

Domestic Violence In Poland



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Women's Rights
Center
Warsaw, Poland



Int'l Women's Human Rights Clinic
At Georgetown University
Law Center

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A Publication of:

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Founded in 1983, Minnesota Advocates for Human Rights is the largest Midwest-based, non-governmental organization engaged in international human rights work. The organization has approximately 4,000 members, including more than 800 active volunteers who contribute an estimated \$1.4 million annually of in-kind services. Minnesota Advocates also has Special Consultative Status with the United Nations.

Minnesota Advocates has received international recognition for a broad range of innovative programs to promote human rights and to prevent the violation of those rights. Minnesota Advocates provides investigative fact-finding, direct legal representation, education and training.

Minnesota Advocates for Human Rights was formerly the Minnesota Lawyers International Human Rights Committee.

The Women's Rights Center in Warsaw, Poland, was founded in December 1994. The Center was created to ensure that a gender perspective is present during the law-making process and in the application of law, and that women and men are equal before the law. The Women's Rights Center is a diligent advocate for equal status and opportunities for women and men in public life and within the family.

The International Women's Human Rights Clinic (IWHRC) was established at Georgetown University Law Center in August 1998. The general mission of the IWHRC is to promote and advance women's human rights throughout the world.

The views expressed herein are not the views of Georgetown University Law Center but solely those of the authors.

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DOMESTIC VIOLENCE IN POLAND

I would like to tell the story about six years of hell—six years of my marriage to a brutal and alcoholic husband. The problems started when I was pregnant. Even though my husband hit me, my son was [born] healthy. After I came back from the hospital with my child, my husband started disappearing for a few days at a time. He always came back while we were sleeping, shouting, "I have come back." He looked for ways to start an argument with me; our son was sick again or the food was not cooked well. He always started quarrelling, hurling abuse at me and beating me.

In 1992, I filed a petition for divorce. One day he threatened to kill me if he were summoned to court. After one argument, I called the police, and they took me to the shelter for battered women. The prosecutor decided to discontinue the proceedings because I lacked serious injuries; I only had bruises and a broken nose. I have never had a forensic examination or [taken] sick leave that the court requires as evidence. I am still waiting for the divorce decision, but it will take a long time. I gave up waiting for the eviction of my husband. I have no chance to go back home.¹

I. PREFACE

Violence against women is one of the most widespread human rights abuses in the world. Domestic violence is a serious problem for women in every country in which it has been studied. Statistics show that two million women in the United States are victims of domestic violence each year.² Judges in Bucharest, Romania, estimate that 60 percent of the divorce cases there involve claims of physical violence.³ Forty-nine percent of Guatemalan women suffer from domestic abuse.⁴ Ten percent of Israeli husbands batter their wives.⁵ In France, 95 percent of assault victims are women, half of whom report being abused by an intimate partner.⁶

¹ CENTRUM PRAW KOBIEC [WOMEN'S RIGHTS CENTER], *Historia Pani M.M.* [The Story of Mrs. M.M.] in ZYWOTY KOBIEC [LIVE WOMEN] 69-71 (2000).

² *Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences*, U.N. Commission on Human Rights, 52nd Sess., Agenda Item 9(a), at 18, U.N. Doc. E/CN.4/1996/53 (1996) [hereinafter *Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences*].

³ *Id.* at para. 61.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

The United Nations recognizes domestic violence as a human rights abuse. In 1993, the UN General Assembly adopted the Declaration on the Elimination of Violence Against Women,⁷ formally articulating its commitment to eradicate all forms of gender-based violence. The Declaration reaffirms a woman's right to be free from violence and calls on member nations to protect that right. The United Nations has also called on governments and nongovernmental organizations (NGOs) to work together to research the nature and prevalence of domestic violence and to develop strategies to eliminate violence against women in the home.⁸

As in virtually all countries, women in Poland suffer from domestic violence.⁹ Surveys of Polish women show that one in six women has experienced violence at the hands of her male partner.¹⁰ The criminal justice system in Poland often fails to apply existing criminal laws in domestic violence cases and women lack civil remedies. Perpetrators, when convicted, usually receive suspended sentences, and economic necessity often forces women to continue living with their abusers.

In March 2001, a delegation from Minnesota Advocates for Human Rights and the International Women's Human Rights Clinic at Georgetown University Law Center visited the Polish cities of Warsaw, Gdansk, and Lodz. The delegation conducted interviews with government officials, judges, prosecutors, police officers, forensic doctors, psychologists, and women's rights activists to investigate the prevalence of domestic violence and the government's response to the problem in Poland. In researching domestic violence, the delegation primarily used the following United Nations definition of domestic violence:

*Domestic violence is the use of force or threats of force by a husband or boyfriend for the purpose of coercing and intimidating a woman into submission. This violence can take the form of pushing, hitting, choking, slapping, kicking, burning, or stabbing.*¹¹

⁷ G.A. Res. 104, U.N. GAOR, 48th Sess., Supp. No. 49, at 217, U.N. Doc. A/48/49 (1993).

⁸ *Id.*

⁹ Although men can also be victims of violence in the home, the majority of domestic violence victims are women. For this reason, this report focuses on domestic violence perpetrated by men against women.

¹⁰ Urszula Nowakowska and Magdalena Jablonska, *Violence Against Women, in POLISH WOMEN IN THE 90'S* 147, 153 (Urszula Nowakowska ed., Women's Rights Center 2000) [hereinafter *POLISH WOMEN IN THE 90'S*] (citing a 1993 and 1996 poll of 1,087 women by the Public Opinion Research Center).

¹¹ See U.N. CTR. FOR SOCIAL DEVELOPMENT AND HUMANITARIAN AFFAIRS, *STRATEGIES FOR CONFRONTING DOMESTIC VIOLENCE: A RESOURCE MANUAL* at 7, U.N. Doc. ST/CSDHA/20 (1993). This definition reflects data indicating that women are the primary victims of domestic violence.

The delegation also documented psychological and sexual abuses as forms of domestic violence to the extent this information was available.¹²

A. Summary of Findings

Domestic violence is a serious and widespread problem in Poland, affecting women from all socioeconomic backgrounds, at all stages of life. Although the Polish government has taken steps to address domestic violence, it remains a grave problem in the lives of many women.

Polish law recognizes domestic violence as a criminal offense, but the legal system does not treat it seriously. Government prosecutors do not charge an isolated incident of abuse as domestic violence unless it results in severe injury. Generally, the only remedy available to victims of violence is to privately prosecute their abusers under criminal assault laws without any state assistance.¹³ Few women pursue these cases.

Officials throughout the criminal justice system demonstrate a deep mistrust of women who report violence. For example, forensic doctors who provide documentation of women's injuries to the court in domestic violence cases routinely question the credibility of the women they examine. Several forensic doctors reported to the delegation that their role is not only to document the severity of the injuries a woman has sustained, but also to determine whether the injuries were actually caused by the reported assault or were "self-inflicted." Prosecutors expressed the opinion that women who plan to divorce their husbands commonly fabricate stories of domestic violence to obtain more-favorable divorce settlements.

Polish officials generally appeared interested in discussing domestic violence and the measures they have taken to combat this problem, including attempts to improve police procedures when responding to incidents of domestic violence. Many officials, however, including police officers, told the delegation that the new procedures are burdensome and are still not adequate to address the problem.

The government response to domestic violence is coordinated through the State Agency for Prevention of Alcohol Related Problems, which bases its policies and programs on the premise that alcoholism causes domestic violence. This premise contradicts international research showing that, although alcohol may be a contributing factor to domestic violence, it is not the cause.

Poland is a party to both the International Covenant on Civil and Political Rights and the Convention on the Elimination of All Forms of Discrimination Against Women.

¹² The United Nations Declaration on the Elimination of Violence Against Women defines violence against women to include "physical, sexual and psychological abuse occurring in the family." G.A. Res. 48/104 (1994).

¹³ See discussion *infra* p. 38 (concerning subsidiary prosecutions, which, although rare, allow a prosecutor to intervene in a private prosecution "if the public interest so requires.")

