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THE CONCEPT AND SEMANTIC SCOPE OF THE DOMESTIC VIOLENCE PHENOMENON

I. The concept of domestic violence

The issue of violence is one of the oldest phenomena. Unfortunately, it is constantly evolving, taking various forms and intensity. For years it has been the subject of interest of psychologists, psychiatrists, sociologists of law, doctors, politicians and mass media. Colloquially, the term violence means influence put on another person, his process of thinking, behavior or physical conditions without his agreement or in order to impose one's will or force a type of particular behavior.¹ Therefore, violence is primarily divided into physical and mental. What is more, one can distinguish violence in relations between the sexes, violence in family, also known as domestic violence, cyber-violence, parliamentary violence, political violence in international relations, and violence at school.

This general division of violence illustrates that it is a dynamic phenomenon which is closely linked to the evolution of social relations. This social phenomenon is highly detrimental from the standpoint of both the smallest social unit, that is the family, as well as from the perspective of larger social groups and society as a whole. Finally, it is dangerous from an international perspective. Obviously, violence is accompanied by other negative social phenomena. For this reason, a number of new national and international initiatives, projects, programs and laws attempting to prevent

¹ *Encyklopedia* [1] *Słownik języka polskiego*, Wydawnictwo Naukowe PWN, Internet version, <http://sjp.pwn.pl/>; B. Gruszczyńska, *Przemoc wobec kobiet. Aspekty prawnokryminologiczne*, Oficyna a Wolters Kluwer business, Warszawa 2007, pp. 20–23

violence in its broad sense will be established. One can even venture to say that there is a new autonomous legal branch – anti-violence law. This is undoubtedly related to the change of social relations which, unfortunately, go in a very worrying direction. It is also connected with the increase and qualitative change of the direct impact that the state power and various national and international organizations international organizations have on such relations.

In recent decades, this process has accelerated even more, which is a consequence of the legal consciousness evolution that our societies undergo (eg. protection of individual rights and freedoms), as well as the public authority scope expansion with the emergence of new forms and institutions of international cooperation. Finally, it is a consequence of the technical development (the Internet, mobile phones, etc.).

While discussing violence as defined by law, one should highlight the phenomenon of the so-called violence in families which was regulated by the Act of 29 July 2005 on preventing domestic violence.² The content of the preamble revealed in this Act, which provides a general guide interpretation of all its provisions, states that domestic violence violates basic human rights, including the right to life and health and respect for personal dignity. Therefore, public authorities are obliged to ensure equal treatment for all citizens and their rights and freedoms should be respected. Moreover, their duty is to increase the effectiveness of violence prevention.

According to the legal definition included in the provision of the article 2 point 2 on preventing family violence, domestic violence means a single or repetitive intentional acts or ignorance resulting in violation of family members' personal rights (that is the rights of the close relatives or partners referred to in the article 115 § 1 of the Penal Code³), but also the rights of other people jointly living or running a common household. It should be understood as a single or repetitive intentional action or nonfeasance that violates the rights or personal goods of persons, and particularly exposes those persons to danger of losing their life, health, destruction of their dignity, personal inviolability, violation of their freedoms, including sexual freedom, harms their physical and psychic health, as well as causes their suffering and moral damage. In the very beginning it should be noted that the term “domestic violence” suggests that the above-mentioned patterns of behavior can occur only in the family in relation to the so-called closest

² Journal of Laws of 2005, No. 180, item. 1493, later amended.

³ Act of July.6 , 1997 – Penal Code, Act No. 88, item. 553 with later amendments.

people – a spouse, ascendant, descendant, sibling, relative to the same line, or extent, the person remaining in the adoption relationship, and cohabitation partners.

Meanwhile, the article 2 point 1 does not state that a family member should be only the closest person in the meaning of the article 115 § 11 of the Penal Code. It also mentions another person jointly living or running a common household. Therefore, victims of violence can become not only persons who are actual members of the perpetrator's family but also those who are connected with him by the so-called "dependency ratio" (eg. renting a flat together with the person who uses violence). Hence, it is necessary to refer to such a broad understanding of persons who may be potential victims of domestic violence. Consequently, a functional criterion is essential here, that is a relationship of dependency. Additionally, a victim of violence should be characterized by his helplessness to resist any acts of aggression or mental harassment, but it is not about his physical capability to repulse such attacks, but rather his inability to influence the perpetrator so that he does not undertake harmful patterns of behavior aimed at others.

