procedure provided for in Article 15aa *et seq.* of the Act on the Police is of an autonomous nature, partly reminiscent of administrative regulations, although it refers to a large extent to the solutions adopted in criminal proceedings, with elements of civil procedure⁴⁸. Such a hybrid concept raises legal and practical problems. These concern mainly the fictional effectiveness of service of the order/prohibition placed on the door of the jointly occupied dwelling. In fact, it should be noted that the right to lodge a complaint with a court is granted within three days counted from the day of service of the order or prohibition, including the posting of the notice on the door of the dwelling. In such a case, the individual concerned is likely to become aware of the contents of the notice issuing the order and then of the contents thereof after the expiry of the three days, thereby losing the right to have the order reviewed

⁴⁶ M. Strus-Wołos, *Stąpienie po polu minowym. Rzecz o nowych przepisach postępowania cywilnego o zobowiązanie osoby stosującej przemoc w rodzinie do opuszczenia wspólnie zajmowanego mieszkania i jego bezpośredniego otoczenia*, "Głos Prawa" 2020, No. 2, p. 344.

⁴⁷ A. Lach, *Prewencja indywidualna w procesie karnym*, Warszawa 2020, available at: sip.lex.pl [accessed on: 20 December 2022].

⁴⁸ Also: A. Lach, *Prewencja...*

by the court. This is undoubtedly a significant limitation of protection for the person against whom the order has been issued, which raises legitimate legal concerns.

Similar objections can also be raised by the rules on the removal of personal and work-related items, as well as household pets. The controversy in this respect relates, firstly, to the prohibition of the removal of items or animals in the event of an unchallenged objection by other persons cohabiting the premises. Secondly, the fact that it is only possible to retrieve items on a single occasion while the order is in force is also controversial. These solutions may lead to a situation in which the person subject to the order is left without the items required for everyday functioning (e.g. educational items, medicines, clothing, money, and personal items necessary for basic living needs). It has been rightly pointed out that the effects of these regulations are even more severe when the order or prohibition is issued while the violent person is not present in the home⁴⁹.

Although the fact that the legislator has recognised the need to link various legal regulations on the isolation of the perpetrator of domestic violence from the victims should be viewed positively, this relationship is still not very clear⁵⁰. For instance, one such unclear regulation implies that the police order ceases to have effect before the expiry of 14 days if, during that period, the person against whom it was issued was taken into custody on suspicion of having committed an offence and was subsequently subject to one of two preventive measures – either pre-trial detention or an order to vacate the premises. Therefore, the wording of Article 15ak(2) of the Act on the Police implies that from the moment of detention until the application of a preventive measure, two measures preventing direct contact between a person who is suspected of domestic violence (detention and a police order) are applied simultaneously. Furthermore, it needs to be noted that the order does not cease to have effect if one of the aforementioned preventive measures is waived after detention. Instead, their non-application means that there is insufficient evidence to conclude that there is a strong likelihood that the person has committed a crime of domestic violence or that there is no reasonable fear that the person will commit such a crime in the future. Maintaining a police order under these circumstances means that the decision of the public prosecutor or the court is undermined by an order issued by a police officer.

Besides the above legal doubts, attention should also be drawn to the problems with the practical application of the barring or the restraining order. These stem primarily from charging police officers with a wide variety of duties. In practice, the need to issue an order or prohibition is most often combined with a domestic intervention. In the case of exercising the powers under Article 15aa of the Act on the Police, police officers are obliged to perform a number of activities during the intervention,

⁴⁹ J. Jagieła, *Nakazanie przez Policję osobie stosującej przemoc w rodzinie opuszczenia wspólnie zajmowanego mieszkania i jego bezpośredniego otoczenia, lub zakazanie zbliżania się do mieszkania i jego bezpośredniego otoczenia*, [in:] *Symbolae Andreae Marciniak dedicatae, Księga Jubileuszowa dedykowana Profesorowi Andrzejowi Marciniakowi*, J. Jagieła, R. Kulski (eds.), Warszawa 2022, available at: sip.legalis.pl [accessed on: 20 December 2022]; M. Strus-Wołos, *Stąpienie po polu minowym...*, p. 343.