As a party to these agreements, the Polish government is obligated to ensure that its policies for addressing domestic violence adequately protect the rights recognized in these treaties. In addition, Poland joined the Council of Europe in 1991 and ratified the [European] Convention for the Protection of Human Rights and Fundamental Freedoms. By not adequately addressing the human rights violations resulting from domestic violence, the Polish government is violating the international obligations imposed by these treaties.

As a member of the United Nations, Poland is also responsible for respecting the rights provided for in the Universal Declaration of Human Rights and the Declaration on the Elimination of Violence Against Women. These documents, along with the 1995 Beijing Declaration and Platform for Action, reflect a global consensus on women's human rights and provide guidance for the Polish government's efforts to combat domestic violence. Finally, because Poland has applied for admission to the European Union (EU), it should harmonize its laws and policies regarding domestic violence with EU standards.

Systematic disregard for domestic violence violates international human rights standards. The Polish government's failure to acknowledge the social roles and gender stereotypes that cause domestic violence greatly undermines the effectiveness of any treatment programs or intervention strategies it has tried to implement. In addition, programs that focus on treating batterers' alcoholism without holding them legally accountable for their crimes violate the victims' right to an adequate remedy under international human rights law.

B. Recommendations

Based on the delegation's findings, Minnesota Advocates for Human Rights and Georgetown University Law Center's International Women's Human Rights Clinic recommend the following:

1. The Polish government should take effective measures to protect domestic violence victims' rights to liberty and security of the person, as well as their right to be free from cruel, inhuman, or degrading treatment or punishment.
2. The Polish government should provide adequate remedies when the rights of its citizens are violated. In particular, the government should take the following steps:
 - a. Enforce the Penal Code and prosecute domestic violence offenders;
 - b. Review the rules of evidence to identify and revise or repeal articles that unduly hinder victims' or prosecutors' abilities to bring claims of domestic violence; and
 - c. Establish policies to ensure that judges issue sentences in domestic violence cases and do not suspend the sentences as a matter of course.
3. The Polish government should ensure victims of domestic violence receive equal treatment under the criminal justice system and that perpetrators of domestic violence

receive the same treatment under the Penal Code as perpetrators of violence in other circumstances.

4. The Polish government should analyze its criminal laws to ensure the following:
 - a. That no provision has a disparate impact on women; and
 - b. That all provisions conform to the international human rights standards to which Poland is bound.
5. The Polish government should review the feasibility of developing civil remedies for victims of domestic violence, including the creation of civil protection orders.
6. The Polish government should require police, prosecutors, courts, doctors, and hospitals to collect statistics on the prevalence and nature of domestic violence. These statistics should be catalogued according to the sex of the victim and the sex of the perpetrator.
7. The Polish government should review the effectiveness of existing support services for victims of domestic violence and, where appropriate, work to make these more efficient. In particular, the government should do the following:
 - a. Identify ways to create more affordable housing; and
 - b. Develop economic programs that will provide alternatives to women who stay in abusive relationships for financial reasons.
8. The Polish government should analyze the effectiveness of the existing social services for domestic violence victims. In particular, the government should ensure the effectiveness of the social service organizations to which the state refers victims under both the Blue Card and the Blue Line systems.
9. The Polish government should educate the public about domestic violence. The government should base these efforts on sound research on the causes and consequences of the problem to dispel common myths and misperceptions of the problem.
10. The Polish government should institute domestic violence education and training programs for police, prosecutors, judges, and doctors.
11. The Polish government should support the work of NGOs working to eradicate domestic violence.

II. HISTORY

A. Introduction

Poland is located in central Europe and is bordered by Belarus, the Czech Republic, Germany, Lithuania, Russia, Slovakia, Ukraine, and the Baltic Sea. More than 97 percent of residents are ethnically Polish,¹⁴ although small numbers of Germans, Ukrainians, Byelorussians, and Roma¹⁵ also reside in Poland.¹⁶ Ninety-five percent of Poles are Roman Catholic, with small minorities of citizens practicing other religions, including Eastern Orthodoxy, Protestant Christianity and Judaism.¹⁷ Throughout history, the Polish people have maintained a sense of nationhood and cultural identity despite shifting national borders and partition.¹⁸

After World War II, Poland became a satellite country of the Soviet Union. The United Workers' Party established itself in 1948 and participated in the development of a communist regime under the direction of the Soviet Union.¹⁹ During the communist era, political leaders tried to eliminate the influence of the Catholic Church in people's lives. For example, in the 1960s, the government required couples to marry in civil weddings rather than church weddings.²⁰

B. Recent History of Polish Women

Throughout the nineteenth century, women could neither vote nor participate in Polish public life. In the 1860s, during the literary movement known as positivism, several Polish women's rights activists emerged.²¹ These women included Eliza

¹⁴ See Central Intelligence Agency, *The World Factbook – Poland*, available at <<http://www.cia.gov/cia/publications/factbook/geos/pl.html>> (last visited April. 26, 2001) [hereinafter *World Factbook*].

¹⁵ Interview, March 5, 2001 (NGO representative, Warsaw).

¹⁶ See *World Factbook*, *supra* note 14.

¹⁷ *Id.*

¹⁸ See Peter J. Obst, *Summary of Poland's History* (Oct. 9, 1998), at <http://www.polishworld.com/polemb/english/poland_history.html> (last visited Dec. 10, 2001) [hereinafter *Summary*].

¹⁹ See *People's Republic – 1944* (Oct. 27 2000), available at <<http://www.polandtour.org/history/1944.html>>.

²⁰ Jadwiga Dziegielewska, *The Law and the People: Marriage and the Law; Civil Weddings*, 98 POLISH-AMERICAN J. 13 (2000).

²¹ Literary positivism denotes a movement in which Polish writers focused on practical themes that depicted the “reality” of life for groups, such as peasants and women, whose lives had previously been either ignored or romanticized. Eliza Orzeszkowska's work in particular highlighted the need for women's emancipation. See Polish literature, 10 ENCYCLOPÆDIA BRITANNICA 561 (1997). See also Joanna

Orzeszkowa, who argued for women's suffrage and their right to education.²² Polish women were granted the right to vote in 1918.²³ After World War II, the number of women members of the Polish parliament rose from 2 to 25 percent.²⁴

During the communist era, Polish women enjoyed formal legal, although not actual, equality with men. Throughout this time, the Polish government guaranteed both men and women employment. The era of formal equality created new problems for Polish women with the double burden of managing responsibilities in the home and in the workplace.²⁵ During the 1960s, the Polish government developed protective regulations for women in an attempt to ease their dual burdens.²⁶ These regulations prevented women from working in certain occupations and restricted women from some types of overtime work, often making them ineligible for higher paying employment.²⁷

In 1956, the Polish government granted women a limited right to seek abortions.²⁸ As the Solidarity Trade Union gained power, however, the Catholic Church worked closely with the union to make abortion illegal.²⁹ Although women played an important role in helping the Solidarity movement gain a base of support among the people,³⁰ Solidarity failed to reward them for their efforts. In fact, in 1981, when Solidarity's economic plan included eliminating two million jobs, the union suggested that women and children—rather than men—should lose their jobs, because women could stay at home.³¹

Woycicka and Andrzej Dominiczak, *Education of Women*, in *POLISH WOMEN IN THE 90S*, *supra* note 10, at 83.

²² For more information about Eliza Orzeszkowa, see *Orzeszkowa, Eliza*, 9 *ENCYCLOPÆDIA BRITANNICA* 1021 (1997).

²³ See Malgorzata Fuszara, *Women's Share of Power*, in *POLISH WOMEN IN THE 90S*, *supra* note 10, at 20.

²⁴ *Id.*

²⁵ See Urszula Nowakowska & Anna Swedrowska, *Women in the Labor Market*, in *POLISH WOMEN IN THE 90S*, *supra* note 10, at 41.

²⁶ The Polish Committee of NGOs, *The Situation of Women in Poland*, 22 (March 1995) (unpublished report, on file with authors) [hereinafter *Women in Poland*].