II. Normative regulations concerning domestic violence in the Polish law

Due to the multiplicity of violence forms and its intensity the Polish legislator has not standardized "domestic violence" offenses *per se* in the Penal Code. As a result, it should be noted that judicial decisions should also be considered from that viewpoint adopted in the actual legal classification. However, in practice, the article 207 of the Penal Code regarding the offense of abuse is the most commonly used legal rule of justice dealing with domestic violence. According to § 1 of this Article, anybody who torments his closest person or another person remaining in a permanent or transient relationship dependence on the perpetrator, be it an under-aged person or a person who is either physically or psychologically inadequate, is punishable by imprisonment for a period of time from 3 months to 5 years. According to § 2, if physical or mental abuse is accompanied by particular cruelty, the perpetrator is subjected to imprisonment for a period of time from 1 to 10 years. On the other hand, if the consequence of the abuse referred to in § 1 or 2 is a victim's suicidal attempt, the offender is subjected to imprisonment for a period of time from 2 to 12 years (§ 3). Offenses of this type are prosecuted *ex officio* because of their high social harm.

Physical abuse is often accompanied by psychological violence. Violence can be defined as a psychological influence on the process of thinking, behavior or physical condition of a person without his consent using the so-called means of psychological violence. These include threat, invective, and psychological harassment.

However, aggressive acts of people using violence can be treated separately although they may be committed for the same purpose. The following offenses may serve as an example of this point: using force (Article 191 of the Penal Code), rape (Article 197 of the Penal Code), sexual abuse of persons under the age of 15 (Article 200 of the Penal Code), having a sexual intercourse with an ascendant, a descendant, an adopted person, a brother or a sister (Article 201 of the Penal Code), neglecting legally imposed duties to support financially a dependent person (people) (Article 209 of the Penal Code), accusing another person of committing a tax or disciplinary offense in the presence of the Tax Office or employers (Article 190 of the Penal Code), discrediting people to humiliate them in the opinion of other people (Article 212 of the Penal Code).

At this point it is necessary to refer to the one of the most important amendments to the Penal Code introduced in the form of provision of the article 190a of the Penal Code, which defines and creates legal protection in response to the phenomenon functioning as *stalking*. This term envelopes a collection of repetitive, malicious and oppressive conduct patterns that result in the victim's sense of fear and danger. This particularly includes:

- persistent personal contacts using the phone,
- sending correspondence in any form (written or electronic),
- tracking,
- distributing false information,
- being present in the victim's work place or residence
- closest persons' harassment.

Such types of behavior are subjected to imprisonment for a period of 3 years.

A similar penalty applies to individuals who, using another person's image or his personal data, cause personal or financial damage. This provision is a response to the increasing phenomenon which involves posting pictures of different people in Internet with comments, ordering various goods and services at the expense of other people, and, above all, distributing personal accounts of other people in popular social network sites without their agreement and knowledge. If stalking results in the victim's suicidal attempt, the offender will be subjected to imprisonment for a period of time from 1 to 10 years. Moreover, the Polish legislator has accepted that in the framework of the new qualification indicated above legal pro-

secution of the perpetrators of these crimes will follow at the request of the victim.

Violence perpetrators can also commit actions that are apparently misdemeanors, that is disrupting one's spouse's sleep a night, making noises at the window of a sleeping person (Article 51 of the Petty Offenses Code⁴), disturbing somebody in a malicious way (Article 107 of the Petty Offenses Code), forcing one's child or another dependent person to beg (Article 104 of the Petty Offenses Code), and embittering a person with a dog (Article 108 of the Petty Offenses Code).

