

**HELŚIŃSKA FUNDACJA PRAW CZŁOWIEKA**  
**HELSINKI FOUNDATION for HUMAN RIGHTS**

**RADA FUNDACJI**

Halina Bortnowska-Dąbrowska  
Henryka Bochniarz  
Janusz Grzelak  
Ireneusz C. Kamiński  
Witolda Ewa Osiatyńska

Teresa Romer  
Andrzej Rzepliński  
Wojciech Sadurski  
Miroslaw Wyrzykowski

**ZARZĄD FUNDACJI**

Prezes: Danuta Przywara  
Wiceprezes: Maciej Nowicki  
Sekretarz: Piotr Kładoczny  
Skarbnik: Lenur Kerymov  
Członek Zarządu: Dominika Bychawska-Siniarska

Warsaw, 17 January 2019

**Mr Linos-Alexandre Sicilianos**  
**The European Court of Human Rights**  
**President of the First Section**  
Section I  
Council of Europe  
67075 Strasbourg-Cedex  
France

**A. K. v. Poland**  
**Application No. 904/18**

Pursuant to the letter from Mr Abel Campos, the Section Registrar of the First Section of the European Court of Human Rights (hereinafter also referred to as “ECtHR”, “Court”) dated 14 December 2018, granting leave to make written submission to the High Court by the 18 January 2019, the Helsinki Foundation for Human Rights (hereinafter also referred to as “HFHR”) with its seat in Warsaw, Poland, would like to respectfully present its written comments on the case of A.K. against Poland (application no. 904/18) with attachments.

On behalf of the Helsinki Foundation for Human Rights,

*Piotr Kładoczny, Ph. D.*  
Secretary of the Board  
Helsinki Foundation for Human Rights

*Maciej Nowicki*  
Vice President of the Board  
Helsinki Foundation for Human Rights

**Amicus curiae brief prepared by the  
Helsinki Foundation for Human Rights  
in the case of  
A.K. v. Poland (Application no. 904/18)**

**I. Introduction**

1. The Helsinki Foundation for Human Rights (HFHR) is a nongovernmental organization which works to protect human rights and whose charter provides for dealing with equal treatment violations including those based on gender. Furthermore, HFHR has undertaken numerous initiatives to prevent family violence and joints cases on behalf of individuals who have experienced such violence.

2. The scale of domestic violence in Poland is significant. Research conducted by the Fundamental Rights Agency indicates 19% of women in Poland have experience physical or sexual abuse from a current or former partner or other individual.<sup>1</sup> Furthermore, 37% of women have experienced psychological abuse by their current or former partner.<sup>2</sup> These figures indicate this is a material problem from the human rights perspective. International human rights bodies have also noted that the insufficient level of support provided to victims of domestic violence in Poland constitutes a systemic problem.<sup>3</sup>

3. Currently, a discussion is ongoing in Poland about possible models for preventing domestic violence as well as their effectiveness. Some advocate the need to increase state efficacy in this realm.<sup>4</sup> However, the debate surrounding Poland's adoption and ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence drafted in Istanbul on May 11, 2001<sup>5</sup> (Istanbul Convention), brought forth a series of allegations that the convention violated the Polish Constitution.<sup>6</sup> What is more, in 2016 the Ministry of Justice drafted a preliminary application to withdraw from the Istanbul Convention, which Poland ratified in 2015.<sup>7</sup> Further, the government submitted draft legislation that attenuated protections provided to victims of domestic violence near the end of 2018, though it backed off the changes after a wave of criticism.<sup>8</sup> It is also necessary to take into account the implementation of the Act dated 29 July 2005 on Preventing Domestic Violence (Act on Preventing Domestic Violence)<sup>9</sup> on the local government level.<sup>10</sup> These additional circumstances induced HFHR to submit an amicus curiae brief in this matter.

4. In the case of A. K. v. Poland, the Applicant alleges violation of articles 3, 6 § 1, 8 Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). She claims that she was not provided due protection as a victim of domestic violence as evidenced by, among other things, denial of her application to the court to order her brother to vacate the family home because at the time she filed the application, she no longer cohabited with

---

<sup>1</sup> Violence against women: an EU-wide survey. Main results, European Union Agency for Fundamental Rights, Luxembourg 2014, p. 28.

<sup>2</sup> Ibid., pp. 73-74.

<sup>3</sup> Committee on the Elimination of Discrimination against Women, Concluding comments on the seventh and eighth periodic reports of Poland, 14 November 2014, CEDAW/C/POL/CO/7-8; Human Rights Committee, Concluding observations on the seventh periodic report of Poland, 23 November 2016, CCPR/POL/CO/7.

<sup>4</sup> For example: Pomoc osobom dotkniętym przemocą. Informacja o wynikach kontroli. [Assistance to Victims of Violence] Supreme Audit Office, 2016, p. 10, <https://www.nik.gov.pl/plik/id,10943,vp,13290.pdf> (accessed on: 6.01.2019); the most recent postulates submitted by the Human Rights Commissioner: <https://www.rpo.gov.pl/pl/content/rusza-kampania-16-dni-akcji-przeciw-przemocy-ze-wzgledu-na-plec>

<sup>5</sup> Dz. U. [Journal of Laws] of 2015, pos. 961.

<sup>6</sup> <https://www.ordoiuris.pl/rodzina-i-malzenstwo/konwencja-przemocowa-zostanie-zaskarzona-do-trybunalu-konstytucyjnego> (accessed on: 6.01.2019).

<sup>7</sup> Letter of the Ministry of Justice to the Human Rights Commissioner dated 13 February 2017, Ref. No. DWMPC-III-053-1/17/2/3, <https://www.rpo.gov.pl/sites/default/files/XI.816.1.2015%20-%20MS%20ws.%20wypowiedzenia%20Konwencji.pdf> (accessed on: 6.01.2019).

<sup>8</sup> A. Szcześniak, Jednorazowa przemoc to nie przemoc? Skandaliczny projekt trafił do kosza. Ekspertka: Róbmy wszystko, by tam pozostał! [Violence committed only once is not violence? A scandalous bill has been canned. Expert: Let's do everything to make sure it stays there.] <https://oko.press/szkodliwy-zly-lepiej-ze-znalazl-sie-tam-gdzie-jego-miejsce-w-koszu-ekspertki-o-nowelizacji-ustawy-o-przemocy-w-rodzynie/> (accessed on: 6.01.2019).

<sup>9</sup> Dz. U. [Journal of Laws] of 2015, pos. 1390 as amended.

<sup>10</sup> For example, the City of Zakopane is the only county in Poland which has steadily for years avoided its responsibility to ratify a domestic violence prevention program and to appoint an interdisciplinary domestic violence task force (<https://fakty.tvn24.pl/ogladaj-online,60/zakopane-walczy-z-ustawa-o-przeciwdzialaniu-przemocy-w-rodzynie,842783.html>). Furthermore, the Zakopane City Council has applied for a constitutional review of the Act on Preventing Domestic Violence (Case Ref. No. K 33/16, no hearing date has been set by the Constitutional Court, <http://trybunal.gov.pl/sprawy-w-trybunale/art/9053-ustawa-o-przeciwdzialaniu-przemocy-w-rodzynie-brak-ustawowo-zdefiniowanego-pojecia-osoby-stosuj/> (accessed on: 6.01.2019).

him. In the plaintiff's allegations the courts did not operably consider the fact that she was forced to flee her home in fear for her life and that of her child. Furthermore, the prosecutor refused to apply preventive means in the form of ordering her brother to vacate the home, while the prosecution's restraining order against him was repeatedly violated. In light of the scope of consent granted by the ECHR, the amicus curiae does not refer directly to the cases under review but presents instead the broader context of the situations. In particular, HFHR wants to turn attention to organizational and institutional practices in domestic violence cases. We would like to review whether these practices offer effective protection to victims of domestic violence, including through effective separation or restraint of the perpetrator from the victim. HFHR also presents the opinion of attorneys who took part in a foundation survey concerning the effectiveness of relevant procedures.<sup>11</sup>

## II. Domestic violence in the Polish legal system - general remarks

5. The Act on Preventing Domestic Violence was the first Polish legislation to directly introduce regulations concerning domestic violence into the Polish legislative system. Article 2.2 of the act defines domestic violence as "a single or repeated premeditated act or omission violating the rights, body or property of family members, especially subjecting these individuals to the threat of the loss of life, health, violating their dignity, personal inviolability, freedom, including sexual, resulting in damages to their physical or mental health as well as evoking suffering and moral damages among the individuals subjected to the violence." A family member is defined as a next-of-kin as pursuant to art. 115 § 11 Criminal Code<sup>12</sup> (CC), i.e. a spouse, ascendant, descendant, sibling, relative by marriage in the same line or degree, an adopted relation and their spouse and an individual actually living in cohabitation. Furthermore, pursuant to the Act on Preventing Domestic Violence, a family member also includes a different individual cohabiting or sharing the household.

6. In 2018, the European Institute for Gender Equality<sup>13</sup> recommended that Poland amend its definition of domestic violence to better comport with, amongst other, provisions of the Istanbul Convention. The current definition means acts of violence among individuals not cohabiting are not registered as instances of domestic violence in statistics, a fact also noted by the Human Rights Commissioner.<sup>14</sup>

7. Polish law does not provide for a separate and particular crime that criminalizes domestic violence. Criminal abuse (art. 207 CC) does not fulfill all the elements of domestic violence and other crimes may also be qualified as domestic violence.<sup>15</sup> Official statistics concerning domestic violence include all acts that meet the definitions of the aforementioned crimes if they were committed in connection with domestic violence.<sup>16</sup>

8. Legal literature notes that the crime of abuse described in art. 207 CC does not constitute an effective tool to prevent domestic violence because its scope is too narrow and not every act of domestic violence meets all the elements of this crime. This often results in *lax ex officio* law enforcement of such cases.<sup>17</sup> The concluding comments of the seventh and eighth periodic reports of Poland's implementation of the UN Convention on the Elimination of Discrimination Against Women (CEDAW Committee) recommend the Polish criminal code be

---

<sup>11</sup> HFHR surveyed 82 attorneys and legal councilors anonymously online. Information about the survey was disseminated within the legal community, including through the bar. Not all of the surveyed lawyers responded to every question, which is why not all opinion results add up to the total number of individuals taking part in the survey.

<sup>12</sup> Act dated 6 June 1997, Criminal Code (i.e. Dz. U. [*Journal of Laws*] of 2018, pos. 1600 as later amended).

<sup>13</sup> Data collection on intimate partner violence by the police and justice sectors: Poland, European Institute for Gender Equality, <https://eige.europa.eu/rdc/eige-publications/data-collection-intimate-partner-violence-police-and-justice-sectors-poland> (accessed on: 6.01.2019).

<sup>14</sup> Letter of the Commissioner for Human Rights to the Minister for Family, Labor and Social Policy dated 22 November 2018, Ref No. III.518.21.2018.JA, <https://www.rpo.gov.pl/sites/default/files/Wyst%C4%85pienie%20do%20MRPiPS%20w%20sprawie%20danych%20statystycznych%20dotycz%C4%85cych%20przemocy%20w%20zwi%C4%85zkach.pdf> (accessed on: 6.01.2019).

<sup>15</sup> These include homicide (art. 148 § 1-4 CC), grave bodily harm (art. 156 §1-3 CC), moderate and insubstantial bodily harm (art. 157 § 1 CC), deprivation of liberty (art. 189 CC), criminal threat (art. 190 CC), stalking (art. 190a CC), use of violence or criminal threat to force an act or omission (art. 191 CC), recording and dissemination of an image of a nude individual (art. 191a CC), rape (art. 197 § 1-3 CC), sexual intercourse with an individual in a state of impaired mental capacity (art. 198 CC), forced sexual intercourse (art. 199 CC), pedophilia (art. 200 § 1 i 3 CC), incest (art. 201 CC), display of pornographic content (art. 202 § 1-4b CC), forced prostitution (art. 203 CC), and inebriation of minors (art. 208 CC).

<sup>16</sup> Report on the implementation of the National Program for the Prevention of Domestic Violence in 2014-2020 for the period of 1 January through 31 December 2016, Ministry of Family, Labor and Social Policy, <https://www.ms.gov.pl/Data/Files/public/sprawozdanie-za-2016-r.pdf> (accessed on: 6.01.2019).

<sup>17</sup> M. Platek, Ochrona prawna przed przemocą wobec kobiet i przemocą domową [Legal Protection Against Violence Committed Against Women and Domestic Violence] [in:]: S. Trociuk ed., *Przeciwdziałanie przemocy wobec kobiet, w tym kobiet starszych i kobiet z niepełno sprawnościami. Analiza i zalecenia*, [Preventing Violence Against Women, Including Older Women and Women with Disabilities. Analysis and Recommendations], Warsaw 2013, pp. 22, 24.

amended to directly criminalize domestic violence and that the amendments consider the fact that domestic violence especially affects women.<sup>18</sup>

### III. Blue Card

9. The Act on Prevention of Domestic Violence provides the procedure referred to as the Blue Card, which includes “the whole of activities undertaken and executed by representatives of organizational units of social assistance, county commissions for the resolution of alcohol-related problems, the Police Department, education and health services, in connection with the reasonable suspicion of the existence of domestic violence.”<sup>19</sup> The purpose of this procedure is to identify instances of domestic violence and facilitate assistance by various services at the local level.<sup>20</sup> Pursuant to art. 9d paragraph 4 of the Act, initiation of the Blue Card procedure follows the filling out of a Blue Card form in the event reasonable suspicion is found of domestic violence against family members in the course of official or professional activities or as a result of a report by a family member or by another individual witness to domestic violence.

10. The blue card form should always be filled out in the event of receipt of information regarding the suspicion of domestic violence. Police statistics<sup>21</sup> indicate that 2017 police officers filled out 75 662 “Blue Card-A” forms. Since 2014, the number of such forms filled out annually has held at a similar level as shown by Figure 1, though in 2014 the number was the highest at 77 808 forms annually. The great majority of filled out Blue Card forms are those that initiate the procedure. For example, in 2017 these constituted nearly 82% of the total forms filled out.

11. In 2017 the police reported 165 770 instances of domestic violence (2016 - 161 467, 2015 – 168 477). The largest number of cases of violence involved emotional abuse with 46.56% of all cases, followed by physical abuse with 36.18% of cases. Meanwhile, cases of economic abuse constituted slightly over 1% and those of sexual violence were below 1% of all cases. Other forms of violence made up the remaining 15%.

12. It is noteworthy in this context that according to Ministry of Labor and Social Policy research, about 75% of those who experience domestic violence did not seek assistance from any institution whatsoever. Such a high percentage may result from lack of information, but may also be caused by fear of the perpetrator, social stigma or a general unwillingness to contact law enforcement.<sup>22</sup>

13. Police statistics further indicate that 92 529 individuals were counted as possible victims of domestic violence in 2017. Nearly three fourths of this number are women, while men constitute about 12% and minors nearly 15%. Also, in 2017, 76 206 individuals were suspected of being perpetrators of domestic violence with 92% of those being men.

14. In 2017 the police detained 18 175 individuals suspected of domestic violence, which constitutes about 24% of the total number of domestic violence suspects. There is a visible difference in the percentage of individuals detained in particular areas of Poland, which is shown in Figure 2. The lowest percentage of individuals detained, with about 10-12% of the total suspect population, were found in the police garrisons in Lublin, Szczecin, and Kielce, while the highest, at over 40%, were reported in Radom, Łódź, and Białystok.