²⁷ *Id.*

²⁸ See Urszula Nowakowska & Maja Korzeniewska, *Women's Reproductive Rights*, in *POLISH WOMEN IN THE 90S*, *supra* note 10, at 220.

²⁹ See Peggy Simpson, *Poland's Morning After: Feminists Fight to Regain Reproductive Power*, 4 *ON THE ISSUES* 36 (1995).

³⁰ *See id.*

³¹ Stefania Szlek Miller, *Solidarity Trade Union, Gender Issues, and Child Care in Poland*, 30 *CANADIAN SLAVONIC PAPERS* 421 (1998).

Extensive public support for the Solidarity Trade Union, which grew out of the 1980 shipyard strikes in Gdansk, threatened the Polish communist government.³² In the fall of 1981, the Polish government imprisoned many Solidarity leaders and declared martial law, making Solidarity illegal and preventing further union activity.³³ Economic instability increased as the standard of living decreased, resulting in a wave of strikes throughout the country, led by the still-outlawed Solidarity Trade Union.³⁴

C. The Polish Transition from Communism

In 1989, influenced by Gorbachev's era of perestroika, Polish government officials invited Solidarity leaders and representatives of other opposition groups to join them in an unprecedented "Round Table" discussion about Poland's future.³⁵ As a result of the Round Table, the government agreed to legalize Solidarity in exchange for Solidarity's agreement to participate in semi-open elections, which guaranteed that the Socialists would maintain a majority of the seats in the Sejm (the Polish parliament).³⁶ Neither side expected the balance of power to shift significantly with the elections. Many Solidarity leaders reluctant to be associated with the Socialist Polish government,³⁷ including Lech Walesa, refused to be nominated. Solidarity candidates, however, won most of the contested seats in the parliamentary elections,³⁸ sweeping 99 out of 100 Senate seats. The result was the election of a non-Socialist government and Prime Minister for the first time in 40 years.³⁹ In 1990, Solidarity leader Lech Walesa was elected president of Poland.

The new government undertook dramatic economic changes⁴⁰ to shift from a centralized economy to a free market economy. It mandated the privatization of many public enterprises, encouraged private and foreign investment, increased exports, and

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ Jan T. Gross, *Poland: From Civil Society to Political Nation*, in EASTERN EUROPE IN REVOLUTION 58 (Ivo Banac ed., 1992) [hereinafter EASTERN EUROPE IN REVOLUTION].

³⁶ United States Library of Congress Country Studies, *Poland: The 1989 Elections and Their Aftermath*, (May 5, 2001), at <<http://lcweb2.loc.gov/frd/cs/pl.toc.html>> (last visited Dec. 10, 2001) [hereinafter *1989 Elections*].

³⁷ EASTERN EUROPE IN REVOLUTION, *supra* note 35, at 60.

³⁸ *1989 Elections*, *supra* note 36.

³⁹ EASTERN EUROPE IN REVOLUTION, *supra* note 35, at 62.

⁴⁰ U. S. DEPT. OF STATE BACKGROUND NOTES ON POLAND (2000).

withdrew many state-provided social services.⁴¹ From an economic perspective, Poland's transition from communism to free market economy, with its relatively low rate of unemployment and large amount of private investment, has been one of the most successful among the former Warsaw Pact countries. This transition, however, has negatively affected the lives of many Polish people, particularly women.⁴² These economic and political changes have contributed to reduced social benefits, increased unemployment, decreased income, and increased poverty. They have led to overt sex discrimination in employment and resulted in a resurgence of traditional attitudes toward gender roles.⁴³

The Polish government introduced restrictive abortion regulations in 1993. These regulations allow for the termination of a pregnancy only when there is a threat to the life or health of the woman or fetus or when the pregnancy is the result of a crime. Even in these circumstances, women must meet strict time restrictions and seek official approval.⁴⁴

III. DOMESTIC VIOLENCE IN POLAND

A. General Overview

Although official statistics about domestic violence are limited, both the interviews conducted for this research and data collected by NGOs confirm that it is a major problem in Poland. Polish women of all ages and socioeconomic backgrounds are at substantial risk of experiencing violence at the hands of their husbands and partners.

Published surveys provide some statistical evidence of the prevalence of domestic violence in Poland. One national poll estimates that 18 percent of Polish women are battered, and 9 percent of Polish women report that their husbands beat them repeatedly.⁴⁵ Estimates among divorced women are higher, with 41 percent reporting repeated abuse and 21 percent reporting sporadic beatings.⁴⁶ Of the women surveyed, 41

⁴¹ Julie Mertus, *Human Rights of Women in Central and Eastern Europe*, 6 AM. U.J. GENDER SOC. POL'Y & L. 369, 376 (1998) [hereinafter WOMEN IN CENTRAL AND EASTERN EUROPE].

⁴² International Labor Organization, *An Impressive Economic Performance*, 33 WORLD OF WORK 20 (2000).

⁴³ WOMEN IN CENTRAL AND EASTERN EUROPE, *supra* note 41, at 376.

⁴⁴ INTERNATIONAL HELSINKI FEDERATION FOR HUMAN RIGHTS, WOMEN 2000: AN INVESTIGATION INTO THE STATUS OF WOMEN'S RIGHTS IN CENTRAL AND SOUTH-EASTERN EUROPE AND THE NEWLY INDEPENDENT STATES 329 (2000) [hereinafter WOMEN 2000].

⁴⁵ See Urszula Nowakowska & Magdalena Jablonska, *Violence Against Women, in POLISH WOMEN IN THE 90S*, *supra* note 10, at 153 (citing a 1993 and 1996 poll of 1,087 women by the Public Opinion Research Center).

⁴⁶ *Id.* at 154.

percent of married women and 61 percent of divorced women reported knowing women who were beaten by men.⁴⁷ These numbers lead women's rights activists to estimate that one in six Polish women is a victim of domestic violence.⁴⁸ One counselor estimated that 30 percent of Polish women experience some form of domestic violence.⁴⁹

Several police officers provided the delegation with unofficial data on domestic violence. Officers in northern Poland in a district of 2.2 million people reported that 2,499 women in that district had been victims of domestic violence in the year 2000, and 2,228 had been domestic violence victims in 1999.⁵⁰ Officers in one Warsaw precinct of 100,000 residents reported that they receive six to seven calls per week reporting domestic violence.⁵¹ Most officers, however, agreed that because many victims do not seek help or report their cases to police, these estimates do not accurately reflect the prevalence of domestic violence.⁵² One police officer noted that in more than 60 percent of the domestic violence cases eventually reported to the police or prosecutor, the victim did not initially call the police or seek police intervention. As a result, intervention statistics from the police reflect only a small percentage of the cases of domestic violence.⁵³

Victims' rights advocates and people who provide support services for victims offered the delegation statistics as well. The national hotline for domestic violence, the Blue Line, registered 5,501 calls in 1998; 7,433 calls in 1999; and 9,962 calls in 2000.⁵⁴ More than 80 percent of the calls had been from women victims of domestic violence. In the first two months of 2001, the hotline had already received more than 2,300 calls.⁵⁵ Another victim's center reported that 1,500 to 2,000 victims of domestic violence seek the services of the center's psychologist, lawyer, or doctor each year.⁵⁶ An attorney at another women's center reported receiving about 10 to 15 new cases each week, 80 percent involving domestic violence.⁵⁷ In the first 10 months of the year 2000, the

⁴⁷ *Id.*

⁴⁸ *Id.* at 155.

⁴⁹ Interview, March 5, 2001 (foundation representative, Warsaw).

⁵⁰ Interview, March 7, 2001 (police officer, Gdansk).

⁵¹ Interview, March 9, 2001 (police officer, Warsaw).

⁵² Interview, March 7, 2001 (shelter coordinator, Gdansk).

⁵³ Interview, March 9, 2001 (police officer, Warsaw).

⁵⁴ Interview, March 7, 2001 (Blue Line Hotline representative, Warsaw).

⁵⁵ *Id.*

⁵⁶ Interview, March 7, 2001 (shelter coordinator, Gdansk).