In the context of these considerations, it should also be noted that the perpetrator of violence can act in the way that makes it impossible to punish him on the basis of the provisions of the Criminal Code and Petty Offenses Code. A very popular example illustrating this type of behavior is the situation when the offender changes door locks of the jointly occupied apartment and "forgets" to convey a new set of keys for the victim. Because of the diversity of the perpetrator's possible patterns of violent behavior it should be pointed out that a separate qualification of such behavior patterns can lead to the discontinuation of the case or its wrong track placement. It is, therefore, important that the person submitting a notice of the offense should describe in detail the perpetrator's behavior and avoid making legal classification of the act on his own. Furthermore, it should be pointed out that stalking can also be accompanied by deeds which do not aim at the victim's anguish, but to avoid criminal liability. The perpetrator may request the police intervention and submit a notice of the victims' commission of various crimes (including criminal harassment, etc.). This aims at the creation of materials which prove the victim's unreliability. The perpetrator may also threaten his victim by promising, for example, just to force him not to give evidence. The victim can also be forced to give false statements as a witness. Such acts are also crimes.

While discussing the development of a new branch of the anti-violence law, significant amendments to the Penal Code of November 5, 2009 and of June 10, 2010 should be pointed out. According to the amended provision of the article 275 § 2⁵ of the Penal Code, a person under supervision may be obliged to have no contacts with the victim or other people; he

⁴ Act of May 20, 1971, Code of Offenses, Journal of Laws of 2010, Nr 46, pos. 275, later amended.

⁵ Amended by the article 2 point 6 and the Act of November 5, 2009 amending the Act of the Penal Code, the Act of the Criminal Procedure Code, the Act of the Executive Penal Code, the Act of the Fiscal Penal Code and other laws, Journal of Laws of 2009 No 206 pos. 1589, the Code of Criminal Procedure dated June 8, 2010 amending the Act.

can also be banned from visiting certain places. However, in accordance with the amendment of the Act § 3⁶, if there are presumptions for the temporary arrest of the accused person for a crime committed using violence or threats to harm a closest person or other people living together with the perpetrator, instead of temporary arrest detention can be used, provided that the accused leaves the premises occupied jointly with the victims and gives the whereabouts of his new location within the expected period of time.

In addition, the provision of the article 275a⁷ § 1 of the Penal Code, as added by the Amendment Act of November 5, 2009 should be indicated. It enriches the catalog of the existing preventive measures by introducing a new measure of coercion by ordering the accused who has committed a crime of violence to the detriment of the person with the same place of residence to leave the occupied dwelling if there is a reasonable fear that the accused will commit a crime of violence against that person once again, especially when he has issued such threats. In preliminary proceedings this measure is used at the request of the police, or ex officio (§ 2). However, in cases when the accused, who was arrested on the basis of the article 244 § 1a (having reasonable assumptions that the arrested who had committed a violence crime to the detriment of people living together may commit a similar crime once again, especially in the presence of his threats to do so⁸) or 1b (in a situation, referred to in § 1a, when the crime has been committed using a gun, knife or other dangerous objects, and there is a fear that the detained will commit a crime of violence against persons living with him once again, especially in the presence of his threats to do so⁹), there are grounds for introducing a preventive measure ordering the accused for committing a crime with the use of violence towards the person having the same residence to leave a dwelling shared with the victim immediately. The police request the prosecutor to apply this preventative measure within 24 hours starting from the moment of the offender's detention (§ 3). Such a request should be recognized within 48 hours starting from the accused person's detention. It can be used for no longer than 3 months. If the conditions of its application have not changed, having jurisdiction at the request of

⁶ Added by the article 2 point 6 of the act referred to in the footnote 5.

⁷ Added by the article 6 point 2 of the act dated June 10, 2010 amending the law on preventing domestic violence and other acts, Journal of Laws No 125, pos. 842, amending the law – the Criminal Code dated August 1, 2010.

⁸ Added by the article 6 point 1 of the act referred to in the footnote 6.

⁹ Added by the article 6 point 1 of the act referred to in the footnote 6.

the prosecutor, the court of the first instance may extend its application for further periods, but not longer than 3 months (§ 4). By issuing a decision to order the accused to leave his dwelling, the authority may indicate a new residence in the institutions providing accommodation at the request of the accused (§ 5). Institutions designated to provide the accused with accommodation cannot be the places where the domestic violence victims reside.