---

<sup>18</sup> Committee on the Elimination of Discrimination against Women, Concluding comments on the seventh and eighth periodic reports of Poland, 14 November 2014, CEDAW/C/POL/CO/7-8.

<sup>19</sup> Art. 9d paragraph 2 of the Act.

<sup>20</sup> H. Sasal, Procedura „Niebieskie Karty” jako przykład łączenia kompetencji różnych służb [The Blue Card Procedure as an Example of Combining the Competences of Various Services] in: *Przewodnik do realizacji ustawy z dnia 29 lipca 2005 r. o przeciwdziałaniu przemocy w rodzinie* [Guide to the implementation of the Act of July 29, 2005 on Prevention of Domestic Violence], <http://niebieska.pl>

<sup>21</sup> Statistics concerning the Blue Card presented in this section are based on: [Information on the implementation by Police organizational units of the Blue Card procedure and initiatives undertaken in the area of preventing violence in 2014, 2015, 2016, 2017] Informacja dotycząca realizacji przez jednostki organizacyjne Policji procedury „Niebieskiej Karty” oraz inicjatyw podejmowanych w obszarze przeciwdziałania przemocy w 2014, 2015, 2016, 2017 roku, <http://statystyka.policja.pl/st/wybrane-statystyki/przemoc-w-rodzinie/137709.Sprawozdania-z-realizacji-procedury-quotNiebieskie-Kartyquot.html> (accessed on: 6.01.2019).

<sup>22</sup> Wyniki badań przeprowadzonego przez WYG PSDB dla Ministerstwa Pracy i Polityki Społecznej (2014 r.) w ramach Projektu pt. „Rodzina polska wolna od Przemocy” dla Programu Operacyjnego PL 14 „Przeciwdziałanie przemocy w rodzinie i przemocy ze względu na płeć” [The results of a study conducted by WYG PSDB for the Ministry of Labor and Social Policy (2014) under the Project entitled “Polish Family Free of Violence” for Operational Program PL 14 “Preventing domestic violence and gender violence”] [https://www.gov.pl/documents/1048151/1060973/DPS\\_przemoc\\_Badania\\_por%C3%B3wnawczeoraz\\_diagnoza\\_skali\\_wyst%C4%99powania\\_przemocy\\_w\\_rodzinie\\_w%C5%9Br%C3%B3d\\_os%C3%B3rdoros%C5%82ych\\_oraz\\_dzieci\\_z\\_podzia%C5%82em\\_na\\_poszczeg%C3%B3lne\\_formy\\_przemocy.pdf/a364db1f-0078-1ff7-97bd-61e173110ef3](https://www.gov.pl/documents/1048151/1060973/DPS_przemoc_Badania_por%C3%B3wnawczeoraz_diagnoza_skali_wyst%C4%99powania_przemocy_w_rodzinie_w%C5%9Br%C3%B3d_os%C3%B3rdoros%C5%82ych_oraz_dzieci_z_podzia%C5%82em_na_poszczeg%C3%B3lne_formy_przemocy.pdf/a364db1f-0078-1ff7-97bd-61e173110ef3) (accessed on: 6.01.2019)

#### IV. Criminal proceedings in cases involving domestic violence

15. Completing the Blue Card form does not mean the Police or prosecutor automatically conduct preparatory proceedings stemming from a violent crime against a victim. For example, in 2016,<sup>23</sup> the Police initiated 26 633 investigations in domestic violence cases. In the same year, police officers issued 13 876 decisions refusing to initiate investigations in such cases and discontinued 15 391 investigations. Officers closed only 10 689 cases with an indictment against the alleged perpetrator. This data suggests most cases are discontinued or not instigated through to the preparatory proceeding stage. A similar pattern exists in previous years.<sup>24</sup> In this context, research of authorities' procedural practices in cases involving Art. 207 CC indicates that in 2005 half of all preparatory proceedings involving this crime were discontinued - with the overwhelming majority of those decisions resulting from lack of evidence.<sup>25</sup>

16. It is also important to follow the data on judicial decisions in criminal cases involving acts of domestic violence. In 2016,<sup>26</sup> 14 914 people accused of committing a crime related to domestic violence were tried, 12 340 were convicted, of which only 2 551 were sentenced to imprisonment (with 6 149 receiving conditional parole). The largest group, 9 133 individuals, were convicted under art. 207 § 1 CC (abuse), of which 1 927 were sentenced to absolute imprisonment.<sup>27</sup> Similar ratios occurred in the preceding years of 2014 and 2015.

17. Moreover, when asked in the HFHR survey about what difficulties they faced in handling domestic violence cases, nearly 80% of attorneys and legal advisors pointed to the stereotypical perception of the case, victim or perpetrator (see Figure 3). Over 66% felt procedural bodies did not consider the case duly important and more than half indicated that the lengthy time-span of proceedings proved a difficulty. More than 46% of respondents highlighted evidentiary difficulties.

18. The CEDAW Committee noted the reports showing a low number of indictments and convictions in domestic violence cases as well as the lenient approach of procedural bodies. In 2014, in the concluding comments of the seventh and eighth periodic reviews of Poland's implementation of the UN Convention on the Elimination of All Forms of Discrimination against Women, the Committee stated, "It is, however, concerned at the high prevalence of violence against women in the State party and the absence of a comprehensive strategy aimed at eliminating all forms of sex- and gender-based violence against women. The Committee is particularly concerned at the remaining gaps in the legal framework to combat such violence, the limited effectiveness of protection orders and the low number of prosecutions and sentences in cases of domestic violence, all of which result in inadequate protection for women who are victims of violence."<sup>28</sup> This problem was also noticed by the Human Rights Committee in 2016, which called on Poland to adopt a coherent and comprehensive strategy to combat domestic violence, among others, by "Ensuring that cases of domestic violence, are thoroughly investigated, alleged perpetrators prosecuted and, if convicted, punished with appropriate sanctions, and that victims have access to effective remedies, including restraining orders, with immediate effect."<sup>29</sup>

---

<sup>23</sup> Sprawozdanie z realizacji Krajowego Programu Przeciwdziałania Przemocy w Rodzinie Na Lata 2014-2020 za okres od 1 stycznia do 31 grudnia 2016 r., Ministerstwo Rodziny, Pracy i Polityki Społecznej, [Report on the implementation of the National Program for the Prevention of Domestic Violence for 2014-2020 for the period from 1 January to 31 December 2016, the Ministry of Family, Labor and Social Policy,] [https://www.ms.gov.pl/Data/Files/\\_public/sprawozdanie-za-2016-r\\_.pdf](https://www.ms.gov.pl/Data/Files/_public/sprawozdanie-za-2016-r_.pdf) (accessed on: 6.01.2019).

<sup>24</sup> Sprawozdanie z realizacji Krajowego Programu Przeciwdziałania Przemocy w Rodzinie Na Lata 2014-2020 za okres od 1 stycznia do 31 grudnia 2015 r., Ministerstwo Rodziny, Pracy i Polityki Społecznej, [Report on the implementation of the National Program for the Prevention of Domestic Violence for the years 2014-2020 for the period from 1 January to 31 December 2015, the Ministry of Family, Labor and Social Policy], [https://www.ms.gov.pl/Data/Files/\\_public/sprawozdanie-za-2015-r\\_.pdf](https://www.ms.gov.pl/Data/Files/_public/sprawozdanie-za-2015-r_.pdf) (accessed on: 6.01.2019).

<sup>25</sup> A. Mroziak, E. Rutkowska, I. Sienkiewicz, Kogo chronimy przed przemocą? Dwa lata ustawy z dnia 29 lipca 2005 r. o przeciwdziałaniu przemocy w rodzinie. Raport krytyczny, [Who are we protecting against violence? Two years of the Act of July 29, 2005 on Preventing Domestic Violence. Critical report,] Warsaw 2007, p. 39, [http://feminoteka.pl/wp-content/uploads/2016/05/kogo\\_chronimy.pdf](http://feminoteka.pl/wp-content/uploads/2016/05/kogo_chronimy.pdf) (accessed on: 6.01.2019).

<sup>26</sup> Sprawozdanie z realizacji Krajowego Programu Przeciwdziałania Przemocy w Rodzinie Na Lata 2014-2020 za okres od 1 stycznia do 31 grudnia 2016 r., Ministerstwo Rodziny, Pracy i Polityki Społecznej, [Report on the implementation of the National Program for the Prevention of Domestic Violence for 2014-2020 for the period from 1 January to 31 December 2016, the Ministry of Family, Labor and Social Policy,] [https://www.ms.gov.pl/Data/Files/\\_public/sprawozdanie-za-2016-r\\_.pdf](https://www.ms.gov.pl/Data/Files/_public/sprawozdanie-za-2016-r_.pdf) (accessed on: 6.01.2019).

<sup>27</sup> On the other hand, as regards the offense of cruelty with extreme cruelty (Article 207 § 2 Penal Code), 8 out of 14 convicted persons were sentenced to imprisonment. In the case of the crime of abuse, which led to a life-threatening act (Article 207 § 3 Penal Code), 11 of 23 convicts were convicted.

<sup>28</sup> Committee on the Elimination of Discrimination against Women, Concluding comments on the seventh and eighth periodic reports of Poland, 14 November 2014, CEDAW/C/POL/CO/7-8.

<sup>29</sup> Human Rights Committee, Concluding observations on the seventh periodic report of Poland, 23 November 2016, CCPR/POL/CO/7.

## V. Separation of the perpetrator from a victim of violence

19. Separation of the perpetrator from the victim is one of the most important aspects of preventing domestic violence.<sup>30</sup> Non-governmental organizations dealing with domestic violence<sup>31</sup> have long highlighted the need for regulations ensuring quick and effective separation of the perpetrator from the victim. Additionally, they point out that regulations applicable through 2010, such as preventive measures provided for by criminal procedure, were not being effectively applied in such cases. Despite these voices, the original wording of the Act on Preventing Domestic Violence included no provisions providing for new and specific legal solutions. It was finally the Act of 10 June 2010 amending the Act on Preventing Domestic Violence and certain other acts<sup>32</sup> that introduced new solutions, allowing authorities to separate the alleged perpetrator from the victim of domestic violence. These measures involve requiring the perpetrator to vacate the dwelling through a civil proceeding and introduce a new preventive measure in the form of an order to vacate the dwelling.

20. However, in reviewing the effectiveness of measures available in Polish law to ensure the safety and separation of the perpetrator from a victim of domestic violence, the CEDAW Committee in General Recommendation 19 on violence against women pointed to the obligation of the state to provide effective legal remedies, including criminal and civil rights that will effectively protect women against all forms of gender-based violence, including domestic violence.<sup>33</sup> In 2005, the CEDAW Committee in the case of *AT v. Hungary* recognized that the state violated the Convention with respect to elimination of discrimination against women because domestic solutions did not provide effective and immediate protection for a victim of violence against degrading treatment on the part of the former partner.<sup>34</sup>

21. Provisions of the Istanbul Convention, which contains many specific provisions on what protection measures should be available to people experiencing violence, are also relevant in this context. For example, art. 52 of the Istanbul Convention provides for the need to introduce legal regulations under which state authorities would be entitled to order the perpetrator of an act of violence, in situations of imminent danger, to temporarily vacate the victim's place of residence and prohibit the perpetrator's entry to dwelling occupied by the victim or to contact the victim or person at risk. In such cases, authorities should prioritize safety of victims when undertaking these activities. In addition, the Istanbul Convention in art. 53, requires that victims of domestic violence be able to apply for appropriate restraining orders or protective orders, and their use should allow immediate protection, even without hearing the opposing party, if necessary.

### V.1. Preventive measures, including an order to vacate the dwelling

22. On the basis of criminal proceedings, there are means that may lead to separation of the perpetrator from a domestic violence victim. These are preventive measures that can be used by the prosecutor (and in certain situations by the court) in the course of preparatory and judicial proceedings. These measures include police supervision combined with a restraining order to protect a domestic violence victim (Article 275 § 2 of the Code of Criminal Procedure<sup>35</sup> - hereinafter: CCP); police supervision conditioned upon the alleged perpetrator vacating a dwelling he or she cohabits with the victim (Article 275 § 3 of the CPC); pretrial detention, order to periodically vacate the dwelling (Article 275a of the Code of Criminal Procedure).

23. The preventive measure introduced in 2010 to the CPC aims to separate the perpetrator from the victim. Art. 275a. CPC indicates that the preventive measure of an order to temporarily vacate the dwelling can be ordered against an alleged perpetrator for a violent crime against a cohabiting individual, if there is a reasonable fear that the alleged perpetrator will again commit a violent crime against that individual, especially if the alleged perpetrator threatened to repeat the crime. In preparatory proceedings, this measure is applied at the request of the police or ex officio. In the event of detaining the alleged perpetrator of violence, when there are grounds for applying this measure, the police shall immediately, i.e. not later than within 24 hours from the time of detention, apply to the prosecutor for the preventive measure; the application should be examined within 48 hours of the

---

<sup>30</sup> S. Spurek, *Izolacja sprawcy przemocy w rodzinie od ofiary*. [Separation of the perpetrator of domestic violence from the victim.] *Prokuratura i Prawo*, 2013, No. 7-8. pp. 147-156.

<sup>31</sup> U. Nowakowska, *Bije – musi odejść, czyli o potrzebie wprowadzenia do polskiego prawa rozwiązań, które pozwalają na szybkie usunięcie sprawcy przemocy z domu* [If he beats you, he must leave; the need to introduce into Polish law solutions that would allow quick removal of the perpetrator of violence from home], *Pr. i Pł.* 2000, No. 1, p. 20.

<sup>32</sup> *Dz. U.* Nr 124, poz. 842.

<sup>33</sup> CEDAW General Recommendation No. 19: Violence against women, Eleventh session (1992), [https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1\\_Global/INT\\_CEDAW\\_GEC\\_3731\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/INT_CEDAW_GEC_3731_E.pdf)

<sup>34</sup> Views of the Committee on the Elimination of Discrimination against Women of 26 January 2005 in the case of *A.T. v. Hungary*, Communication No. 2/2003.

<sup>35</sup> Act dated 6 June 1997, i.e. *Dz. U.* [*Journal of Laws*] of 2018 pos. 1987 as later amended.

alleged perpetrator's detention. This measure shall not be applied for a period to exceed three months. If the conditions for its application have not ceased to exist, the court of first instance competent to hear the case, at the request of the prosecutor, may extend its application for further periods, not to exceed three months.

### V.1.A. Preventive measures in practice

24. Prosecutors are increasingly often choosing to apply the new measure of the order to vacate the dwelling,<sup>36</sup> as shown in Figure 4. While in 2012 this measure was used 1 241 times, the number jumped to 3 761 in 2017. There is also a notable difference in the number of orders across various parts of the country, as shown in Figure 5. In 2017, prosecutors from the jurisdiction of the Regional Prosecutor's Office in Gdańsk (684) issued the highest number of orders, followed by Kraków (607). The lowest numbers came from the Regional Prosecutor's Office in Rzeszów (166), Warsaw (181), and Lublin (186). A similar tendency appears in previous years.

25. In criminal domestic violence cases (i.e. not just in matters related to the crime of abuse) prosecutors also often resorted to a preventive measure in the form of police supervision accompanied by a restraining order. For example, in 2016, this measure was applied 3 427 times.<sup>37</sup> In addition, in 2010-2016, there is an increase in the number of such measures being used, as illustrated in Figure 6. Police supervision under condition of vacating a dwelling is much less frequently used by prosecutors. In 2016, this measure was applied 760 times<sup>38</sup> while Figure 7 shows data from preceding years.