⁵⁷ Interview, March 6, 2001 (legal counselor, Gdansk).

attorney handled 123 domestic violence cases.⁵⁸

The delegation also interviewed judges, attorneys, prosecutors, physicians, forensic doctors, journalists, and representatives of women's NGOs, many of whom see victims of domestic violence firsthand. One forensic doctor related the story of a newlywed marriage that ended in divorce and life-threatening injuries to the wife:

*A case happened recently, about one month ago, involving the shortest marriage ever. The husband severely battered his new wife on their wedding night because she had smiled at a waiter. He repeatedly kicked her while he was wearing shoes and broke her skull in several places. She was in terrible condition when she got to the hospital. She remained in a coma for several weeks. She suffered a severe concussion to the lower part of her brain. She also had very serious injuries to her internal organs. The beating tore her uterus, and she had internal bleeding.*⁵⁹

Several doctors reported regularly seeing pregnant women victims of violence. A senior gynecologist at a major Warsaw hospital reported that he sees a pregnant woman who has been seriously beaten by her partner at least once a month.⁶⁰ He recounted the following case of a pregnant woman whose boyfriend had beaten her:

*Six months ago, [I treated] a 34-year-old woman with four children who was seven months pregnant. She was in an informal relationship with the father of her children. During a party, three of her partner's friends gang-raped and beat her, and then her partner kicked her all over because she was raped. He completely smashed her face. [The men] left her in the house. Her eldest child, who was eight, called the ambulance. She had six broken ribs and miscarried the fetus. Her stomach was bruised all over when she arrived here.*⁶¹

A doctor in Lodz told the delegation about another woman who had miscarried due to a severe beating:

The woman was seven months pregnant. She received wounds to the fetus and eventually suffered a fetal death. The beating started in the backseat of the car after she had sex with her partner. He pushed her to the back seat of a very small Polish car where there was little space. He punched her in the head, arms, and belly. He pushed her on her stomach with his knees. She managed to crawl out of the car, but he got on top of her while she was lying on her stomach on the ground. He sat on her and jumped many times. She managed to get home, but she had headaches, vomiting, and shivers. She felt her stomach tighten, so she

⁵⁸ *Id.*

⁵⁹ Interview, March 9, 2001 (forensic doctor, Lodz).

⁶⁰ Interview, March 8, 2001 (gynecologist, Warsaw).

⁶¹ *Id.*

*called an ambulance to take her to the hospital. The doctor said that she was in shock. During the sonogram, they saw that the umbilical cord was broken and the fetal heart was not beating. They did a cesarean section, but the baby had died from severe injuries. The baby had a broken skull, bleeding inside its brain, and a swollen liver. The woman was in shock. They needed to remove her uterus. The woman recovered. If not for the loss of her uterus, her injuries would not have qualified as serious. The man was charged with assault and with death of a child. He was sentenced to two years in prison. The prosecutor asked for ten years, but the additional eight years were for the loss of the uterus.*⁶²

One women's rights advocate told the delegation about a woman who was nursing her first-born child when her husband began to abuse her:

*This girl was well-educated, had many hobbies [and] a good job and was economically independent. She met a boy, and they lived together and had a nice time for four years before they got married. The first two years of their marriage were like a honeymoon. When she became pregnant, her husband became controlling. After she gave birth, he hit her on the head for the first time while she was breast-feeding. She was afraid, went into the bathroom, and shouted that she would call the police. He came into the bathroom and severely beat her again. She went to the hospital and needed neurological therapy because she had injuries to her spinal cord.*⁶³

Some women experience violence in the early stages of their relationships or in their early childbearing years but stay in those relationships for many years due to a multitude of legal, social, and economic factors. Women will often endure years of abuse in a marriage before seeking help, if they seek help at all. When women do seek help, they often turn to shelters or women's advocacy groups for assistance. One shelter worker told the delegation of a woman who had sought refuge at the shelter:

A woman came here with two children. She had been married for 13 years. Immediately after her marriage, her husband revealed his true nature. He started to drink and hit her. She thought when she gave birth to their child, the situation would get better. When the abuse happened, she called the police. They said, "We cannot do anything." So she was convinced she could not do anything either. If she got enough courage to report [the violence] to the police and press charges, [her husband] would begin to threaten her, and she would refuse to testify at trial. Years passed and the violence reached the point where she could no longer bear it, her husband would beat her children or beat her unconscious. She ran

⁶² Interview, March 9, 2001 (forensic doctor, Lodz).

⁶³ Interview, March 7, 2001 (shelter coordinator, Gdansk).

*away from home. She just took her purse and the most necessary things. She knew she would never go back home.*⁶⁴

One shelter worker reported the case of a terminally ill woman whose husband psychologically abused her:

*In one case, a woman with cancer was also the victim of violence. The violence took place while she was suffering from the disease. It was mainly psychological violence, but her husband also hit and kicked her once. She had uterine and lung cancer; her husband did not take care of her at all. He [swore at her] and said she belonged in the cemetery. He did not allow her to go outside and limited her contact with her family. She was sick, and he was angry that she was not cooking for him. She came [to the center] extremely depressed, seeking help.*⁶⁵

In addition to providing temporary housing and shelter services, women's groups provide other services such as free legal advice. Women living in violent relationships often view divorce as their only recourse. In one survey, 32 percent of women respondents cited physical abuse as the reason for their divorce; in contrast, only 2 percent of men did.⁶⁶ One legal counselor recounted the case of a woman who had sought the center's legal services to end her 26-year marriage to a naval officer:

*[He] beat his wife from the beginning of their marriage. The woman stayed with her husband because she had no money of her own. He would beat her, kick her, push her into walls, pull her hair, and threaten her with a gun in her face, saying he would kill her. Sometimes, he would beat her until she lost consciousness. The man told his wife that he was going to shoot her. One day, he left her and stopped paying the mortgage. They had two children, ages 17 and 21 years old. The woman had only a secondary school education; she had never worked. At first, she did not call the police, but when her husband came back and beat her, she called the military police twice. They never came. The military police told her that her husband was a good officer. They were afraid of him, so they did not want to come. She did not contact the civilian police. She came to me for help. I helped her write the divorce documents and alimony request. I also gave her the number of a psychologist who works with domestic violence victims. Eventually there was also a criminal prosecution. Her husband was convicted and received a suspended sentence of one-and-one-half years.*⁶⁷

⁶⁴ Interview, March 7, 2001 (shelter coordinator, Warsaw).

⁶⁵ Interview, March 6, 2001 (shelter coordinator, Gdansk).

⁶⁶ See Urszula Nowakowska & Magdalena Jablonska, *Violence Against Women, in POLISH WOMEN IN THE 90S*, *supra* note 10, at 154.

⁶⁷ Interview, March 6, 2001 (legal counselor for women's rights organization, Gdansk).

Even a divorce does not guarantee that the abuse will stop. One shelter coordinator told the delegation about a woman whose ex-husband repeatedly raped her. She bore four children after their divorce, each the product of a rape.⁶⁸

Interviewees reported to the delegation that violence occurs across Poland, but women in smaller and rural communities may have greater difficulties obtaining services. Police reluctance to act and the scarcity of resources available to women in rural areas leave many trapped in abusive relationships, at risk for severe injury and possibly death. One counselor noted, "In big cities, people are more open and willing to talk about domestic violence, but in small villages they are more closed. They think it is a private matter."⁶⁹ Women in rural communities also often lack information about domestic violence programs.

Despite stereotypes in Poland that abuse only happens in lower economic classes, wives of wealthy, prominent, and professional men also suffer abuse. A judge recalled a case of physical and psychological abuse by a medical doctor:

*In one case, the perpetrator was a doctor who had abused his wife for a very long time. He claimed he could not stand living with her. He moved into a camper and parked it outside her bedroom window. He then invited women to the truck and had loud sex with them so that his wife could hear and see what was going on. One morning, he knocked on his wife's door because he needed alcohol. He beat her when she answered, and she fell down the stairs. The court dismissed the case.*⁷⁰

Economic conditions leave many women financially dependent upon their husbands. This dependence creates an obstacle for women seeking help or leaving an abusive relationship. One therapist told the delegation about a woman who continues to be abused by her wealthy husband:

*A prominent businessman has abused his wife for years. He ties her with a bathrobe so no one can hear her scream. The man hits his wife through the robe so there are no bruises. He often locks her in the basement. One night he came home late from a party, and he kicked her in front of their child. He did not abuse alcohol or drugs but he was under stress. She continues to suffer, because she is totally dependent on him financially and is too depressed to try to find a job of her own.*⁷¹

Without an independent means of support, many women feel they cannot leave

⁶⁸ Interview, March 7, 2001 (shelter coordinator, Gdansk).