III. Sociological determinants of the domestic violence phenomenon

Many societies approve of domestic violence. This fact is well illustrated by widespread myths, stereotypes, proverbs and sayings hampering a proper response to the acts of brutality or cruelty towards closest persons. All these myths justify a lack of reaction on the part of the violence witnesses; they also force victims into silence and convince perpetrators that their acts are not harmful or punishable.¹⁰

Popular myths about domestic violence:¹¹

1. Domestic violence is a private matter, nobody should interfere.

Violence, abuse, beatings, and harassment of relatives are a crime, just as dangerous and punishable as violence against strangers. The fact of being married or sharing one house is not a circumstance allowing for violence; it does not take out one's responsibility for committing acts punishable by law.

2. Violence occurs only in the families from the social margins.

Domestic violence occurs in all social groups, regardless of one's education level or financial situation.

3. Violence is when there are visible marks on the body of the victims.

Violence is not only an act of leaving bruises, fractures and burns. It also involves humiliation, insults, forcing certain behavior, threats, and intimidation.

4. Victims of domestic violence accept help.

¹⁰ A comparison of the study results conducted in Poland, and data from other members of the European Union states – 2010 see Domestic Violence against Women, http://ec.europa.eu/public_opinion/archives/eb_special_en.htm#344.

¹¹ J. Herman, *Przemoc – uraz psychiczny i powrót do równowagi*, Gdańsk 2003, pp. 11–14; Sh. Herzberger, *Przemoc domowa. Perspektywa psychologii społecznej*. PARPA, Warszawa 2002, p. 10 and following. See also http://www.statystyka.policja.pl/portal/st/944/50863/Przemoc_w_rodzynie.html.

Victims of domestic violence always try to defend themselves, but their actions are ineffective. They try out different, often irrational defensive strategies, which consequently results in the intensification of violence.

5. It was a single incident that will not happen again.

Domestic violence is rarely a single incident. Unless decisive actions are taken against the perpetrator, violence persists.

6. The victim would leave the offender, if he was really hurt.

Victims are really hurt. Nobody likes being beaten and humiliated. The fact that the victim does not leave the offender usually results from his dependence on the offender, accommodation difficulties, beliefs about the status of marriage, and pressure they are subjected to on the part of the perpetrator, family, colleagues, and neighbors.

7. Alcohol causes domestic violence.

Even alcohol dependence does not exempt the offender from his liability for the acts performed under its influence. Alcohol only facilitates the use of violence; perpetrators often drink in order to bully and beat their loved ones, and they use a state of intoxication to justify their behavior to avoid liability.

8. People who use violence must be mentally ill.

There is no direct link between violence and mental illnesses. Violence is a demonstration of one's strength and willingness to take total control of power over another person.

Domestic violence is not a single act. Often it has a long history which may last even for several years. Domestic violence is repeated in accordance to a noticeable regularity. A cycle of violence is composed of three consecutive phases:

1. A phase of the tension increase – at the beginning of the phase there is a rise of tension; there appear more conflicting situations. The causes of tension may reside outside the family, sometimes these are trifles, little misunderstandings resulting in the increase of tension; aggression begins to appear.

2. A phase of extreme violence – an explosion of aggression in which the perpetrator performing as a normal human being is transformed into the executioner; he may make terrible deeds without paying attention to the suffering of others. This is the phase in which victims frequently decide to complain and call for help.

3. A phase of honeymoon – this is the phase of showing pity and love, the phase of the victim's seduction. The perpetrator begins to see what has happened. He tries to smooth things over; he apologizes and promises to improve. The situation becomes helpful and nice. The offender convinces

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the victim that from now on it would be different and a similar situation will never happen again. The victim believes him, because, contrary to his common sense, this is what they want in the heart. And even if a moment ago the victim was ready to escape, he stays. The perpetrator cannot stand performing such a role for a long time. For some reason, the tension rises again and everything starts anew.

Such cycles can last for many years. Violence escalates over time and the situation gets worse. The perpetrator usually begins by making an insulting comment, a slight push, a curse, but after some time he can cause serious physical harm, sophisticated psychological torture, permanent injury or murder. A lack of witnesses of domestic violence is a very important phenomenon. The perpetrator is able to effectively isolate the victim from the sources of support; he can effectively persuade the victim to be silent – if anyone knows or guesses to make attempts to intervene, he will be effectively intimidated.