26. In 2010-2016 prosecutors in domestic violence cases submitted between about 1,500 to 2,300 applications for pre-trial detention against suspects.<sup>39</sup> Figure 8 shows the detailed data. Notably, courts approved over 90% of these applications.

27. HFHR examined the frequency in application - in the opinion of attorneys and legal advisors - of the order to vacate the dwelling as well as other measures that involve separation of the perpetrator from the victim. Regarding the use of the order to vacate the dwelling, the largest number of lawyers indicated that this measure was used in some cases - 20 indications (Figure 9). Almost the same number of lawyers indicated this measure was not used in criminal cases concerning domestic violence in which they participated. In addition, almost half of the lawyers surveyed indicated that in such cases no pretrial detention was applied (Figure 10) and fewer respondents indicated that such a measure was used in some cases. At the same time, with regard to the use of police supervision combined with some form of a restraining order, more than half of the lawyers indicated that such a measure was applied in some cases in which they took part (Figure 11). About 25% of respondents indicated this measure was not used and four respondents indicated that it was used in about half or in most cases with which they had contact.

28. HFHR also asked attorneys and legal advisors whether in the course of proceedings authorities responded to requests or motions from lawyers or their clients to apply preventive measures (Figure 12). Lawyers, responded with respect to each of the three measures mentioned above. They most often indicated that use of preventive measures in response to a request or motion was granted in some cases. In the case of an order to vacate the dwelling, 25% of lawyers surveyed indicated that such a measure was not applied in any case despite the motion, and only two respondents indicated that it was used in most cases in which they were involved. HFHR also asked lawyers to indicate whether, during the proceedings, preventive measures were applied ex officio, without any request or motion from participants of the proceedings. The answer to this question is presented in Figure 13. The respondents most often indicated that preventive measures were used in some cases, but almost 40% of lawyers indicated that the order to vacate the dwelling was not applied in any case in which they participated.

29. An important factor is whether suspects or accused persons abide by the conditions of preventive measures. Nearly 40% of lawyers surveyed indicated that the suspect or accused in the majority of cases respected the duties imposed on him (Figure 14). Meanwhile, nearly 20% of attorneys and legal advisors pointed out that suspects or accused in most cases did not comply with preventive measures. About 40% of respondents indicated that the authorities usually did not react to the fact that the suspects or accused did not comply with the conditions of preventive measures. However, only slightly more than 10% of lawyers declared that the authorities usually took some action in such a situation (Figure 15).

---

<sup>36</sup> Data based on a letter from the National Public Prosecutor's Office to HFHR dated November 17, 2018, Ref. No. PK I Ip 385.2018.

<sup>37</sup> Sprawozdanie z realizacji Krajowego Programu Przeciwdziałania Przemocy w Rodzinie Na Lata 2014-2020 za okres od 1 stycznia do 31 grudnia 2016 r., Ministerstwo Rodziny, Pracy i Polityki Społecznej. [Report on the implementation of the National Program for the Prevention of Domestic Violence for the years 2014-2020 for the period from 1 January to 31 December 2016, the Ministry of Family, Labor and Social Policy.].

<sup>38</sup> Ibid.

<sup>39</sup> Ibid.

30. An analysis of 120 criminal proceedings involving abuse carried out in 2010 and 2012 deserves mention here. It showed that over 80% of perpetrators lived with the victims of domestic violence during pending criminal proceedings and more than half of those did so for the entire duration of proceedings. Some of them even cohabited in a single room. In 94% of cases in which the perpetrator and victim lived together, the prosecutor did not use any available preventive measures to separate the perpetrator and victim. The author of the study indicated that authorities misunderstand the essence of domestic violence, reading it as a family conflict, and saw their main role in maintaining proper family relationships rather than protecting the victim of violence.<sup>40</sup>

### **V.1.B. Conclusions**

31. Taking into account the above data and research results, it seems doubtful that current criminal procedures effectively protect domestic violence victims and guarantee immediate and effective separation from the perpetrator. A Supreme Audit Office report from 2016 indicated the limited effectiveness of support to victims of violence and highlighted that in most cases victims of violence in a crisis situation are forced to leave a shared dwelling.<sup>41</sup> First of all, the literature indicates that Polish law still lacks solutions that immediately remove the perpetrator from the dwelling without the need to formally initiate criminal proceedings. Currently, preventive measures can only be used after the initiation of the proceedings. Amnesty International, citing experts from organizations working in the field of domestic violence prevention,<sup>42</sup> points out that lack of regulations (and erroneous use of existing ones) is one of the biggest shortcomings of the Polish system for violence prevention. Therefore, it postulated granting the police the right to order the perpetrator to vacate the dwelling for up to 14 days.<sup>43</sup>

32. Although prosecutors increasingly often seek preventive measures in cases concerning domestic violence, this number is too low in comparison to the number of pending preparatory proceedings in these cases. Furthermore, in most cases no measures to separate the perpetrator from the victim are implemented. HFHR's survey of lawyers also supports this conclusion. In addition, in the lawyers' opinions, current criminal law and procedure related to domestic violence do not ensure effective protection to victims. This is particularly true in the context of separating the perpetrator from the victim and securing against future acts of violence – as reported by nearly three-fourths of respondents.

### **V.2. Application to order a family member to vacate the dwelling**

33. As mentioned above, the amendment to the Act on Preventing Domestic Violence of 2010 established a new institution that provides funding to separate the perpetrator from the victim before criminal proceedings are initiated. According to art. 11a of the Act on Preventing Domestic Violence, a victim of violence may apply for an order to remove a family member from a common place of residence if the cohabiting family member's acts of domestic violence make cohabitation particularly onerous. A civil court examines such a case in non-litigious proceedings. The ruling becomes enforceable upon announcement and may be amended or revoked if circumstances change. The doctrine stresses that such ruling is independent of dwelling ownership, does not lead to deprivation of property, but only constitutes a restriction in use thereof.<sup>44</sup>

#### **V.2.A. Statistics on cases requiring a family member to vacate the dwelling**

34. In the first instance, district courts review requests to order a family member to vacate the dwelling. The number of such cases is small on a national scale. In 2017, there were 1 454 applications citing art. 11 a of the Act on Preventing Domestic Violence.<sup>45</sup> In comparison, in 2017, there was a total of 3 419 184 civil cases filed

---

<sup>40</sup> M. Czarkowska, *Przeciwdziałanie przemocy domowej wobec kobiet w rodzinie w praktyce organów ścigania, wymiaru sprawiedliwości i innych instytucji* [Preventing domestic violence against women in law enforcement, judicial and other institutional practice], Warsaw 2014, pp. 285, 287, 300-301.

<sup>41</sup> *Pomoc osobom dotkniętym przemocą. Informacja o wynikach kontroli.* [Assistance to people affected by violence. Information about the results of the audit.] Supreme Audit Office, 2016, p. 10, <https://www.nik.gov.pl/plik/id,10943,vp,13290.pdf> (accessed on: 6.01.2019).

<sup>42</sup> The organizations included the Women's Rights Center, Feminoteka Foundation, the Blue Line Nationwide Helpline for Victims of Domestic Violence.

<sup>43</sup> S. Spurek, *Izolacja sprawcy przemocy w rodzinie od ofiary.* *Prokuratura i Prawo* [Separation of a perpetrator of domestic violence from the family], 2013, No. 7-8. pp. 147-156.

<sup>44</sup> S. Spurek, Art. 11(a). w: *Przeciwdziałanie przemocy w rodzinie. Komentarz.* [in: Preventing domestic violence. Comment.] LEX, 2012.

<sup>45</sup> Data in this section are based on a letter from the Ministry of Justice to HFHR dated 3 December 2018 with attachments, Ref. No. DSF-II-082-305/18.

in regional courts.<sup>46</sup> However, there is an upward trend in the number of applications submitted. In 2011, the year following passage of art. 11 a of the Act on Preventing Domestic Violence, only 197 applications were submitted, while in the years between 2015 and 2017 the number fluctuated between 1400 and 1500 such applications. Figure 16 provides details on the number of applications submitted on a national scale. There is also a visible differentiation in the number of applications submitted in various jurisdictions. For example, in 2017, the most applications were made in Gdańsk (244) and Katowice (195), with smallest number coming from Rzeszów (53) and Warsaw (60). The same trends can also be observed in previous years, as illustrated in Figure 17.

35. An analysis of decisions (Figure 18) in these cases shows that courts granted about 45% of the applications and denied about 10-20%. A material portion of the cases (i.e. about 20-25%) gets dismissed, with the majority of the dismissals resulting from withdrawal of the request in the course of proceedings. For example, 231 applications were withdrawn in 2017, 210 in 2016, 195 in 2015, and 173 in 2014.

36. Few appeals are submitted in cases regarding an order to vacate the dwelling. Regional courts are the courts of second instance in these cases. Hitherto, the most appeals were filed in 2017 - 103 appeals. There is also an upward trend in the number of appeals filed in these cases, as illustrated in Figure 19. In the majority of cases, these appeals are granted in whole or in part.

### **V.2.B. Duration of proceedings ordering a family member to vacate the dwelling**

37. The duration of proceedings for an order to vacate the dwelling is an important indicator. According to art. 11a of the Act on Preventing Domestic Violence, the first hearing in the case must take place within one month of the application. There is no data collected as to whether proceedings are in fact scheduled in accordance with this deadline<sup>47</sup>. At the same time, the period is instructional and carries no consequences if exceeded. However, the Ministry of Justice does record data on the duration of proceedings in these cases (reported in days according to the duration of proceedings calculated in accordance with the CEPEJ methodology).<sup>48</sup> Shown in Figure 20, the data indicates that first-instance proceedings in 2011 lasted nearly 320 days nationally, and fluctuated between nearly 119 and 181 days in the other years.<sup>49</sup> There are also visible differences in the duration of these proceedings in various jurisdictions – Figure 21 presents the data in this respect. The longest duration of such cases is recorded in the Warsaw jurisdiction.

38. Figure 22 presents data on the duration of appellate proceedings. There is a downward trend in the duration of appellate proceedings in these cases. In 2012, this indicator for the entire country was 182.5 days, while in 2017 it was 129.04 days. However, some individual jurisdictions report particularly lengthy proceedings. For example, in 2012, two cases were filed in the Rzeszów jurisdiction where their duration exceeded 365 days. In 2013, three cases were filed in the Katowice jurisdiction and their duration 730 days. In Białystok and Kraków, with two cases each, the length was 365 days. In 2014, Łódź and Szczecin, also with two cases each, recorded durations of 365 days. In 2015, the same duration was reported in the Warsaw jurisdiction (one case) with 304.17 days in Poznań (9 cases). The longest periods in 2016 were recorded in the Warsaw jurisdiction (10 cases) lasting 438 days, and in Białystok (four cases) lasting 365 days. In 2017, the Poznań jurisdiction had the highest figure at 208.5 days (8 cases), with Warsaw “leading” in the first half of 2018 with 273.75 days and three cases.

39. The aforementioned data also correspond to the results of the HFHR survey of lawyers and legal advisers. Respondents most often indicated proceedings of first instance lasted anywhere from one to three months and three to six months (Figure 23). One respondent indicated the proceedings usually lasted less than one month and two indicated they were involved in cases that usually lasted more than one year. As to the length of the appeal proceedings, more than half of the respondents indicated a period between three and six months, and more than one-fourth indicated between one and three months (Figure 24). Irrespective of the above, nine lawyers indicated that in addition to indicating the average duration of proceedings for an order to vacate the dwelling, they participated in proceedings that lasted for a particularly long time. They indicated having taken part in cases in the first instance lasting over one year, 10 months, 10-14 months, 18 months and 24 months.

<sup>46</sup> Analiza statystyczna działalności sądów w Polsce – sądy rejonowe za rok 2017, Ministerstwo Sprawiedliwości [Statistical analysis of court operations in Poland - Regional Courts for 2017, Ministry of Justice] <https://isws.ms.gov.pl/pl/baza-statystyczna/opracowania-jednoroczne/rok-2017/>

<sup>47</sup> Letter from the Ministry of Justice to the Commissioner of 12 June 2017, Ref. No. .DL-I-053-6/17, <https://www.rpo.gov.pl/pl/content/minister-sprawiedliwosci-zgadza-sie-z-rpo-sprawy-sadowe-o-opuszczenie-mieszkania-przez-sprawce-pilne> (accessed on: 6.01.2019).

<sup>48</sup> Indicator of the duration of the proceedings (according to the CEPEJ methodology) (in days) - is a reference to the number of matters remaining to be dealt with for the next statistical period to the average resolution of cases in a given statistical period or reporting period - 365 days - one year, 182.5 - half-year, 91.25 - quarter).

<sup>49</sup> Data in this chapter are based on a letter from the Ministry of Justice to HFHR dated 3 December 2018 with attachments, Ref. No.DSF-II-082-305/18.

40. As of 1 January 2018, the Regulation of the Minister of Justice of 23 December 2015 on the Rules of common court proceedings,<sup>50</sup> prioritized matters involving an order for a family member to vacate the dwelling (made them “urgent”) (§2 point 5 letter n of the Regulations). Pursuant to §56 para. 2 of the Rules, the hearing and proceeding on these matters must be prioritized over other cases brought before the court. However, as the statistics discussed earlier show, the duration indicator for such cases in the first instance for the first half of 2018 has not decreased and is even higher as compared to 2017.

### V.2.C. Interpretation of the concept of "cohabitation"

41. Cohabitation is one of the conditions that must be met to order a family member to vacate a dwelling. Common court jurisprudence offers heterogeneous interpretations of this concept. This is especially the case when a victim violence vacates a shared home he or she shares with a member of the household suspected of using violence, even before the formal submission of an application for an order to vacate the dwelling or in the course of court proceedings.

42. For example, the Łęczycza District Court by order of 4 October 2016, Ref. No. I Ns 296/16,<sup>51</sup> dismissed an application for order to leave a shared dwelling because the applicant had prior moved out for fear of safety, which in the court's opinion meant that the condition of cohabitation was not met. Finally, the Łódź Regional Court by decision of 5 April 2017, Ref. No. III Ca 1874/16,<sup>52</sup> pursuant to an appeal overturned the decision and ordered the perpetrator of domestic violence to vacate the residential dwelling he owned. The Łódź Regional Court considered the interpretation of the regional court absurd and pointed out that, "There is no doubt and, in fact, even more so implies, that the aforementioned presumption [of ceasing to use a given dwelling upon vacating such] has been overcome when one of the spouses [*left because they*] wanted to protect themselves and their children (...). The above considerations leave no doubt (...) that R.F., despite actually having vacated the dwelling, should be deemed to cohabit the dwelling with JF, the perpetrator of the violence." The Wrocław District Court for Wrocław-Śródmieście took a similar view in the decision of 3 February 2016, Ref. No. VIII Ns 504/14.<sup>53</sup> In the reasoning for its decision, the court wrote that "the legislative justification for the draft law on preventing domestic violence argues that the perpetrator should bear the legal and social consequences of domestic violence and the state should not allow the perpetrator to stay at home while the victim flees from him (...). In the opinion of the Court, the fact that the applicant currently resides with her parents as a result of domestic violence cannot constitute grounds for ruling her application groundless. Such flows from the teleological interpretation of art. 11a of the Act. Otherwise, to effectively defend her legal interests, the victim of violence should, in spite of the imminent danger (...) remain in the same household with the perpetrator." The Radom Regional Court in the decision of 3 February 2015, Ref. No. IV Ca 549/14,<sup>54</sup> and the Włocławek District Court in the decision of 12 July 2017, Ref. No. I Ns 239/17<sup>55</sup> (not legally final) found the same necessity of teleological interpretation and protection of victims fleeing violence from their homes, among other courts.