⁶⁹ Interview, March 6, 2001 (shelter coordinator, Gdansk).

⁷⁰ Interview, March 9, 2001 (criminal court judge, Warsaw).

⁷¹ Summarized from an interview on March 9, 2001 (psychotherapist, Warsaw).

their abusers. Yet even employed and financially independent women often feel reluctant to leave an abusive relationship or stay because they believe the violence will end. One prosecutor recalled a case of severe psychological abuse of a woman seeking financial independence:

One woman was not allowed to make any decisions of her own. Her husband told her what clothes to wear and how to run their apartment. He told her he had paid someone to kill her. He would not let her go to work. She was well-educated and wanted to work at the police station. She finally found a job as a nurse's assistant for the elderly. Her husband told her she could not be worth much if that was the only job she could find.⁷²

Even when women seek help through social service agencies or the legal system, they often continue to suffer violence at the hands of their husbands or intimate partners. A crisis counselor told the delegation the following story in which a woman, whose husband abused her physically, sexually, and psychologically, sought help through the legal system only to discover that it offered her minimal protection:

One woman had prosecuted her abusive husband, but he only received a suspended sentence. The violence continued after the court proceeding. The woman sought help to get the court to execute his sentence. The crisis center initiated a new suit, and the husband finally went to prison briefly. After four months, the prison released him. He continued to abuse his wife. She suffered physical, emotional, and sexual violence. He raped her in the presence of their seven-year-old daughter. He beat her with his fists and other objects. One day, he put a hook on a tree and tried to hang her. She [eventually] divorced him, but she shares parental rights with him.⁷³

Officials throughout the criminal justice system reported cases of severe abuse. In many of these cases, the severity of the abuse increased over time. In some instances, the violence became lethal. One forensic doctor reported the case of a 50-year-old woman whose husband, after years of abuse, killed her when she sought protection from the courts:

She had several [forensic] exams—each time the husband threatened to kill her. She decided to take the case to the police, and they started an investigation. The case ended up in court. The court was about to decide the case and sentence the husband. During the process, however, the husband strangled his wife at their home. The autopsy proved his guilt. She had swelling, bruises, scratches, and wounds from a blunt object. He received a sentence of ten years.⁷⁴

⁷² Interview, March 7, 2001 (prosecutor, Gdansk).

⁷³ Summarized from an Interview, March 6, 2001 (shelter coordinator, Gdansk).

⁷⁴ Interview, March 9, 2001 (forensic doctor, Lodz).

B. Causes and Complicating Factors

There are no simple explanations of the causes of domestic violence. Research indicates that domestic violence has its roots in the subordinate role women have traditionally held in private and public life in many societies.⁷⁵ The United Nations denounces this violence as one of the “crucial social mechanisms by which women are forced into subordinate [positions] compared with men.”⁷⁶

The effort to improve the status of women in Poland has been complicated by political factors. Poland has struggled, as have many other eastern European nations, to redefine itself after years of communism. One Polish feminist commented that, “Since its fall, communism has been recast in the public’s eyes as the dominance of women and the downfall of men, because Polish history defines itself in terms of honor and male values.”⁷⁷ Many Poles link feminism with efforts to rejuvenate communism and the formal equality associated with it.⁷⁸

Since the fall of communism, Poland has experienced a resurgence of conservative religious ideology. Ninety-five percent of Poles identify Catholicism as their religion, and 75 percent report that they regularly practice Catholicism.⁷⁹ Some Poles identify church ideology as the basis for the new social pressure for women to stay at home with their families rather than work.⁸⁰ Some women’s rights activists in Poland suggest that this attitude about the role of women in the family makes women reluctant to report or prosecute domestic violence.⁸¹

As in most societies, many Poles have internalized stereotypical views of women. Some Polish women continue to accept traditional gender-based stereotypes that reinforce their inferior position within the family. In one survey, 30 percent of women in rural areas agreed that women are obligated to provide sex on demand.⁸² Forty-six

⁷⁵For a discussion of the causes of domestic violence, see *Domestic Violence, Report of the Secretary-General*, Eighth U.N. Congress on the Prevention of Crime and the Treatment of Offenders at 8, U.N. Doc. A/Conf.144/17 (1990).

⁷⁶ *Id.*

⁷⁷ Shana Penn, *The Great Debate: When Feminism Hit the Headlines, Poland Hit the Roof*, MS. MAG., Dec. 2000/Jan. 2001, at 16 (quoting Agnieszka Graff, professor of American literature at Warsaw University).

⁷⁸ *Id.*

⁷⁹ *Poland 2001*, at <<http://www.bartleby.com/151/c196>> (last visited Jan. 16, 2002).

⁸⁰ See WOMEN IN CENTRAL AND EASTERN EUROPE, *supra* note 41, at 387.

⁸¹ Interview, March 7, 2001 (shelter coordinator, Gdansk).

⁸² See Magdalena Grabowska & Wanda Nowicka, The Federation for Women and Family Planning, *Attitudes of Rural Women Toward Reproduction Issues: Report on the Survey Conducted by*

percent of respondents indicated that bearing children is also an obligation.⁸³ The emphasis on domesticity for women is evident in symbols such as the selfless *Matka Polka* (Polish Mother), who is honored for sacrificing her own ambitions to fulfill the needs and desires of her family.

These stereotypes reinforce the view that the family is a self-contained unit, deserving privacy at the expense of other rights and freedoms. The Polish Constitution reinforces the significance of family privacy.⁸⁴ For victims of domestic violence, this notion of family privacy often interferes with effective police intervention and prosecutorial decisions in domestic violence cases. Many people interviewed, including police officers, reported that police often regard domestic violence as a minor offense and as a family issue in which police officers should not interfere.⁸⁵

Interviews repeatedly revealed that many in Poland believe the widespread myth that alcohol is the primary cause of domestic violence. A governmental publication articulates this view:

*Some three to four million people live in families that due to habitual insobriety experience violence, neglect, poverty, demoralization and other negative phenomena leading to stress, co-dependence and other personal harm to family members. Surveys among wives of alcoholics indicate that about three-quarters of them have experienced violence.*⁸⁶

In accordance with this view, the Polish government, under the auspices of the State Agency for Prevention of Alcohol Related Problems, initiated a program to address domestic violence.⁸⁷ Funded through a tax on the alcohol industry, this program has helped to reinforce the misperception that Poland's high alcoholism rate is responsible for

RUN, in THE ANTI-ABORTION LAW IN POLAND, THE FUNCTIONING, SOCIAL EFFECTS, ATTITUDES AND BEHAVIORS 93, 96 (Wanda Nowicka ed., 2000) [hereinafter THE ANTI-ABORTION LAW].

⁸³ *Id.* at 97.

⁸⁴ The Constitution contains provisions dealing with the inviolability of the private sphere. Specifically, Article 47 guarantees that “everyone shall have the right to legal protection of his private and family life, of his honor and good reputation, and to make decisions about his personal life.” Article 50 provides that “the inviolability of the home [is] ensured.” And Article 71 §1 ensures that “the State, in its social and economic policy, shall take into account the good of the family....” Taken together, these guarantees may be read to relegate domestic violence to the private sphere and may prioritize the rights of the family above those of individual domestic violence victims. POLISH CONSTITUTION, arts. 50, 71 [hereinafter POL. CONST.].

⁸⁵ Interview, March 6, 2001 (social welfare center representative, Targowek).

⁸⁶ THE STATE AGENCY FOR PREVENTION OF ALCOHOL RELATED PROBLEMS, THE NATIONAL PROGRAMME OF PREVENTION AND RESOLVING ALCOHOL-RELATED PROBLEMS: GOALS AND ACTION PLAN FOR THE YEARS 2000-2005 (2001) [hereinafter NATIONAL PROGRAMME].