Behavior of the domestic violence victims.

Psychologists point out that the behavior of victims may sometimes be confusing, frustrating, and discouraging. Victims of domestic violence suffer from various psychological disorders. They get depressed often and suffer from anxiety, uncontrollable outbursts of crying, laughter, aggression, frequent and confusing changes of decisions, uncertainty, unjustified reaction of fear, and a constant sense of danger. It is difficult to expect rational and coherent behavior from them, because their minds are ruled by a permanent fear of the perpetrator.

All those who help victims of domestic violence should be aware that they are unpredictable emotionally and their behavior is a swing: I want to be helped – I do not want to be helped, I am going to apply for a divorce – I am withdrawing my decision, I blame the perpetrator – I stand in his defense.

Increasingly, the situations of domestic violence victims are compared to the situation of the terrorist attack victims. The analysis of what happens to the psyche and behavior of hostages, and how devastating the situation in which one's life is being threatened even for several hours or several days is, helps to understand the irrational behavior of victims.

The victim of domestic violence faces such a threat often for several years, and the perpetrator is not a strange criminal, but the man who is expected to show support, respect, and love. The victim is connected with the offender by various constraints, such as affection, marriage, children, shared housing, and property.

The psyche of the hostages, often adults and serious people reliant on

the mercy of the terrorists, is affected by amazing changes which are more shocking than the tragedy of the situation. It has been observed that in many cases even after their release, the victims remained in a strange incomprehensible emotional connection with their torturers. This connection deprives them of the ability to rationally assess the events, defense, and demand a severe punishment for terrorists. Victims released from terrorist attacks begin to engage in actions aimed at the terrorist's acquittal; they collect funds for the best lawyers for the terrorists. They forget the humiliation resulting from the terrorists' gaining control over their lives and skillful manipulation they have suffered when they were restricted to the position of small and powerless children grateful for every grimace of a smile or a little less menacing look, less frequent beatings or putting down a gun. Where is the consistency? They are usually expected to show anger, revenge, and unambiguous indictment.

Post-Traumatic Stress Disorder (PTSD) is a term enveloping a collection of psychiatric disorders that victims of terrorists, victims of domestic violence, and victims of other crimes threatening health and life suffer. This concept was formally introduced into the professional vocabulary of health care in 1980 by the American Psychiatric Association. Nevertheless, this does not mean that it was only since 1980 that such disorder syndromes occurring in people who survived extremely difficult life-threatening events have been recognized.

External situations in which a person is exposed to the loss of one's life or health or if a person observes injuries, sudden death or life threatening of the people he loves encourage the development of these symptoms. Natural disasters, war, traffic accidents, crimes, physical violence, sexual abuse and other forms of life-threatening violence can be the source of such situations.

In case of violence, a mere threat of using it is enough to shock the victim, for example, the offender does not have to shoot to the victims to make them really endangered; his presence and demonstration of his hostile intention would be enough. Often, the violence perpetrators are able to evoke a paralyzing fear and submissiveness in the closest people by a particular gesture, word, look, or a characteristic behavior. For the victims the conviction of the imminent danger is enough.

Not only victims but also witnesses and emergency services officers are exposed to the occurrence of PTSD. It can affect even people who have been carefully selected to serve in severe, extreme situations, who have adequate medical and psychiatric qualities, and have been adequately trained.

The Criteria of the PTSD diagnosis:

- occurrence of highly traumatic events,

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- experiencing trauma in memories, dreams, feelings, and situations resembling traumatic events,
- insensitivity to the environment, specific emotional numbness, a tendency to isolation, alienation, and avoidance of everything that might resemble the experienced shock,
- excessive agitation, anxiety, touchiness, difficulty in concentrating, and uncontrollable outbursts of anger.

IV. Final remarks

In conclusion, for the consistency of the above considerations, philosophical connotations of violence should be referred to Leszek Kolakowski, a Polish philosopher, who survived the experience of World War II, described them. He did not condemn the phenomenon of violence stating that violence is part of the culture, not nature. In nature, when an animal kills another animal to get food, it is not violence. On the other hand, violence as part of social life partly justifies the work of the police and courts. Without violence, the work of these institutions would be greatly reduced and unnecessary. It is hard to imagine the world in which nothing would be punishable, that is, in which there would be no evil. L. Kolakowski is also concerned about the concept of “moral violence” that is, blackmail.¹² However, it seems that in Kolakowski’s opinion violence is primarily collective violence, the war that accompanied human beings from the beginning, which, of course, does not mean that war must be praised and commended. In a word, to condemn absolutely all violence without any distinction is to condemn life.