⁵⁰ More on the relations between criminal, civil and administrative provisions see: J. Jagieła, *Nakazanie przez Policję...*, available at: sip.legalis.pl [accessed on: 20 December 2022].

including: ensuring safety of the victim of violence, stopping the perpetrator from further use of violence during the intervention, collecting information necessary to verify the premises for issuing an order/prohibition (including questioning witnesses, hearing the person suspected of using violence), drawing up extensive documentation (including filling in a questionnaire for assessing the risk of danger to human life or health, issuing an order/prohibition, drawing up a protocol of the act of vacating the dwelling indicating, *inter alia*, the objects and animals taken from the dwelling and an inventory of the belongings left there, often also a notice of the issuing of the order placed on the door of the dwelling in the event of the impossibility of serving the order), instructing the person against whom the order was issued and the victim of violence, carrying out the act of vacating the dwelling. Based on the above, it is obvious that police officers at the scene of the intervention are obliged to undertake a number of activities, including those which, as a rule, are not performed during the intervention but are of a strictly procedural character (e.g. questioning of persons). In this context, it should be noted that during an intervention, people tend to behave aggressively or are under the influence of alcohol or other intoxicants. The emotions accompanying the intervention, and even more so the decision resulting in an immediate departure from the dwelling they normally occupy, certainly do not facilitate the performance of these activities, nor a careful assessment of the circumstances of the incident or making a decision based on a thorough analysis of all the relevant information. It is also necessary to be aware of the rules of interrogation, including those concerning the place where a person is questioned, in conditions ensuring his/her freedom of expression and proper understanding of the instructions given⁵¹. Consequently, an intervention in practice often ends with the detention of a person suspected of domestic violence and the order itself is not issued until the detained person is released. The abuser's isolation period allows the officers to proceed with the necessary steps to establish the grounds for issuing an order and to prepare relevant documentation. This is certainly an effective solution, although the order loses its most important feature under such circumstances, i.e. the immediacy of the isolation. This effect is achieved by an instrument that has existed for years – the detention of a person. This raises the question of the necessity of the barring order. Another solution is to involve more police officers in performing separate tasks (especially those related to intervention and information gathering, including interrogation of persons). This option allows the order to be issued immediately, with guarantees that the grounds for issuing it will be thoroughly investigated and that full, proper documentation will be drawn up. However, it entails an increase in the number of officers (also from other units than those performing patrol and intervention duties)

⁵¹ The importance of this problem is also emphasized by the changes proposed in the Senate bill (Sejm paper No. 584 of 14 August 2020, IX parliamentary term). They provide that when there is a reason to fear that the presence of the person using violence might hinder a witness, the Police may order that person to leave the place of examination for the duration of that procedure (see proposed Article 15ac sec. 5a Act on the Police). In this case, prior to the hearing of a person using violence, a policeman is obliged to inform that person of the content of the statements made during their absence and give them the opportunity to comment on those statements (proposed Article 15ab sec. 9 of Act on the Police).

and the necessity to coordinate efforts efficiently. Undoubtedly, the necessity to conduct intensive training of officers, which will focus precisely on the cumulative activities undertaken during an intervention connected with issuing a warrant/order, is rightly emphasised⁵². Nevertheless, it seems implausible to expect officers on daily patrol duty to be fully prepared for such a variety of activities, including strictly procedural ones. This particularly applies to young officers, who start their professional experience precisely by performing preventive service.

When assessing an order/prohibition, one must also keep an eye on the person against whom it is issued. There must be a balance in protecting the interests of the parties involved in the incident⁵³ since attempted manipulation or misuse of this tool for purposes other than those statutorily defined cannot be ruled out. This measure constitutes a significant interference with civil rights and freedoms, especially since it is not of a procedural nature. Consequently, the regulations should adhere to high legislative standards related to the precision and clarity of the introduced solutions. Instead, they display numerous legal shortcomings, as well as confusing situations occurring between criminal and civil law measures. Coupled with the necessity to carry out a variety of activities on the scene of an intervention by understaffed police forces, it generates the risk of the automatic application of a police order and using it as a substitute for measures available to the court and prosecutor, which provide broader guarantees of the protection of rights. Therefore, we need to reflect on the shape of legal regulations and the proper preparation of officers to perform new tasks.