⁸⁷ The Blue Line, discussed on pp. 43-44, is a part of the government's alcohol-focused response.

the country's domestic violence problem (and a corresponding belief that treating perpetrators for their alcoholism will make them stop abusing their partners). The director of one district office of the State Agency for Prevention of Alcohol Related Problems estimated that only 3 to 5 percent of domestic violence cases are *not* alcohol related.⁸⁸

Police, prosecutors, doctors, and others share the government's view that alcoholism causes domestic violence. When a survey asked Polish police and prosecutors the question "is male violence against women a consequence of alcohol abuse?" more than 96 percent of men and 94 percent of women answered either "most commonly yes" or "usually yes."⁸⁹ One psychologist suggested that in 95 percent of domestic violence cases, "aggression from alcohol" causes violence and in 5 percent of cases, "the perpetrators have psychological disorders."⁹⁰ A forensic doctor in Warsaw blamed women for not simply putting their drunk partners to bed. He explained:

In general, what happens is the man does not come home on time [and] the woman gets worried. He appears drunk in the morning. She is disappointed and gets very aggressive. It may be a mistake of women that instead of putting the men to bed, they start a discussion and become aggressive. Then the man becomes aggressive and attacks the woman. In my opinion, women could avoid getting battered if they put their husbands to bed instead of acting this way.⁹¹

Advocates in Poland and around the world disagree with the Polish government's assessment that alcoholism causes domestic violence. International studies attribute domestic violence to other underlying factors in the abuser's life. Some of these factors include violence in the home as a child, a belief that violence against women is acceptable, and a desire for personal power. In discussing substance abuse and domestic violence, these researchers conclude that one does not cause the other.⁹² One researcher has explained, "feelings of personal inadequacy or failure may lead a man to both abuse alcohol and use violence to restore the balance of power in the marriage to his favor."⁹³ Said another way, "the link between alcohol and violence may indeed be a spurious one

⁸⁸ Interview, March 6, 2001 (employee, district office, The State Agency for Prevention of Alcohol-Related Problems, Warsaw).

⁸⁹ WOMEN'S RIGHTS CENTER, DOMESTIC VIOLENCE AGAINST WOMEN AND CHILDREN 21 (Andrzej Dominiczak trans., 2000) (unpublished translation on file with the authors) [hereinafter DOMESTIC VIOLENCE AGAINST WOMEN AND CHILDREN].

⁹⁰ Interview, March 9, 2001 (psychologist, Warsaw).

⁹¹ Interview, March 8, 2001 (forensic doctor, Warsaw).

⁹² See Larry W. Bennett, *Substance Abuse and Women Abuse by Male Partners* (1997) at <<http://www.vaw.umn.edu/vawnet/substanc.htm>> (last visited Dec. 10, 2001) [hereinafter Bennett].

⁹³ Holly Johnson, *Contrasting Views of the Role of Alcohol in Cases of Wife Assault*, 16 JOURNAL INTERPERSONAL VIOLENCE 54, 57 (2001) [hereinafter Johnson].

in which masculinity is acted out through both heavy drinking and attacks, and degradation of female partners.”⁹⁴

Indeed, there are many alcoholics who do not abuse their partners. Some alcoholics abuse their wives, but not their employees or strangers. Other people are not alcoholics, but abuse family members nonetheless. One researcher has noted, “abstinent [men] and recovering substance abusers are well-represented in domestic violence courts and batterers’ programs.”⁹⁵ Although alcohol may be present in many domestic violence cases, it is not the cause of the abuse. Rather than an outgrowth of substance abuse, “woman abuse is a choice that men make in a society that supports men’s power and control.”⁹⁶

Advocates recommend that the government address alcoholism and domestic violence as two separate problems with two separate treatments.⁹⁷ One study has concluded that “[a]lthough programs addressing alcohol abuse are no doubt beneficial in many ways . . . unless interventions also aim to . . . alter male attitudes and beliefs in the rightness of male dominance and control over women, they are unlikely to be successful.”⁹⁸

Most people the delegation interviewed also attributed high levels of domestic violence to poor economic conditions in Poland. Although women from all socioeconomic backgrounds experience domestic violence, international research indicates that women who live in poverty may experience higher rates of domestic violence than women of higher socioeconomic status.⁹⁹

A senior gynecologist in Warsaw noted that, “[Poland’s] transition is bad for violence. Violence against women has increased since the transition. Many people are unemployed, it is unsafe on the streets [Before], all people had some work. Now, we have violence, unemployment [and] . . . people are experiencing social degradation that they did not experience before. Democracy means more violence and more unemployment.”¹⁰⁰ He added that, “changes to the Polish education and political

⁹⁴ *Id.* at 69.

⁹⁵ Bennett, *supra* note 92

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ Johnson, *supra* note 93, at 70-71.

⁹⁹ L. Heise, et al., *Ending Violence Against Women*, 11 JOHNS HOPKINS UNIVERSITY SCHOOL OF PUBLIC HEALTH, POPULATION REPORTS 8 (December 1999).

¹⁰⁰ Interview, March 5, 2001 (gynecologist, Warsaw). As noted earlier, Poland’s economic transition has resulted in low rates of unemployment relative to other former Warsaw Pact countries. See pages 8-9. Polish people, however, compare their country’s rate of unemployment, which is currently 15 percent of the population, to the complete employment that they experienced under Communism, and to the

system[s] have been causing an increase in aggression towards women. This change has come about in part [because] the general profile and scheme of family has changed. In addition, the general economic situation of the family has changed, causing the increase in aggression.”¹⁰¹

The leader of a therapy group for domestic violence perpetrators echoed this theme when he attributed the violence committed by members of his group to their precarious economic state. He said, “[The group has] no way to deal with the new reality in Poland. Warsaw and big cities have a 10-percent unemployment rate, but the domestic violence group has a 40-percent rate, so it is a very big problem.”¹⁰²

Economic hardship also affects a woman’s ability to leave a violent relationship.¹⁰³ Although the Polish Constitution requires the government to work to meet the housing needs of the country’s citizens,¹⁰⁴ affordable housing in Warsaw is scarce. Several people in Poland reported that women stay in abusive relationships because they have nowhere else to go. Because cases often linger in the court system for years and because often sentences in domestic violence cases are ultimately suspended, many women are reluctant to bring charges against abusers with whom they must continue to live. This reality affects both divorced women, who must live with their ex-husbands as they wait for financial and property settlements, and married women, who may wish to flee the abuse but have no reasonable alternatives given their lack of economic resources. The concern cuts across all socioeconomic classes. One psychologist noted the following:

*In Poland, there is a problem with apartments. Women are afraid to call the police, because they are afraid the husband will throw them out of the flat and they will be homeless. When a woman calls the police, the outcome is just a more aggressive husband and more injuries.*¹⁰⁵

In addition to economic pressures, social taboos against divorce force women to stay in violent marriages. As a result of these taboos, divorce in Poland is relatively rare. It is most common among people ages 25 to 34 residing in large urban areas and least

current unemployment rates in neighboring countries. Their success when compared to other countries does not prevent the joblessness resulting from their newly -competitive market economy from frustrating many Poles, leading them to attribute various social ills to the transition.

¹⁰¹ Interview, March 8, 2001 (obstetrician-gynecologist, Warsaw).

¹⁰² Interview, March 7, 2001 (therapy group leader, Warsaw).

¹⁰³ This fact is not unique to Poland and is seen around the world.

¹⁰⁴ POL. CONST., *supra* note 84, art. 75 § 1.

¹⁰⁵ Interview, March 9, 2001 (psychologist, Lodz).

common among couples who live in the rural countryside.¹⁰⁶ The difficulties inherent in obtaining divorces,¹⁰⁷ coupled with the lack of affordable housing and available shelters, prevent many domestic violence victims from leaving abusive marriages.