43. However, the Poznań Regional Court found the applicant's having left her shared apartment decisive in the case. By virtue of decision of 14 October 2016, Ref. No. XV Ca 626/16,<sup>56</sup> the Poznań Regional Court overturned the decision of the court of first instance and dismissed the application ordering the perpetrator to vacate the dwelling. The Poznań Regional Court remarked, "One cannot agree with the court of first instance that the above circumstance [the applicant vacating her flat] is irrelevant to the resolution of the case, the reason for H.A.'s moving out, i.e. her husband's inappropriate behavior of accosting her. The court emphasized that the situation where the victim of domestic violence is forced to leave a home in which the perpetrator still remains cannot be sanctioned. (...) In the present case however, the conflict in the family has lasted for many years and as a result of its effects, H.A., in November 2014, nearly two years ago, moved out to live with her daughter, [the application for an order to vacate the dwelling was filed in August 2014 by the prosecutor – ed.]. In this situation, it is difficult to consider it legitimate to use - for the purpose of granting her protection - the specific legal instrument provided for in Article 11a of the Act on Preventing Domestic Violence." The Oleśno District Court took a similar view in its decision of 19 November 2015, Ref. No. I Ns 18/15,<sup>57</sup> which dismissed the application for an order to vacate

<sup>50</sup> Dz. U. [Journal of Laws] pos. 2316 as later amended.

<sup>51</sup> Based on the contents of the Łódź Regional Court decision of April 5, 2017, Ref. No. III Ca 1874/16, [https://orzeczenia.ms.gov.pl/content/\\$N/152510000001503\\_III\\_Ca\\_001874\\_2016\\_Uz\\_2017-04-05\\_001](https://orzeczenia.ms.gov.pl/content/$N/152510000001503_III_Ca_001874_2016_Uz_2017-04-05_001) (accessed on: 6.01.2019).

<sup>52</sup> [https://orzeczenia.ms.gov.pl/content/\\$N/152510000001503\\_III\\_Ca\\_001874\\_2016\\_Uz\\_2017-04-05\\_001](https://orzeczenia.ms.gov.pl/content/$N/152510000001503_III_Ca_001874_2016_Uz_2017-04-05_001) (accessed on: 6.01.2019).

<sup>53</sup> [https://orzeczenia.ms.gov.pl/content/\\$N/155025500004003\\_VIII\\_Ns\\_000504\\_2014\\_Uz\\_2016-02-03\\_001](https://orzeczenia.ms.gov.pl/content/$N/155025500004003_VIII_Ns_000504_2014_Uz_2016-02-03_001) (accessed on: 6.01.2019).

<sup>54</sup> [https://orzeczenia.ms.gov.pl/content/\\$N/153010000002003\\_IV\\_Ca\\_000549\\_2014\\_Uz\\_2015-02-03\\_001](https://orzeczenia.ms.gov.pl/content/$N/153010000002003_IV_Ca_000549_2014_Uz_2015-02-03_001) (accessed on: 6.01.2019).

<sup>55</sup> [https://orzeczenia.ms.gov.pl/content/\\$N/151030150000503\\_I\\_Ns\\_000239\\_2017\\_Uz\\_2017-09-04\\_001](https://orzeczenia.ms.gov.pl/content/$N/151030150000503_I_Ns_000239_2017_Uz_2017-09-04_001) (accessed on: 6.01.2019).

<sup>56</sup> [https://orzeczenia.ms.gov.pl/content/\\$N/153510000007503\\_XV\\_Ca\\_000626\\_2016\\_Uz\\_2016-10-14\\_001](https://orzeczenia.ms.gov.pl/content/$N/153510000007503_XV_Ca_000626_2016_Uz_2016-10-14_001) (dostęp: 6.01.2019 r.).

<sup>57</sup> [https://orzeczenia.ms.gov.pl/content/\\$N/155015500000503\\_I\\_Ns\\_000018\\_2015\\_Uz\\_2015-11-19\\_002](https://orzeczenia.ms.gov.pl/content/$N/155015500000503_I_Ns_000018_2015_Uz_2015-11-19_002) (accessed on: 6.01.2019).

the dwelling, due to, amongst other, the fact that the applicant no longer lived in the dwelling in which she had previously cohabited with the alleged perpetrator. In its reasoning, the Oleśno District Court stressed in its decision that the reasons for moving out of the residence are not important. This ruling is not legally binding.

44. The decision of the Oława District Court of 26 February 2015, Ref. No. VI Ns 315/14,<sup>58</sup> which dismissed the application for an order to vacate the dwelling because the alleged perpetrator had already moved out pursuant to an order to vacate the dwelling, so he no longer lived with the applicant at the time of adjudication. The decision was criticized and overturned by the Wrocław Regional Court in a decision of 10 November 2015, Ref. Act II Ca 884/15.<sup>59</sup> The Wrocław Regional Court emphasized that "the literal wording of art. 11 a of the Act on Preventing Domestic Violence points to the requirement of "cohabitation," which should be interpreted as the current (i.e. on the day of ruling) necessity to stay in a given dwelling, though with the intention of permanent residence there, not mere occasional visits. At the same time, the temporary vacation of the home by the tenant as required to fulfil a certain obligation, or due to the occurrence of given factual circumstances, does not indicate that he has moved out of the flat permanently. (...) One should also take into account the functional meaning of the standard in art. 11 a of the Act on Preventing Domestic Violence and the essence of the entire legal act (...). The provisions of the Act on Preventing Domestic Violence aim to (...) prevent situations where victims of violence, as a result of the perpetrator's behavior are forced to flee and leave housing that is their only place of residence. For this reason, (...) there should not be a strict reading of the aforementioned provisions (...)." In addition, according to the Szczecin Regional Court (decision of 21 November 2017, Ref. No. II Ca 571/17),<sup>60</sup> the possibility to order an alleged perpetrator to vacate the dwelling also arises when the victim and the offender no longer physically live together, e.g. although the perpetrator moved out, his property still remains in the home.

45. In the context of fulfilling the elements of cohabitation, courts have also shown various interpretations of the fact that the alleged perpetrator was currently incarcerated. By virtue of a decision of 3 November 2016, the Kalisz Regional Court in, Ref. No. Act II of Ca. 414/16,<sup>61</sup> found no foundation to order the perpetrator to vacate the dwelling when he was in prison. In the District Court's opinion, cohabiting with a perpetrator of domestic violence is another necessary precondition for an order to vacate the dwelling. By contrast, the perpetrator's incarceration did not stop the Giżycko District Court from ordering him to vacate the dwelling (decision of 10 May 2016, Ref. No. I Ns 563/15,<sup>62</sup> not final).

## V.2.D. Conclusions

46. Cases involving applications to order a perpetrator to leave the dwelling are extremely rare, especially when compared the annual number of Blue Card procedures or criminal domestic violence proceedings initiated. This may indicate that domestic violence victims do not see this measure as an effective way to protect their rights. Amnesty International stresses that the formalism involved in submitting an application and pursuing proceedings may be discouraging to victims.<sup>63</sup> The situation is further exacerbated by the lengthy proceedings in these cases, as shown in the above data. The length of the proceedings will be important in people's assessment of whether this measure constitutes an effective guarantee of victims' safety or whether it will be deemed illusory. The Human Rights Commissioner also drew attention to the problematic length of proceedings and need to implement changes that would allow the most rapid resolution of such cases possible. In the Commissioner's opinion, formal recognition of these matters as urgent is a good step, but does not resolve all attendant problems.<sup>64</sup> Indicatively, the Women's Rights Center appealed for legislative changes that would require courts to issue a ruling within 48

<sup>58</sup> Pursuant to the decision of the Wrocław Regional Court dated 10 November 2015, Ref. No. akt II Ca 884/15, [https://orzeczenia.ms.gov.pl/content/\\$N/155025000001003\\_II\\_Ca\\_000884\\_2015\\_Uz\\_2015-11-20\\_002](https://orzeczenia.ms.gov.pl/content/$N/155025000001003_II_Ca_000884_2015_Uz_2015-11-20_002) (accessed on: 6.01.2019).

<sup>59</sup> [https://orzeczenia.ms.gov.pl/content/\\$N/155025000001003\\_II\\_Ca\\_000884\\_2015\\_Uz\\_2015-11-20\\_002](https://orzeczenia.ms.gov.pl/content/$N/155025000001003_II_Ca_000884_2015_Uz_2015-11-20_002) (accessed on: 6.01.2019).

<sup>60</sup> [https://orzeczenia.ms.gov.pl/content/\\$N/155515000001003\\_II\\_Ca\\_000571\\_2017\\_Uz\\_2017-11-21\\_002](https://orzeczenia.ms.gov.pl/content/$N/155515000001003_II_Ca_000571_2017_Uz_2017-11-21_002) (accessed on: 6.01.2019).

<sup>61</sup> [https://orzeczenia.ms.gov.pl/content/\\$N/152505000001003\\_II\\_Ca\\_000414\\_2016\\_Uz\\_2016-11-03\\_001](https://orzeczenia.ms.gov.pl/content/$N/152505000001003_II_Ca_000414_2016_Uz_2016-11-03_001) (accessed on: 6.01.2019).

<sup>62</sup> [https://orzeczenia.ms.gov.pl/content/\\$N/1505151000000503\\_I\\_Ns\\_000563\\_2015\\_Uz\\_2016-07-15\\_001](https://orzeczenia.ms.gov.pl/content/$N/1505151000000503_I_Ns_000563_2015_Uz_2016-07-15_001) (accessed on: 6.01.2019).

<sup>63</sup> Polska wolna od przemocy wobec kobiet (Poland free from violence against women), Amnesty International, Warsaw 2018, p. 27, [https://amnesty.org.pl/wp-content/uploads/2018/02/Polska-wolna-od-przemocy-wobec-kobiet\\_analiza\\_Amnesty-International-2.pdf](https://amnesty.org.pl/wp-content/uploads/2018/02/Polska-wolna-od-przemocy-wobec-kobiet_analiza_Amnesty-International-2.pdf) (accessed on: 6.01.2019).

<sup>64</sup> Letter from the Commissioner for Human Rights to the Minister of Justice of 19 November 2018, Ref. No.IV.7214.110.2018.DZ, <https://www.rpo.gov.pl/sites/default/files/Wyst%C4%85pienie%20do%20Ministra%20Sprawiedliwo%C5%9Bci%20w%20sprawie%20d%C5%82ugotrwa%C5%82o%C5%9Bci%20spraw%20o%20nakaz%20opuszczenia%20lokalu%20sprawcy%20przemocy.pdf> (accessed on: 6.01.2019).

hours and additionally adjudicate restraining orders within that time.<sup>65</sup> Mentioned issues are the topic of internal and analytical works pending in the Ministry of Justice<sup>66</sup>.

47. Furthermore, the courts' diverging interpretations of the factual foundation required to order a perpetrator to vacate the dwelling is also a significant problem. This applies, among others, to the concept of "cohabitation," especially in the context of cases involving victims that flee a shared home from a perpetrator. This issue is crucial in the facts of the present case of A.K. v. Poland pending before the ECtHR. Case law analysis indicates there are some judgments in which courts refused to order a perpetrator to vacate the dwelling when the victim flees a cohabited dwelling for fear of their safety. However, at the same timesome courts have noted that such interpretation grossly violate the purpose of the Act on Preventing Domestic Violence, the very aim of which is to counteract violence and provide support to victims thereof.

48. Considering the above, the legal instrument of ordering a perpetrator to vacate a dwelling does not constitute an effective way to protect the rights and freedoms of victims of violence. This opinion was also expressed by over 65% of lawyers surveyed by HFHR.

## VI. Summary

Bearing in mind the arguments presented, we submit the following conclusions:

- in the case of A. K. v. Poland, the ECtHR has the opportunity to develop standards for the protection of domestic violence victims, in particular in the area of affirmative obligations incumbent on state authorities regarding preventing violence and ensuring safety;
- studies and official statistics show that domestic violence is a serious and ongoing problem in Poland, the scale of which is not decreasing;
- non-governmental organizations, national institutions dealing with the protection of human rights, as well as international bodies and organizations indicate that women experiencing violence are not adequately protected in Poland. This is caused, inter alia, by gaps in legal regulations, insufficient effectiveness of victim protection measures as well as low involvement of judicial authorities in conducting such cases;
- in particular, national legislation includes no measures that allow a perpetrator to be quickly and effectively separated from victims of violence. The preventive measures that can be applied in criminal proceedings do not meet this standard. Further, the prospect of ordering an alleged perpetrator to vacate the dwelling in a civil procedure is not an effective measure to protect victims, especially due to the lengthy duration of such cases;
- state actors' failure to take effective measures to prevent domestic violence, support and protect victims thereof indicates that domestic violence should be treated as a systemic problem in Poland;
- the decision in the case of A. K. v. Poland will be of import not merely to the Applicant, but also for other victims of domestic violence in Poland. In addition, given that the problem is of a global nature, the hope is that the standard developed in this matter will additionally improve the situation of victims of violence in other states.

*The amicus curiae opinion was drafted by advocate trainee Jaroslaw Jagura, lawyer in the Strategic Litigation Programme of the Helsinki Foundation for Human Rights, under the supervision of advocate Katarzyna Wiśniewska, Coordinator of the Strategic Litigation Programme and Dr. Piotr Kłodoczny, Secretary of the Board of the Helsinki Foundation for Human Rights.*

On behalf of the Helsinki Foundation for Human Rights,

*Piotr Kłodoczny*  
Secretary of the Board

*Maciej Nowicki*  
Vice President of the Board

---

<sup>65</sup> Women's Rights Center, Petition to MP clubs regarding the immediate separation of a perpetrator from the victim, <https://cpk.org.pl/petycje/petycja-do-klubow-poselskich-w-sprawie-natychmiastowej-izolacji-sprawcy-od-ofiary/> (accessed on: 6.01.2019).

<sup>66</sup> Letter from the Minister of Justice from to the Commissioner for Human Rights of 3 January 2019, Ref. No. DLPC-IV-053-2/18, <https://www.rpo.gov.pl/sites/default/files/Odpowied%C5%BA%20MS%203.01.2019.pdf> (accessed on: 16.01.2019).