Similarly, Emmanuel Levinas, a French philosopher, after his experience of World War II, believed that the European culture is a culture of violence, the culture that led to Auschwitz.¹³ According to him, violence and a desire to subjugate the world remain at the core of our culture. Violence manifests itself in our attempts to understand the world in terms of science and in our desire to make unfamiliar and alien things understandable. It is also visible in our practical use of such knowledge to transform the outside world. What is more, exploitation of knowledge is, according to E. Levinas, an attempt to impose one’s will on other people, including our lack of acceptance of

¹² L. Kolakowski, *Mini wykłady o maxi sprawach*, Kraków 2003, chapter on violence.

¹³ About E. Levinas in *Powszechna Encyklopedia Filozofii*, ed. M. A. Krąpiec, Lublin 2005, pp. 350–352.

otherness. This is an antagonistic attitude, an attitude that leaves no room for compromise, hence wars, crusades, and mass murders in the name of the idea. The Western civilization is one of the most possessive civilizations in the history of mankind which can even destroy the planet. Hence, according to Levinas, perhaps the very essence of our culture directs our action towards violence. However, it should be noted that both L. Kulakowski and E. Levinas, being the witnesses of World War II, conceived violence primarily as the element of the society civilization development.

While discussing violence in general and domestic violence in particular, it is also necessary to emphasize the stand of the highest moral authority of the recent decades respected by people of different nations and religions – Pope John Paul II. He was also a philosopher, phenomenologist with the experience of World War II. John Paul II's concern for the family, expressed in his speeches and documents¹⁴, was associated primarily with the recognition of the family as the common value of the humanity, the beginning and at the same time basis for the individual and social life of every human being. In the light of John Paul II's thought, protection of family from destructive violence, especially protection of children against all forms of violence, corruption, cruelty and pornography promoted by the media is one of the primary tasks of dissidents responsible for shaping our social order. Hence John Paul II saw threats to the family whose origins lie in the very institution of family. He pointed out various forms of violence whose perpetrators and victims are family members. Violence directed against children in forms of abuse, abandonment of children, or leaving children unattended is its most radical manifestation. The Pope appealed to the whole societies not to remain inert and passive. He also encouraged states to create appropriate structures, aiming at providing assistance to families affected by this kind of misfortune. Therefore, he also warned against a distorted picture of the family, the educational function of physiognomy and pedagogical function distributed by the media. In his opinion, it constitutes a particular challenge for the Polish politicians and individual states. Finding appropriate solutions in this area is essential.

¹⁴ Letter to Families Gratissimam sane by Pope John Paul II in Rome, at St. Peter, on 2 February 1994, in the sixteenth year of his pontificate, John Paul II, Message for the World Day of Peace – January 1, 2000. http://www.opoka.org.pl/biblioteka/w/wp/jan_pawel_ii/przemowienia/dzien_pokoju_01012000.html/; Jan Paweł II, *Prawda i sprawiedliwość fundamentem wolności i pokoju*, http://www.opoka.org.pl/biblioteka/w/wp/jan_pawel_ii/audiencje/ag_11092002.html/.

S U M M A R Y

The article raises the problematic of domestic violence phenomenon indicating its notional, philosophical, normative and sociological connotations. The multifacetedness and permanence of the phenomenon of violence suggests it is unfortunately a pejorative part of our culture taking various forms and intensity. This dynamic social phenomenon tightly related to evolution of social relations takes increasingly alarming shapes also implying other disadvantageous social phenomena. It is very harmful from the point of view of the smallest social unit which is a family as well as from the point of view of larger social groups, a whole society or finally from the international point of view. Therefore, it constitutes a special challenge for the legislator in the field of new acts and legal tools, projects, programmes, as well as domestic and international initiatives. In the article the authors describe the trends of the latest normative changes as anti-violence.