Lack of access to divorce courts and public perceptions about the role of courts further hinder women's abilities to obtain divorces. A recent regulatory change assigned divorce cases to higher-level courts instead of family courts. As there are fewer higher courts in Poland, the change decreases the access that many women, especially those living in rural communities, have to divorce courts.¹⁰⁸ Moreover, even those women able to access divorce courts may be reluctant to use them. As one attorney told the delegation, "People are not used to looking to the court system for help. This is a remnant of the communist period, when courts were not the place to look for justice."¹⁰⁹

IV. POLICE RESPONSE TO DOMESTIC VIOLENCE

A. Overview

Although the decision to prosecute a case ultimately lies with the prosecutor, police are responsible for collecting all relevant evidence for every claim they receive.¹¹⁰

¹⁰⁶ Malgorzata Fuszara, *Divorce in Poland: The Effects in the Opinion of the Divorced*, in FAMILY LAW AND FAMILY POLICY IN THE NEW EUROPE 158 (Jacek Kurczewski & Mavis Maclear eds., 1996) [hereinafter Fuszara].

¹⁰⁷ The Polish divorce procedures focus on maintaining the family unity. For a detailed discussion of these provisions, please see the section entitled "Civil Law," at pp. 38-41.

¹⁰⁸ See Fuszara, *supra* note 106, at 157. Fuszara notes that 282 family courts oversaw divorce cases in 1990, before the jurisdictional change, while in 1993, only 44 higher courts were able to preside over such cases.

¹⁰⁹ Interview, April 12, 2001 (Polish lawyer, Washington, DC).

¹¹⁰ POLISH CRIMINAL PROCEDURE CODE, art. 308, §1. *Within the limits necessary to secure evidence of the offence against loss, distortion or destruction, the Police in cases not amenable to delay, may always carry out the necessary inquiries. This can be done even before the issuance of the order on the institution of the investigation or inquiry and they can in particular inspect, if necessary, with the participation of experts, conduct searches and effect the other action set forth in Article 74 §2 subsection (1) with respect to the suspect, and undertake all other necessary actions, including taking blood and excretory samples for tests. Upon completing such activities in cases in which investigation is mandatory, the person conducting the inquiry shall refer the case to the state prosecutor without delay.*

§2. *In cases not amenable to delay, and particularly if delay might result in the effacing traces of evidence of an offence, a person suspected of committing the offence may be examined as a suspect prior to the issuance of an order on the presenting charges, if there are grounds for the issuance of such an order. The examination shall begin by informing the suspect of the contents of the charge.*

§3. *In cases specified in §2 the state prosecutor shall, not later than 5 days from the date of the examination, issue an order on the presentation of charges, or by refusing its issuance, shall discontinue the proceedings with respect to the person examined.*

§4. *The actions referred to in §1 and 2 may only be conducted within 5 days of the first action.*

§5. *In cases specified in §1 and 2 the duration of the investigation or inquiry is calculated from the day of the first action [hereinafter POL. CRIM. PROC. C.].*

In practice, because of the low priority accorded incidents of domestic violence, many police do not investigate these crimes until it is apparent that the prosecutor's office intends to pursue an action.¹¹¹ According to a pilot study, almost 40 percent of police officers surveyed reported that they did not believe the law should recognize "repeated battery with serious health consequences for the victim" as domestic violence.¹¹²

Interviewees reported that police officers often blame women for provoking their drunken husbands to become violent.¹¹³ In the pilot study involving police and prosecutors, 33 percent of male police and prosecutors responded that victims, through their behavior, contribute to the violence they suffer at the hands of perpetrators.¹¹⁴ Another 60 percent responded that victims contribute to the violence "to a certain degree."¹¹⁵ Mental health care workers reported that police officers responding to the scene often blame women for perpetuating the abuse through their decision to stay with a batterer.¹¹⁶

Police do not receive instruction about domestic violence during their official training. NGOs and women's advocacy groups have begun to host training sessions of their own, but the training is not mandatory, and few officers participate.¹¹⁷ Often, police responding to a domestic violence call do little more than take the perpetrator to a detoxification center if he is inebriated, where he is confined overnight at the family's expense. Police do not always arrest the perpetrator after he has become sober, leaving women vulnerable to continued abuse when the man returns home.

Many interviewees reported that even when women do call the police, officers in both rural and urban communities feel apprehensive about getting involved. An attorney in Gdansk noted, "sometimes [the police] know the family and they decide not to intervene. The police know the neighborhoods and the families, so when there are minor incidences or a house with a history of domestic violence, they do not bother to go to the house."¹¹⁸

A psychologist in Lodz, one of the largest cities in Poland, detailed one story in

¹¹¹ See e.g., Interview, March 6, 2001 (police officer, Warsaw).

¹¹² DOMESTIC VIOLENCE AGAINST WOMEN AND CHILDREN, *supra* note 89, at 21.

¹¹³ Interview, March 8, 2001 (forensic doctor, Warsaw).

¹¹⁴ DOMESTIC VIOLENCE AGAINST WOMEN AND CHILDREN, *supra* note 89, at 28.

¹¹⁵ *Id.*

¹¹⁶ Interview, March 8, 2001 (psychologist, Gdansk).

¹¹⁷ Interview, March 9, 2001 (police officer, Warsaw).

¹¹⁸ Interview, March 6, 2001 (legal counselor, Gdansk).

which resources were available, but the police and prosecutor nevertheless declined to move forward with the case:

While they were walking, the husband attacked his wife. He kicked her and beat her very seriously. He broke her jaw and broke her arm. The man and his wife returned home, while the children were sleeping. The woman called the police. She tried to convince them to arrest her husband, but they were not interested. So she called for an ambulance to take her husband to the psychiatric hospital. After one month, she decided to take her husband home from the hospital. She wanted to charge him in court because he had injured her. Later, the man beat his wife because she told him he should not look at attractive women on the street. Again, the police did not come. The woman went to the forensic doctor and paid for the exam herself. The prosecutor refused to prosecute the case, because he said there was no evidence.¹¹⁹

Many rural communities lack detoxification centers,¹²⁰ a condition that exacerbates the problem of police inaction. The absence of a detoxification facility may lead police to simply verbally reprimand a drunken abuser or merely question him before releasing him.

Even when women and the local authorities have access to remedies or services in their communities, the remedies may not be enough to avoid tragic consequences. One women's advocate reported a case in which inadequate police action contributed to a woman's murder:

In a small village about 60 kilometers from Warsaw, a man got drunk and killed his wife. Before that, he had tried to kill his wife with a knife. She had called the police, and the police came. It was a small village so everyone knew what was going on. The police came and took him to the police station, but they did not arrest him. They just told him not to go home that night. He did not go back that night. He went back early in the morning and killed his wife and severely wounded his older daughter.¹²¹

Some police officers who have participated in training programs on domestic violence have begun to use new investigative practices to address issues specific to domestic violence. One police officer who participated in extensive training noted that he approaches a scene and gathers evidence as if the victim were dead, because it is likely that she will refuse to testify against the abuser.¹²² These procedures are not, however, widely practiced. Generally, if the victim is the main witness and she refuses to testify,

¹¹⁹ Interview, March 9, 2001 (psychologist and psychiatrist, Lodz).

¹²⁰ The Polish word for these facilities literally translates as "sobering detention center."

¹²¹ Interview, March 4, 2001 (women's rights advocate, Warsaw).

¹²² Interview, March 9, 2001 (police officer, Warsaw).

the case will not be prosecuted.

B. The Blue Card (*Niebieska Karta*) System

The Polish government created a mandatory social program meant to standardize the procedure for police interaction with families experiencing domestic violence.¹²³ The “Blue Card” program requires police to complete specially designed cards when they respond to domestic violence calls or, as some police officers call them, “home interventions.”

The Blue Cards are separate from the police reports that officers must complete to initiate a criminal investigation. The Blue Card is divided into four parts, designated by the letters A through D. The A and B cards document the incident. The A card is a report of a concluded home intervention, and the B card consists of the police notes made at the time of the intervention. The C card contains information about local assistance centers and programs, and the officer gives this card to the victim at the scene. The law requires officers, in addition to giving victims the C card, to contact local “Social Service Centers” and consult with social workers. Together, the officers and social workers track whether the victims have contacted any support agencies, determine a date for a joint visit to the family residence, and develop a “help plan” for the family.