Figure 1

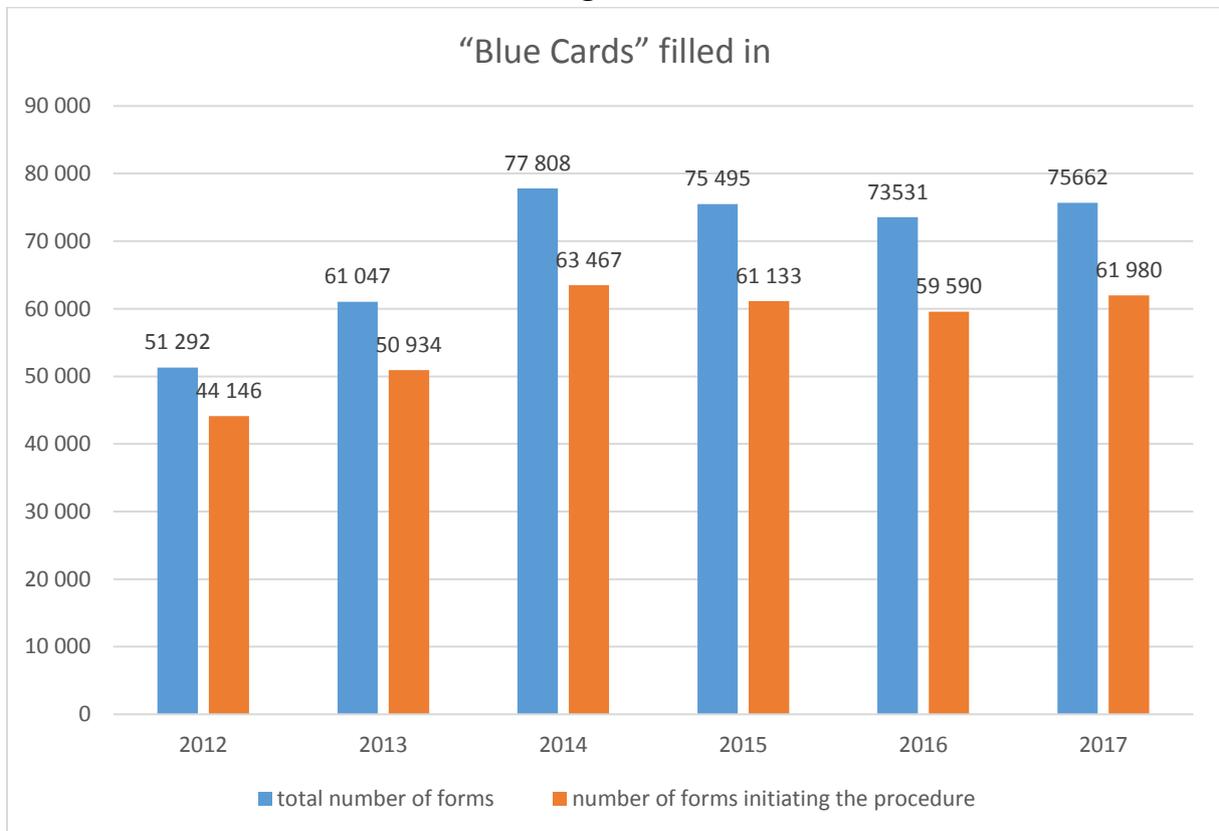


Figure 2

Provincial Police Headquarters	Number of people suspected of domestic violence	Number of people detained as a result of being suspected of domestic violence	Number of people detained against the total of people suspected of domestic violence (%)
Białystok	3846	1684	43.79
Bydgoszcz	4050	989	24.42
Gdańsk	3046	580	19.04
Gorzów Wielkopolski	2202	412	18.71
Katowice	6989	976	13.96
Kielce	3610	466	12.91
Kraków	4738	1841	38.86
Lublin	6036	550	9.11
Łódź	4540	1958	43.13
Olsztyn	5619	1912	34.13
Opole	1649	325	19.71
Poznań	5023	714	14.21
Radom	5306	2454	46.25
Rzeszów	4766	725	15.21
Szczecin	5130	609	11.87
Wrocław	5564	788	14.16
Warsaw Police Department	4092	1192	29.13
POLAND	76206	18175	23.85