References

1. Bosek L., *Opinia na temat legislacyjnej spójności oraz zgodności z Konstytucją RP projektu ustawy o zmianie ustawy o przeciwdziałaniu przemocy w rodzinie oraz niektórych innych ustaw (druk 2776), z dnia 15 marca 2010 r.*
2. Burtowy M., *Nowa procedura szybkiego reagowania wobec sprawców przemocy domowej. Komentarz praktyczny*, LEX/el. 2020.
3. Dudka K., *Praktyka stosowania nieizolacyjnych środków zapobiegawczych w polskim procesie karnym*, Warszawa 2015.
4. Grygorczuk A., Dzierżanowski K., Kiluk T., *Mechanizmy psychologiczne występujące w relacji ofiara–sprawca przemocy*, *Psychiatria* 2009, Vol. 6, No. 2.
5. Jagieła J., *Nakazanie przez Policję osobie stosującej przemoc w rodzinie opuszczenia wspólnie zajmowanego mieszkania i jego bezpośredniego otoczenia, lub zakazanie zbliżania się do mieszkania i jego bezpośredniego otoczenia*, [in:] *Symbolae Andreae Marciniak dedicatae, Księga Jubileuszowa dedykowana Profesorowi Andrzejowi Marciniakowi*, J. Jagieła, R. Kulski (eds.), Warszawa 2022.

⁵² M. Burtowy, *Nowa procedura szybkiego reagowania wobec sprawców przemocy domowej. Komentarz praktyczny*, LEX el./2020, available at: sip.lex.pl [accessed on: 20 December 2022].

⁵³ W. Kotowski, *Ustawa o Policji. Komentarz*, Warszawa 2021, available at: sip.lex.pl [accessed on: 20 December 2022].

6. Karaźniewicz J., *Art. 15a*, [in:] *Ustawa o Policji. Komentarz*, K. Chałubińska-Jentkiewicz, J. Kurek (eds.), Warszawa 2021.
7. Karaźniewicz J., *Art. 15ab*, [in:] *Ustawa o Policji. Komentarz*, K. Chałubińska-Jentkiewicz, J. Kurek (eds.), Warszawa 2021.
8. Karaźniewicz J., *Zakres prewencyjnego stosowania środków przymusu procesowego – próba oceny tendencji rozwojowych*, [in:] *Proces karny w dobie przemian. Zagadnienia ogólne*, S. Steinborn, K. Woźniewski (eds.), Gdańsk 2018.
9. Kosonoga J., *System nieizolacyjnych środków zapobiegawczych*, *Ius Novum* 2014, No. 2.
10. Kotowski W., *Ustawa o Policji. Komentarz*, Warszawa 2021.
11. Lach A., *Prewencja indywidualna w procesie karnym*, Warszawa 2020.
12. Manikowski F., *Postępowanie w sprawie o zobowiązania osoby stosującej przemoc w rodzinie do opuszczenia wspólnie zajmowanego mieszkania i jego bezpośredniego otoczenia lub zakazania zbliżania się do mieszkania i jego bezpośredniego otoczenia – analiza badań aktowych*, *Prawo w Działaniu* 2022, Vol. 50, <https://doi.org/10.32041/pwd.5001>.
13. Melaniuk E., *Praktyka stosowania instytucji nakazu natychmiastowej izolacji sprawcy przemocy domowej w wybranych krajach*, Warszawa 2020.
14. Mikołajczuk E., *Praktyka stosowania instytucji nakazu natychmiastowej izolacji sprawcy przemocy domowej w wybranych krajach*, *Prawo w Działaniu* 2020, Vol. 44, <https://doi.org/10.32041/pwd.4404>.
15. Olszewska A., *Problematyka przemocy w rodzinie w świetle wybranych uregulowań międzynarodowych*, *Nowa Kodyfikacja Prawa Karnego* 2016, No. 39, <https://doi.org/10.19195/2084-5065.39.10>.
16. Piskozub P., *Izolacja sprawcy przemocy w rodzinie*, Warszawa 2021.
17. *Pomoc osobom dotkniętym przemocą domową. Informacja o wynikach kontroli NIK (Nr ewid. 48/2016/P/15/046/KPS)*, <https://www.nik.gov.pl/plik/id,10943,vp,13290.pdf>.
18. Różycka A., *Zasadność nowych środków ochrony osób doznających przemocy domowej*, *Prawo w Działaniu* 2020, Vol. 41, <https://doi.org/10.32041/pwd.4111>.
19. Sakowicz A., *Opinia prawna o sprawozdaniu Podkomisji nadzwyczajnej do rozpatrzenia rządowego projektu ustawy o zmianie ustawy o przeciwdziałaniu przemocy w rodzinie oraz niektórych innych ustaw (druk nr 1698) oraz poselskiego projektu ustawy o zmianie ustawy o przeciwdziałaniu przemocy w rodzinie oraz zmianie niektórych innych ustaw (druk nr 1789), z dnia 8 lutego 2010 r.*
20. Spurek S., *Izolacja sprawcy od ofiary. Instrumenty przeciwdziałania przemocy w rodzinie*, Warszawa 2013.
21. Spurek S., *Komentarz do ustawy z dnia 10 czerwca 2010 r. o zmianie ustawy o przeciwdziałaniu przemocy w rodzinie oraz niektórych innych ustaw*, [in:] *Przeciwdziałanie przemocy w rodzinie. Komentarz*, Warszawa 2012.
22. Starzyński P., *Funkcja ochronna środków przymusu procesowego*, [in:] *Zgwałcenie. Definicja, reakcja, wsparcie dla ofiar*, L. Mazowiecka (ed.), Warszawa 2016.
23. Stefański R.A., *Środek zapobiegawczy nakazu opuszczenia lokalu mieszkalnego zajmowanego wspólnie z pokrzywdzonym*, *Wojskowy Przegląd Prawniczy* 2010, No. 3.

