

Karolina Gawinowska
Faculty of International and Political Studies
University of Lodz
Poland

Abstract

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International Tribunals and the Rule of Law.

On the role of international agreements in shaping domestic law.

Case study: Council of Europe Convention on preventing and combating violence against women and domestic violence and Polish domestic law

International agreements create legal obligations for the states parties. Treaties create a systematic set of rules and norms, the observance and implementation of which by states is subject to external control. The aim of this paper is to analyze how the provisions of an international treaty may affect the internal legal order of a state-party and to attempt to answer the question whether it is possible to prove a direct or indirect relationship between the ratification of a convention and the implementation of changes in the legal order. I am going to examine the above-mentioned problem on the example of the Council of Europe Convention on preventing and combating violence against women and domestic violence, ratified in Poland, and the Polish internal legal order within the scope of the Convention.

The Council of Europe Convention on preventing and combating violence against women and domestic violence is a joint legal act of European countries, which is to introduce a number of norms, solutions and legal changes in order to protect women and other victims of domestic violence. It is the first universal convention to highlight the fact that women are more vulnerable to gender-based violence, well documented in statistics, and are designed to counter gender-based violence. This convention, known as the Istanbul Convention, creates a comprehensive legal framework and approach to combating violence against women, and focuses on the prevention of domestic violence, the protection of victims and the prosecution of defendants. In 2012, the European Economic and Social Committee prepared an opinion in which it called on the Member States of the European Union to quickly sign, ratify and implement the Convention. It was ratified by 34 European countries, including Poland in 2015. The ratification process in Poland lasted three years. In July 2020, the Polish Minister of Justice Zbigniew Ziobro filed a motion to terminate the so-called Istanbul Convention. The minister justified his position with the fact that Polish domestic law sufficiently protects women against violence, and called the document itself “harmful in terms of ideology.” Work on the termination of the Convention was directed to the Minister of Family, Labor and Social Policy, Marlena Maląg.

It is worth recalling, however, that it was only in 2014 that an amendment to the criminal law was introduced, allowing for the prosecution of the perpetrators of the crime of rape ex officio, and not at the formal request of the victim, as it was before.

Prosecution of rape *ex officio* was one of the requirements of the Council of Europe Convention on preventing and combating violence against women signed by Poland in December 2012. In the current year 2020, Polish President Andrzej Duda signed an act on the separation of the perpetrator of violence from the family, the introduction of which has been requested for years by Polish women's rights organizations - including the Women's Rights Center - on the basis of Convention. According to the new regulations, the perpetrator of domestic violence is obliged to immediately leave the jointly occupied apartment and not to come closer to it. The police and the Military Police will have at their disposal actual forms of enforcement and control of sanctions imposed on the perpetrator of violence. In the event of failure to comply with the prohibition, the perpetrator will be liable to arrest, restriction of liberty or a fine. It is difficult not to notice the role of the Convention in the implementation of these important, fundamental changes to Polish law in the field of protection of the rights of women affected by domestic violence and its direct impact on the real situation and protection of individuals affected by domestic violence.

In the light of the announcement by the minister of justice of the plan to terminate the Convention, it is worth considering an attempt to answer the question of what impact the termination of the contract by Poland may have on the shaping of the internal law and change the legal situation of women and other people affected by domestic violence. This is particularly worrying in the light of the government's idea to amend the Act on Counteracting Domestic Violence, which was proposed in 2018. According to the amendment, for example, a one-off act of violence against relatives would not be classified by law enforcement agencies as violence. The amendment was withdrawn after a wave of protests in Polish society. While commenting the case, legal experts emphasized the special importance of the Anti-Violence Convention for the protection of the Polish legal order against changes unfavorable to victims of domestic violence. The withdrawal seem to pose a threat of excluding the possibility of external, international control ensuring safety and rights of victims of domestic violence.

In conclusion, I will try to find an answer to the question whether the fact that Poland is a party to Convention for the Prevention of and Combating Violence Against Women and Domestic Violence has a direct impact on shaping the legal order regarding the subject of the agreement and whether has an indirect or direct impact on the real situation of natural persons affected by the problem of domestic violence. I will try to highlight possible threats to real situation of women and other victims of domestic violence resulting from terminating this agreement by Poland.