Figure 3

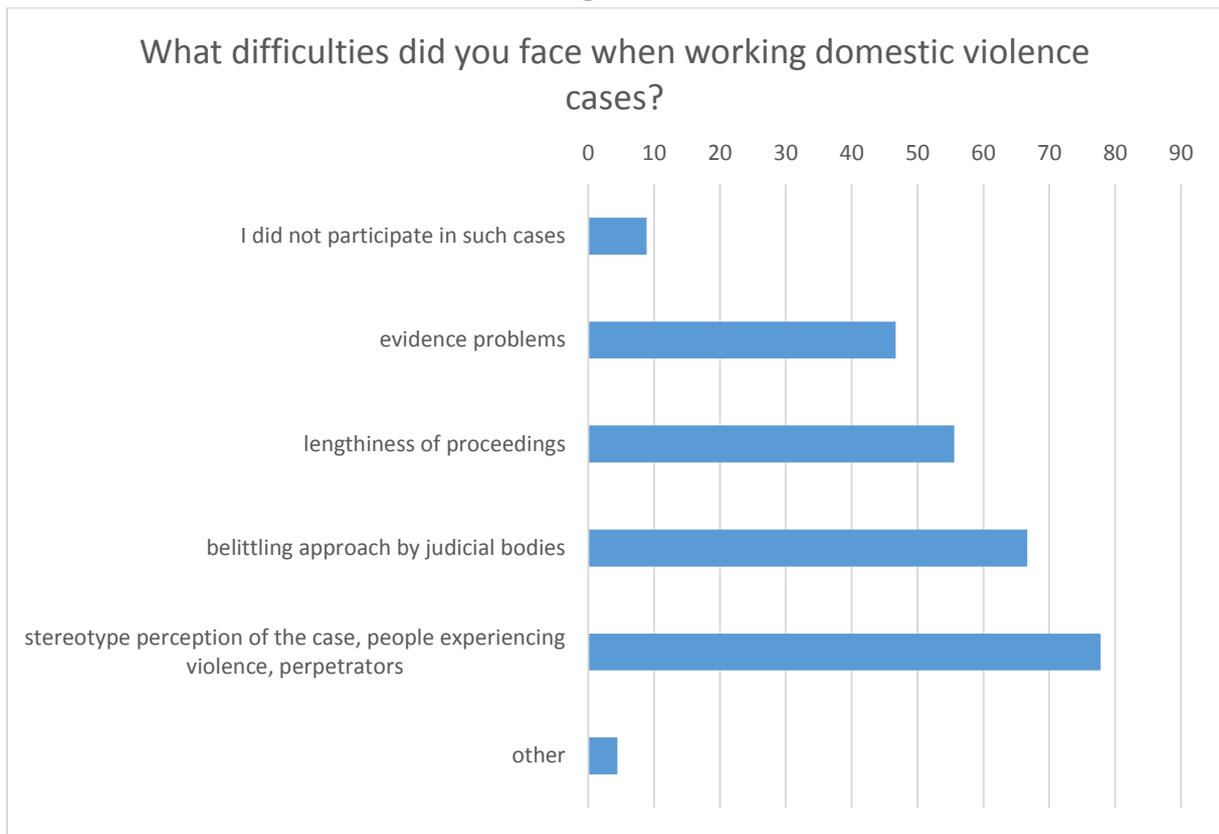


Figure 4

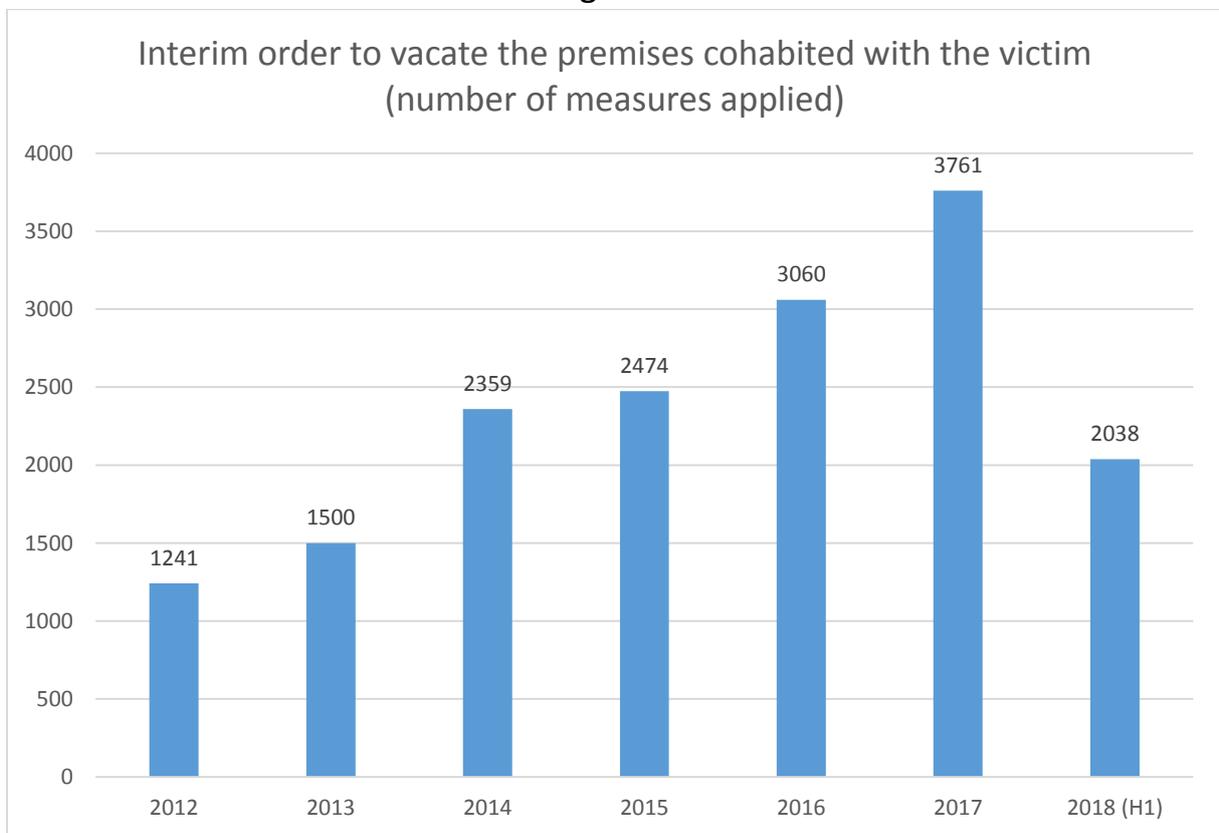


Figure 5

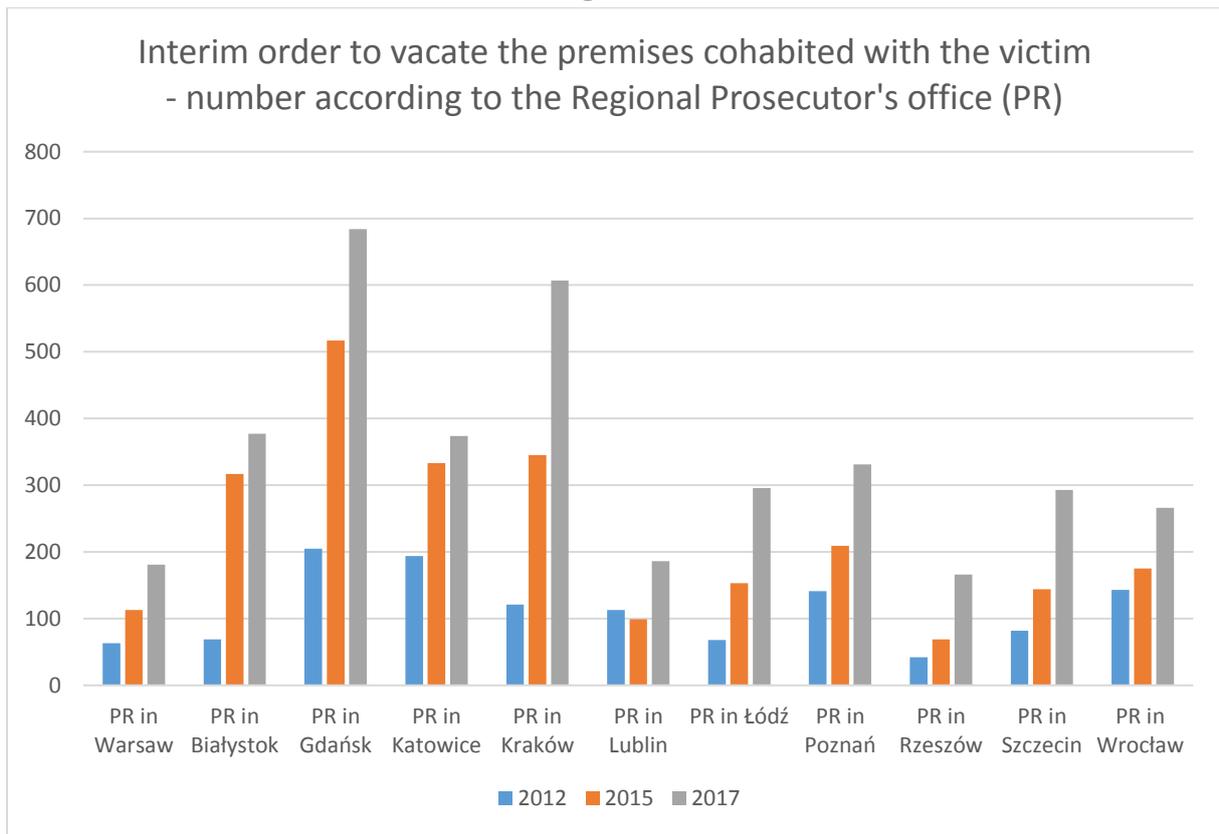


Figure 6

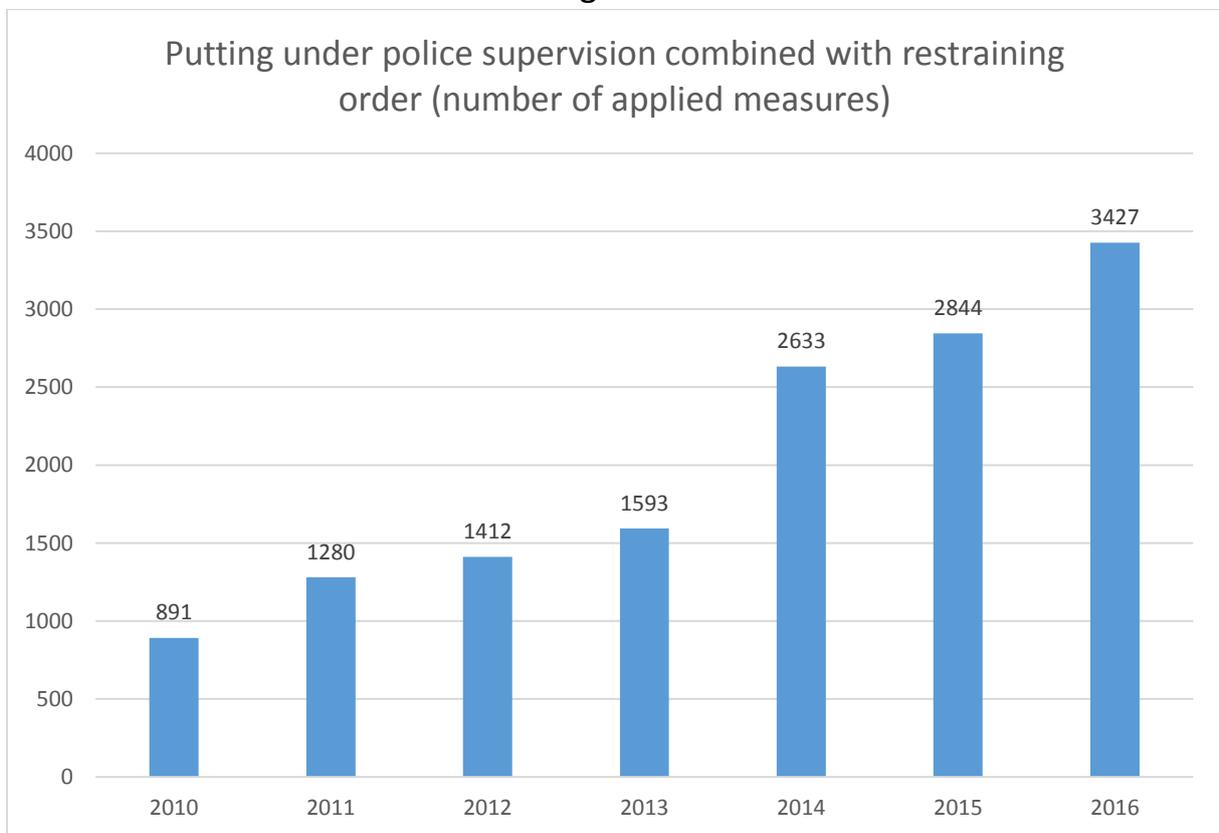


Figure 7

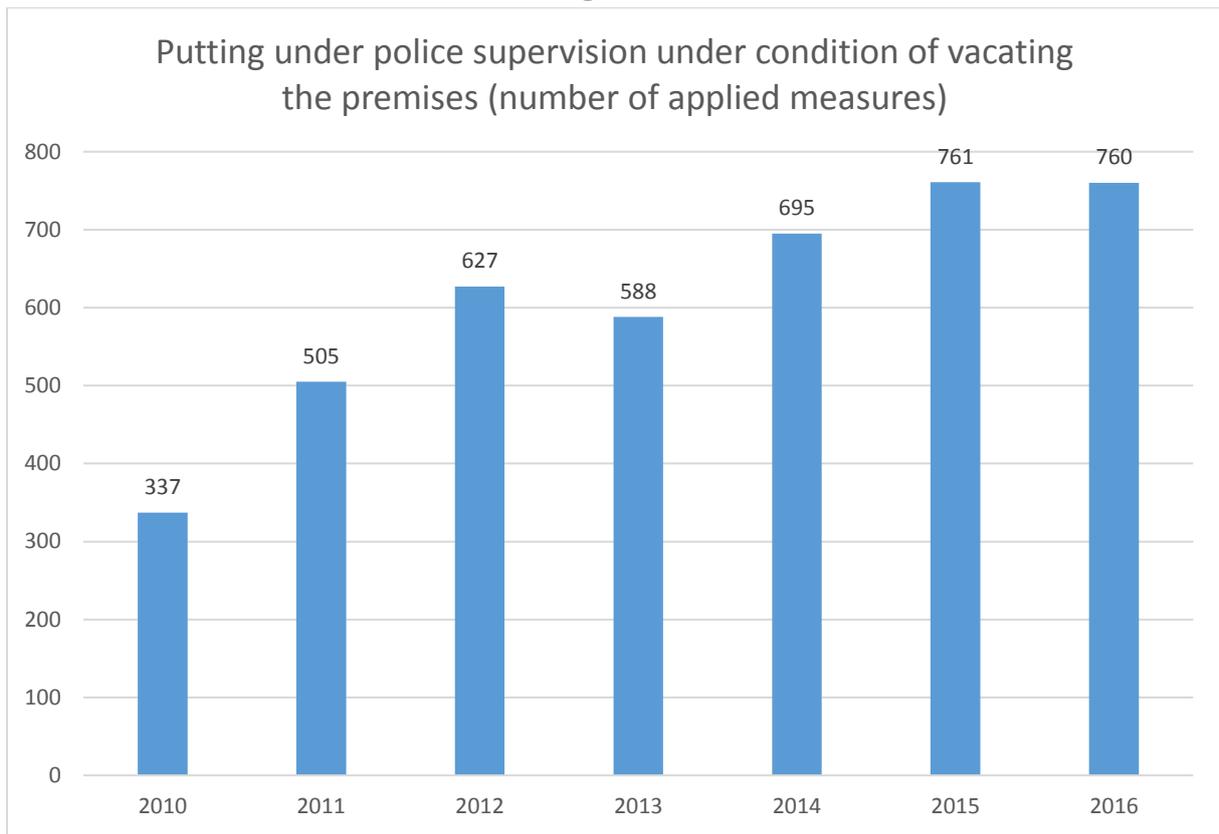


Figure 8

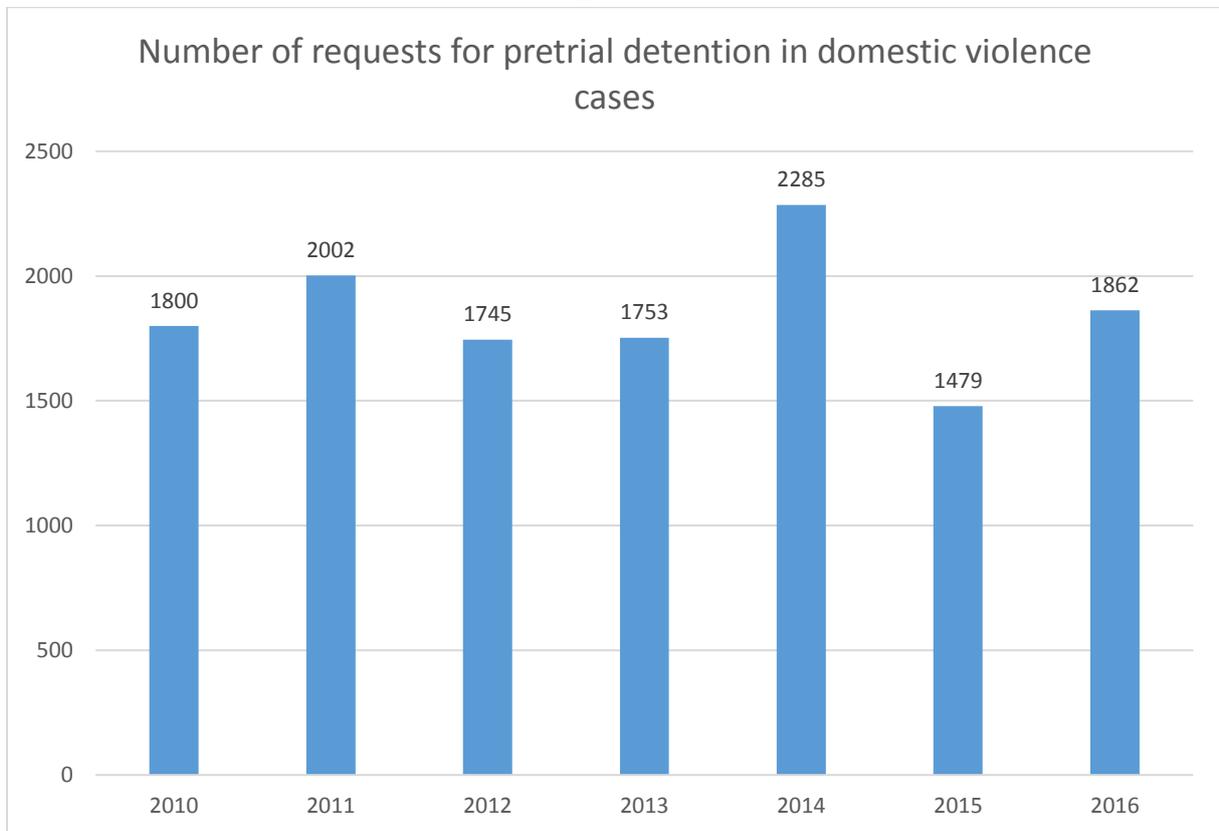
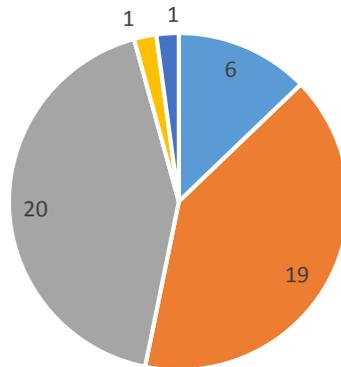


Figure 9

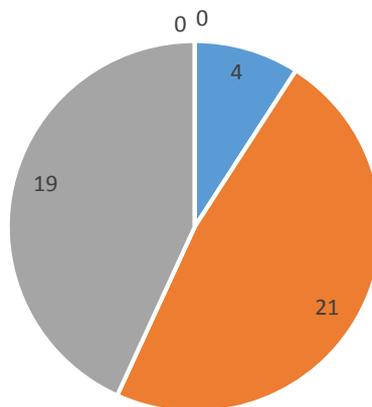
Were preventive measures applied in criminal cases regarding domestic violence in which you participated? - interim order to vacate the premises



- I did not participate in such cases or don't remember
- it was not applied
- in some cases
- in about half of cases
- in the majority of cases

Figure 10

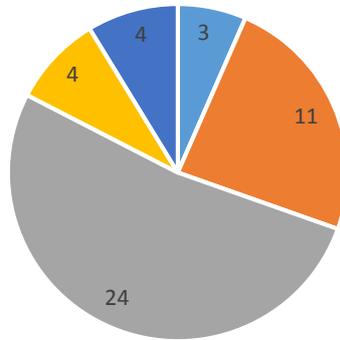
Were preventive measures applied in criminal cases regarding domestic violence in which you participated? provisional detention



- I did not participate in such cases or don't remember
- it was not applied
- in some cases
- in about half of cases
- in the majority of cases

Figure 11

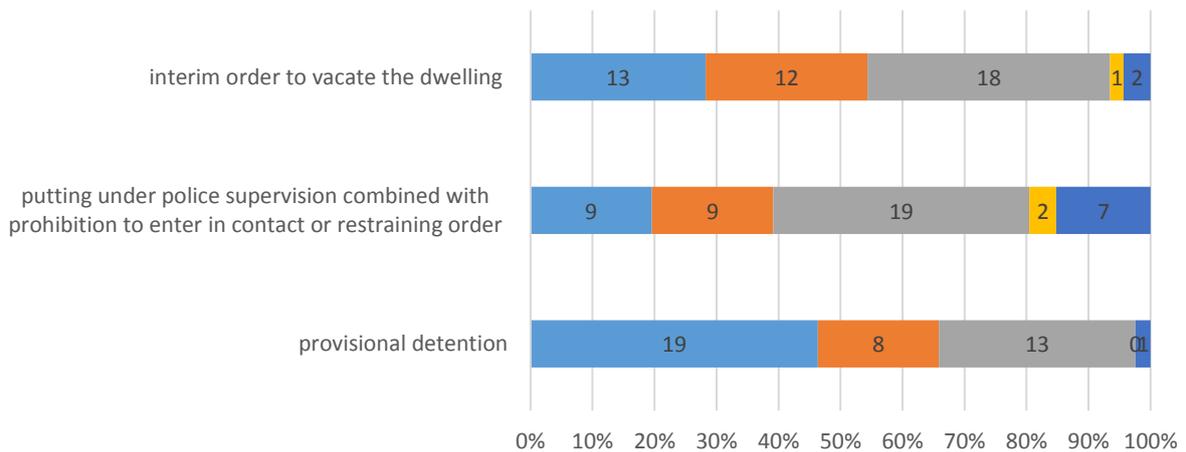
Were preventive measures applied in criminal cases regarding domestic violence in which you participated? - putting under police supervision combined with prohibition to enter in contact or restraining order



- I did not participate in such cases or don't remember
- it was not applied
- in some cases
- in about half of cases
- in the majority of cases

Figure 12

In how many cases was the request approved by applying a preventive measure?



- I did not participate in such cases or don't remember
- in none of cases
- in some cases
- in about half of cases
- in the majority of cases