24. Strus-Wołos M., *Stąpienie po polu minowym. Rzecz o nowych przepisach postępowania cywilnego o zobowiązanie osoby stosującej przemoc w rodzinie do opuszczenia wspólnie zajmowanego mieszkania i jego bezpośredniego otoczenia*, Głos Prawa 2020, No. 2.
25. Strus-Wołos M., *Uprawnienia i obowiązki funkcjonariuszy Policji w zakresie wydawania względem osób stosujących przemoc w rodzinie nakazu natychmiastowego opuszczenia wspólnego mieszkania oraz zbliżania się do jego bezpośredniego otoczenia lub zakazu zbliżania się do takiego mieszkania i jego bezpośredniego otoczenia*, Przegląd Policyjny 2022, No. 2, <https://doi.org/10.5604/01.3001.0016.0160>.
26. Wiktorska P., *Procedury prawne związane z możliwościami odseparowania sprawcy przemocy domowej od osoby doświadczającej przemocy*, Prawo w Działaniu 2021, Vol. 45, <https://doi.org/10.32041/pwd.4505>.
27. Wiktorska P., *Zmiany w kontrolowaniu przemocy domowej – aspekty prawne, kryminologiczne i społeczne*, Archiwum Kryminologii 2021, No. 43, <https://doi.org/10.7420/AK2021.36>.
28. Witkowska-Paleń A., *Rola programów edukacyjno-korekcyjnych w kształtowaniu postaw i przekonań skazanych sprawców przemocy domowej*, Journal of Modern Science 2018, Vol. 39(4), <https://doi.org/10.13166/jms/94801>.
29. Wrona G., *Ustawa o przeciwdziałaniu przemocy w rodzinie. Komentarz*, Warszawa 2021.
30. Zielińska E., *Opinia prawna dotycząca Sprawozdania Komisji Polityki Społecznej i Rodziny (druk 2776) o rządowym projekcie zmiany ustawy o przeciwdziałaniu przemocy w rodzinie oraz niektórych innych ustaw (druk 1698) oraz o poselskim projekcie ustawy o zmianie ustawy o przeciwdziałaniu przemocy w rodzinie oraz o zmianie niektórych innych ustaw (druk nr 1789), z dnia 15 marca 2010 r.*