Figure 13

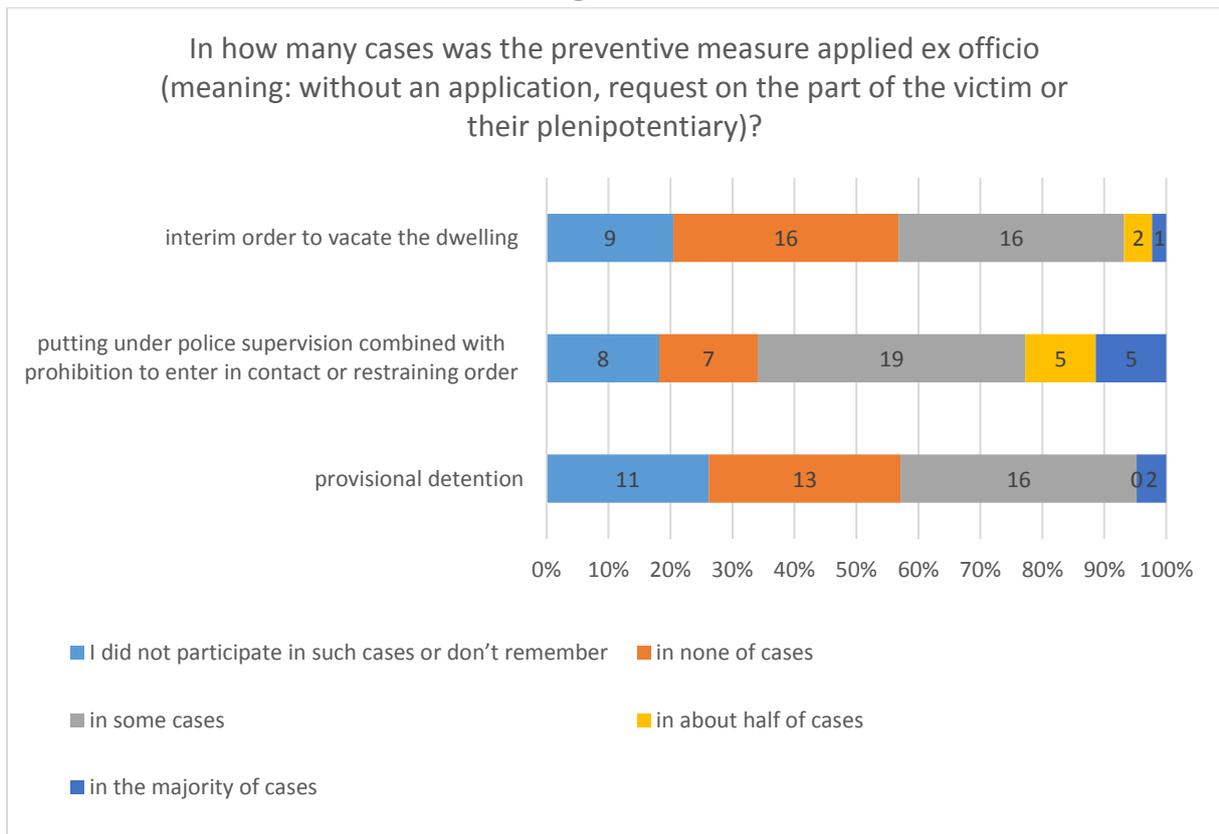


Figure 14

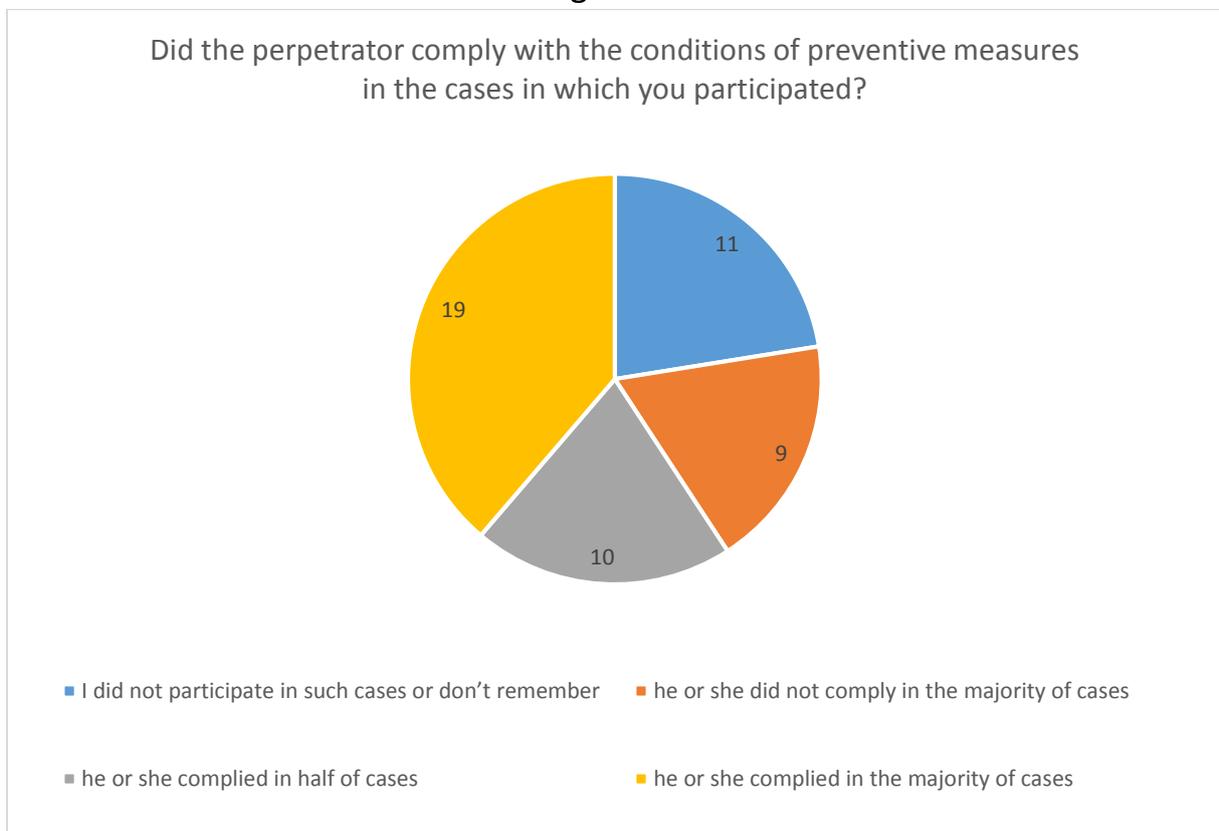


Figure 15

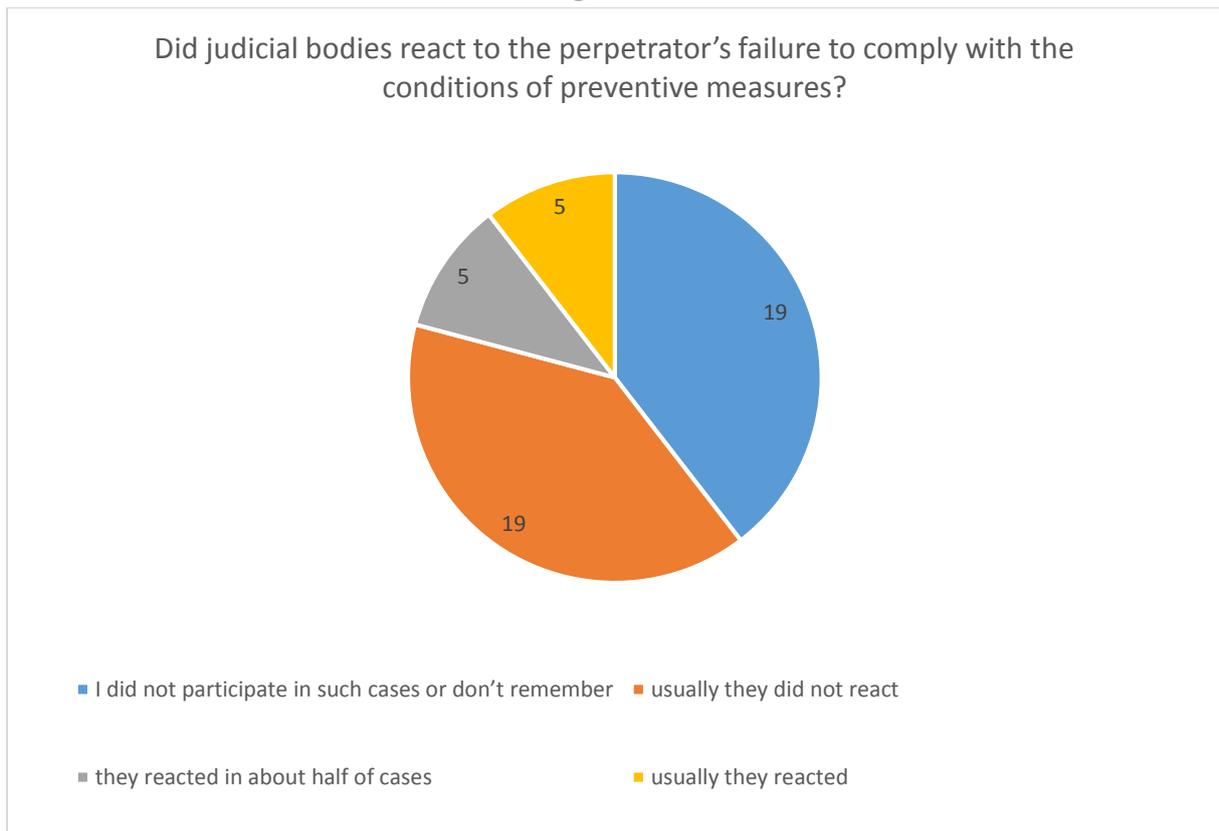


Figure 16

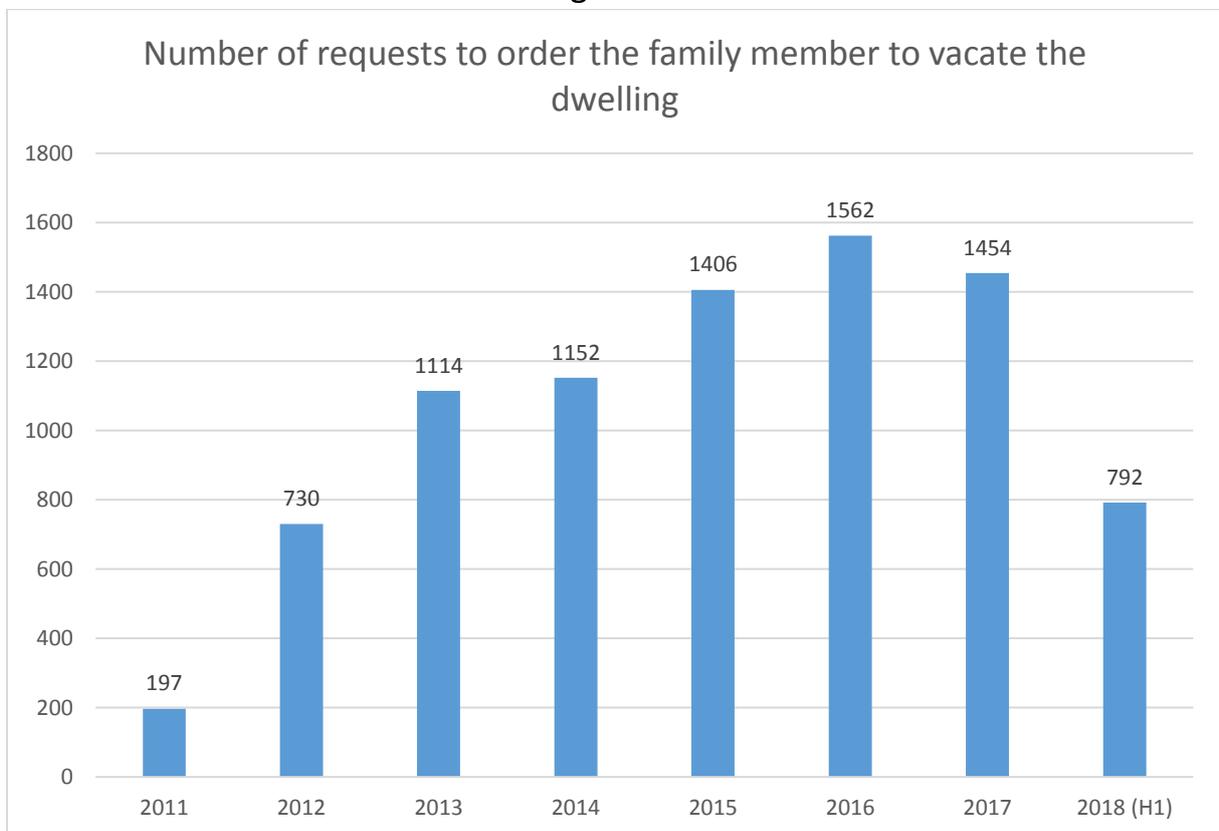


Figure 17

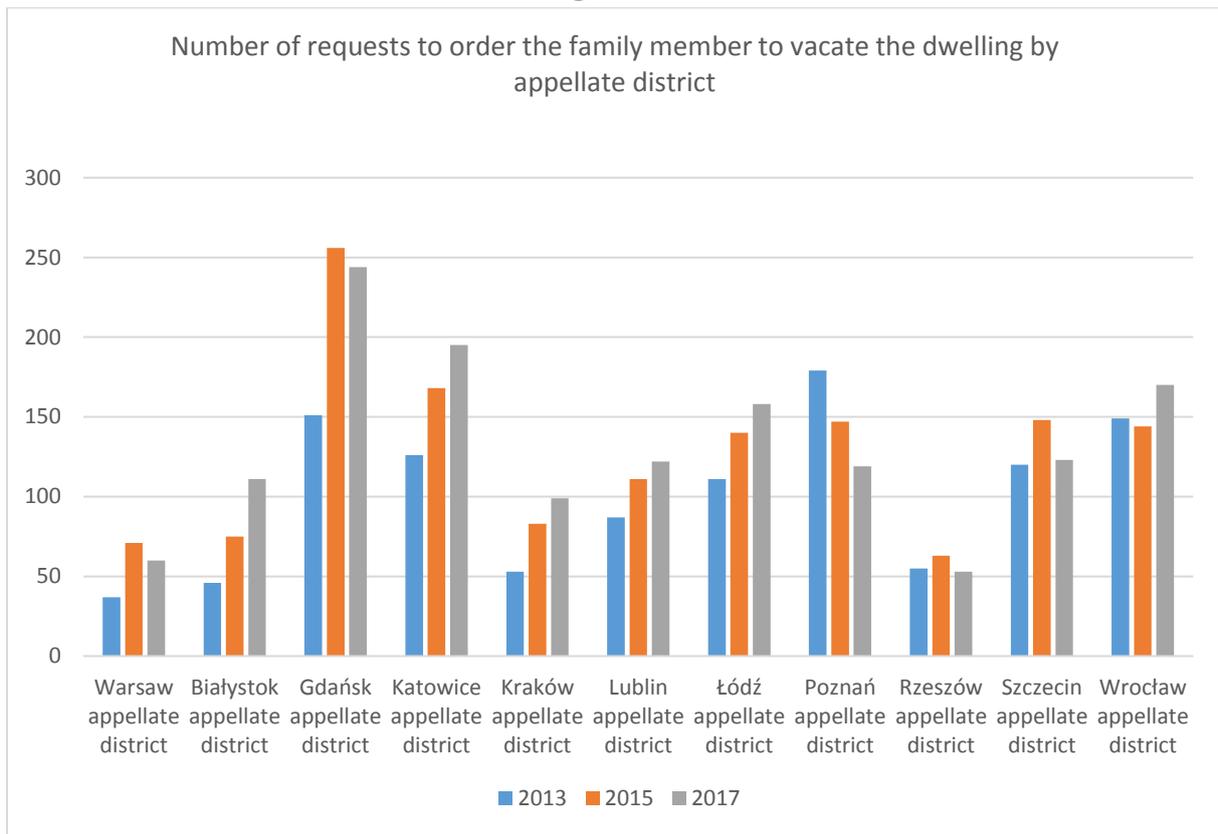


Figure 18

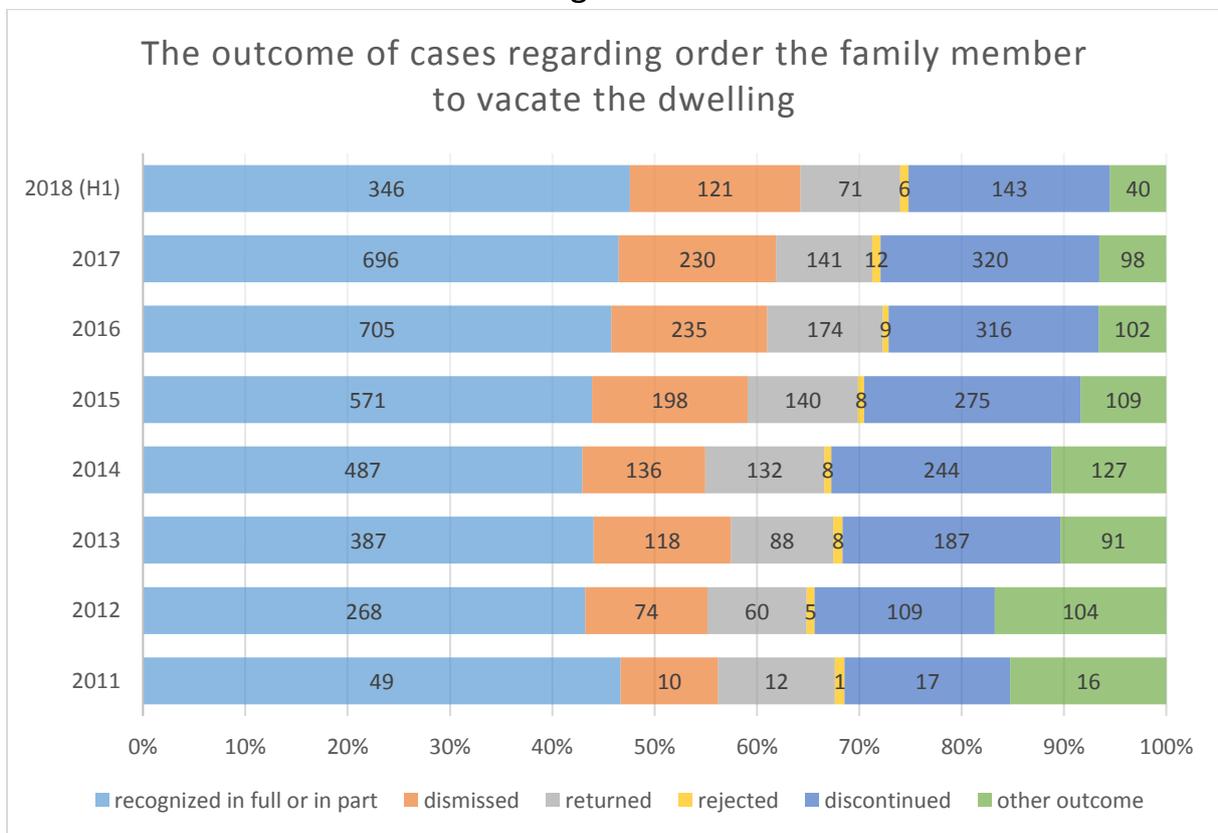


Figure 19

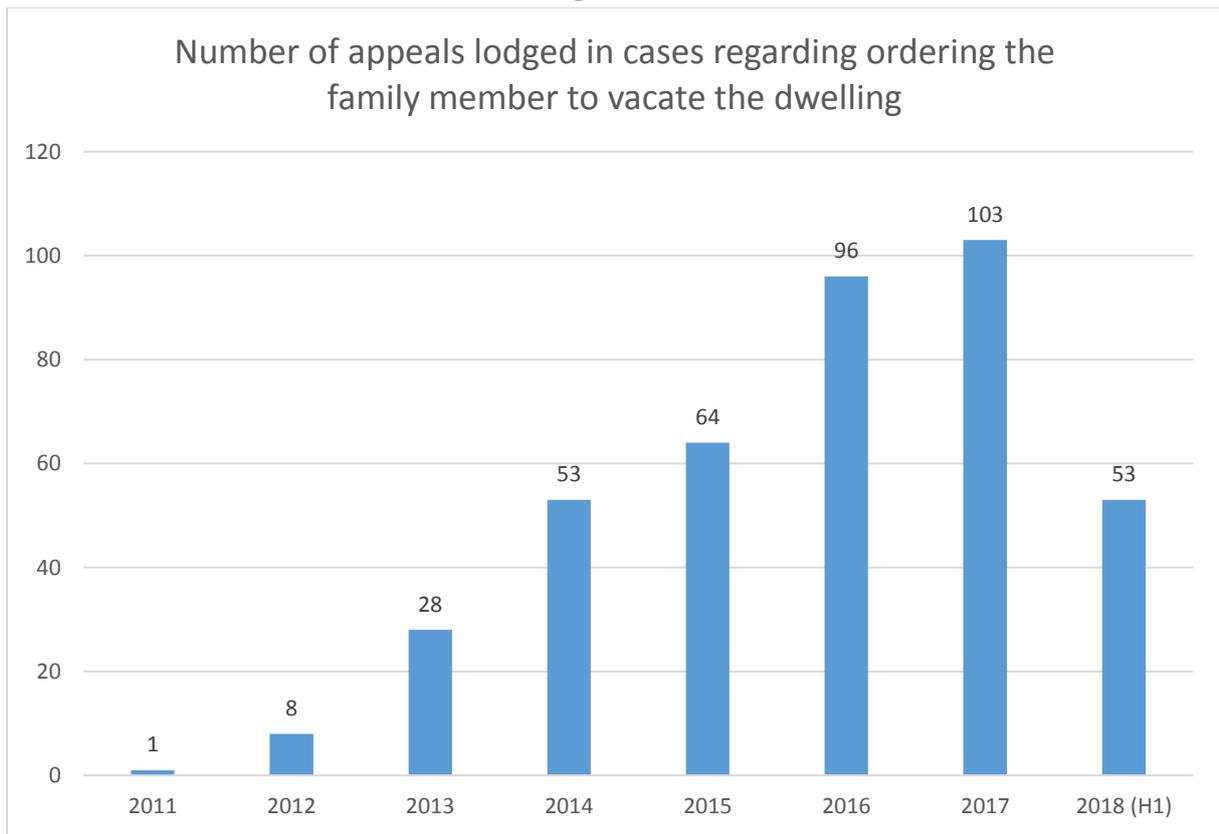


Figure 20

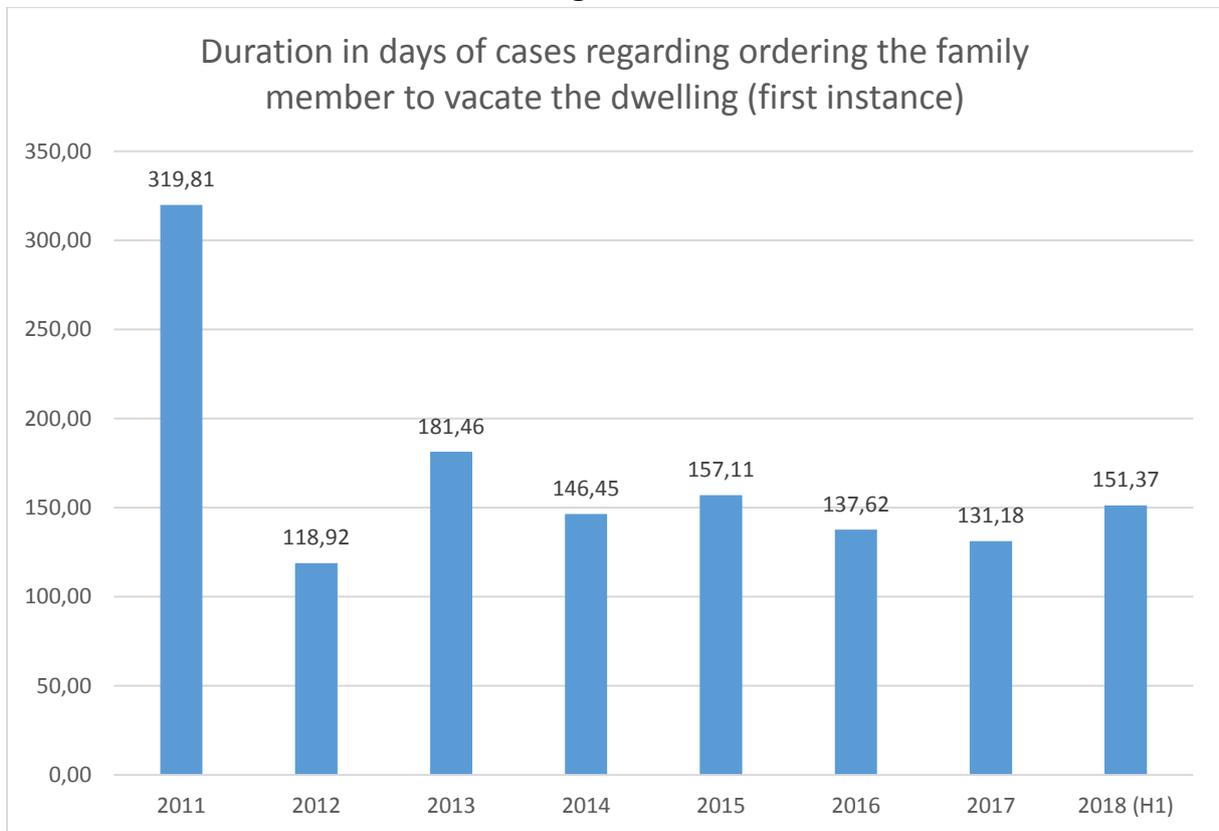


Figure 21

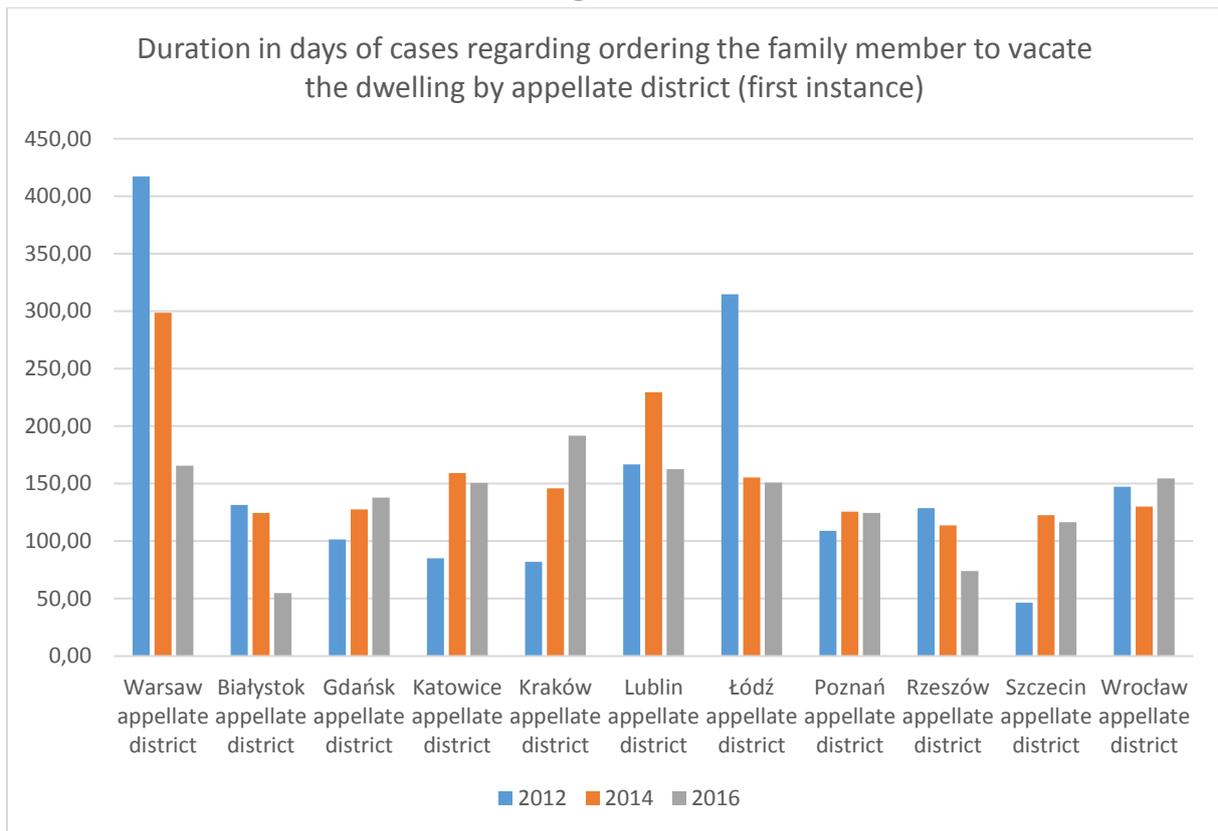


Figure 22

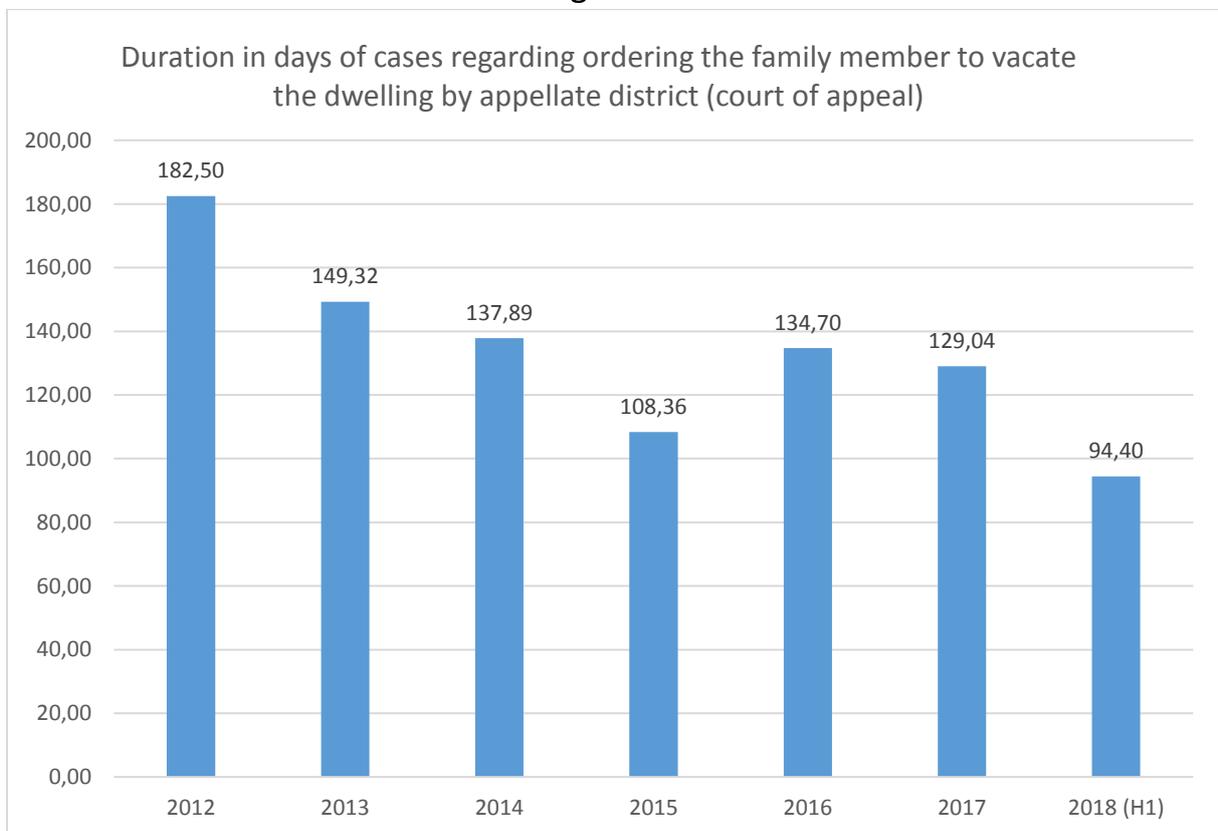
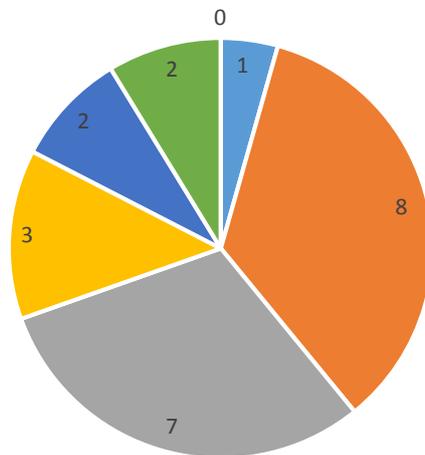


Figure 23

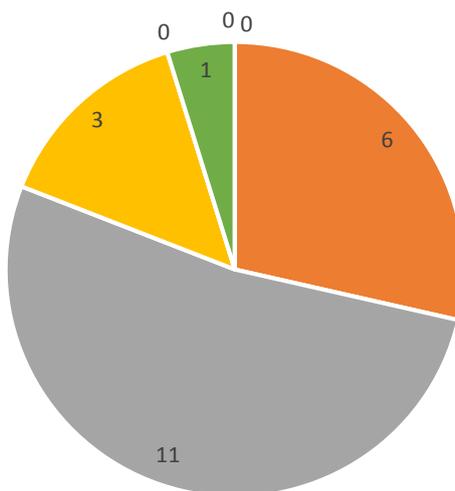
How long did the proceedings in which you took part in cases regarding the order to vacate the dwelling usually take before the court of first instance (from the moment of submitting the request until the ruling of the first instance court)?



■ up to 1 month    ■ from 1 to 3 months    ■ from 3 to 6 months    ■ from 6 to 9 months  
■ from 9 to 12 months    ■ more than 1 year    ■ more than 2 years

Figure 24

How long did the appeal proceedings in which you took part in cases regarding the order to vacate the dwelling usually take (from the ruling of the first instance court to the ruling of the court of appeals)?



■ up to 1 month    ■ from 1 to 3 months    ■ from 3 to 6 months    ■ from 6 to 9 months  
■ from 9 to 12 months    ■ more than 1 year    ■ more than 2 years