The D card is a “help request,” which the victim has the option to sign and return to the responding officer. According to a publication of the State Agency for Prevention of Alcohol Related Problems, “signing [the D card] request should motivate the victim to actively and consciously pursue help.”¹²⁴ Thus, the “help request” is geared toward assisting the victim in contacting the social support agencies, rather than initiating a police investigation. An individual affiliated with the Blue Card system in Warsaw stated that the victim’s decision whether or not to fill out the D card has no bearing on whether the police either investigate her claim or attempt to put her in contact with social service agencies. Rather, he contends that the D card is a formality that may be eliminated in the near future.¹²⁵

Regardless of the motivation behind the D card, activists worry that it may mislead both victims and police. One attorney stated, “The ‘Request for Help,’ which should be filled out by a woman victim of violence, suggests that domestic violence is prosecuted upon the request of a victim, which is not consistent with existing law. It may strengthen the false but widespread belief held by many police that they are not obligated to proceed without a victim’s request.”¹²⁶

¹²³ “Blue Cards,” a joint effort of the National Police Headquarters and the State Agency for Prevention of Alcohol Related Problems, became obligatory on October 1, 1998 by the order of the Commanding Officer of the National Police Department.

¹²⁴ NATIONAL PROGRAMME, *supra* note 86.

¹²⁵ Interview, March 7, 2001 (Blue Card official, Warsaw).

¹²⁶ Interview, March 4, 2001 (lawyer, Warsaw).

The structure of the Blue Card system vests significant responsibility in individual officers to participate in the social services plan. Police officers in several cities reported routinely filling out the Blue Card.¹²⁷ Only one officer interviewed, however, stated that his precinct fulfilled the program requirements by checking back with the family within the following month.¹²⁸ Another officer, who admitted that such follow-up visits do not occur in his precinct, told the delegation that the visits were impractical, because police are too busy to check in with families that report abuse.¹²⁹

Many factors, such as the pressure of their criminal caseloads and, in some instances, the attitude that families should deal with domestic violence without state interference, prevent officers from doing more than cursorily completing the Blue Cards and filing them.¹³⁰ As a result, some police suggested that the Blue Cards simply duplicate paperwork. In other areas, however, the failure of the local police to comply with the Blue Card program is even more pronounced. For example, several officers reported that the cards were not even used in their precincts.

One police chief reported the following:

*[The Blue Cards are] just one more obstacle to go through. [They are] the same as the official report, and the Blue Card is glued to the back of the official report and has nothing more in it than in the official report . . . It does not really matter what color the card is . . . what we do is go to houses and answer calls and try to deal with domestic violence. We do not like [the Blue Card], because [we] have to fill it in and it is mandatory.*¹³¹

C. The STOP Domestic Violence (*Stop Przemocy Rodzinnej*) Program

Although the Blue Card system is mandatory, it is only the baseline of service that each district must provide to domestic violence victims and their families. Individual precincts can institute programs that offer additional services. For example, the Targówek precinct in the Praga district of Warsaw has created its own program, called Stop Domestic Violence. Targówek's coordinated community response program is one of the first in Poland to affirmatively seek out families experiencing domestic violence. Police officials, prosecutors, and social services personnel in that precinct were enthusiastic about their program.¹³²

¹²⁷ Discussed under "Social Response" section, *infra* pp. 43-45.

¹²⁸ Interview, March 8, 2001 (police officer, Warsaw).

¹²⁹ Interview, March 9, 2001 (police officer, Warsaw).

¹³⁰ Interview, March 8, 2001 (police officer, Warsaw).

¹³¹ *Id.*

¹³² Interviews, March 5, 2001 (prosecutor, Warsaw); March 6, 2001 (community response program employee, Warsaw); and March 6, 2001 (police officer, Warsaw).

Officials in Targowek designed Stop Domestic Violence to address what they perceived to be problems with the Blue Card system, specifically the lack of mandated follow-up and effective preventive measures. These officials were concerned that police routinely disregarded the program, failing both to fill out the cards and to conduct follow-up visits. Moreover, these officials believed that officers needed to be more proactive in combating domestic violence. One of the creators of Stop Domestic Violence reported the following:

*The Blue Card system means simply that the head of the district visits the victim at home from time to time. When police go to the intervention, they fill in papers. Stop Domestic Violence originated because the Blue Card system was ineffective. Police fill out papers; the head of the district visits [and] that is all. We had the idea to start an efficient system. Stop Domestic Violence is broadly developed from the Blue Card system but is more effective.*¹³³

Unlike the Blue Card system, Stop Domestic Violence seeks out victims of domestic violence by sending patrol officers into area neighborhoods. These officers, who are assigned to the “Prevention” department, leave pamphlets bearing the contact information for the head of the Prevention department, the head of the Social Alcohol Center, and a local telephone hotline. When police designate a particular family as “at-risk” for domestic violence, officers place that family on a special list of similarly situated families. If and when the precinct receives a domestic violence call about a family on the list, the program requires that they respond immediately because of the known risk present in that particular family.¹³⁴

After leaving the pamphlet, the officers document their suspicions and attempt to persuade both the victim and the perpetrator to join locally sponsored support groups. The decision whether to join these groups, which are the core of the Stop Domestic Violence program, is made by the victim and perpetrator, both of whom can decline to participate.

Additionally, a counseling group for perpetrators meets in the Targowek police station to emphasize to the participants that the police will monitor their behavior. The program focuses on alcohol treatment and rehabilitation of perpetrators. The leader of the therapy group said that they do not call domestic violence a crime, because they want to build the self-esteem of the perpetrators in therapy. The leader also visits the victims’ group to explain that they are teaching the perpetrators better interpersonal skills and that the victims must similarly improve their interpersonal skills. He explained that many of the victims become angry and frustrated when he discusses their behavior rather than the criminal conduct of the perpetrators.¹³⁵

¹³³ Interview, March 7, 2001 (police officer, Warsaw).

¹³⁴ *Id.*

¹³⁵ Interview, March 7, 2001 (therapy group leader, Warsaw).

Some interviewees identified victims' lack of commitment to therapy as the cause of continued violence. The comments of one Stop Domestic Violence worker illustrate this view:

*The problem working with married couples is that the women often do not want to participate because they do not think that they have done anything wrong. If both do not improve, things will not work at all . . . If [a victim] does not go through therapy, it could be dangerous to both of the partners.*¹³⁶

This treatment ignores research that demonstrates that domestic violence is caused by the abuser's desire to control the victim, not by any particular behavior of the victim.¹³⁷ Instead of counseling victims to change their behavior, program officials should condemn domestic violence as a crime. As one domestic violence expert notes, domestic violence is "...intentional, instrumental behavior dedicated to control of the family ... [it] is not ... anger-driven bursts of violence that dissipate with a short period of "cooling off" or that disappear if wives accommodate husbands' demands perfectly."¹³⁸

Data from the Stop Domestic Violence program, however, indicate that more perpetrators are being held accountable for their crimes. According to one police officer in the Targowek district, in 1999, the year before the program began, there were 151 domestic violence proceedings initiated; 37 of these went to the prosecutor's office, and most of the women withdrew the charges. In 2000, there were 289 proceedings initiated under the Stop Domestic Violence program, of which 146 led to prosecution.¹³⁹

V. NATIONAL LAW

Women often face barriers in both the criminal justice system and the family court when attempting to seek relief from violent relationships. Poland follows the civil law tradition. Lawyers and judges therefore rely on the language of Polish statutes and their accompanying commentary to determine the law on any given subject rather than looking to the decisions in prior cases for guidance.

Poland's Constitution guarantees citizens many basic rights. As discussed below, the Constitution includes many provisions that implicitly prohibit domestic violence, such as the inherent and inviolable right to dignity of the person, the right to personal security, and the right to life. The Constitutional Tribunal, a branch of the judiciary, is

¹³⁶ *Id.*

¹³⁷ See BATTERED WOMEN AND THE LAW 57 (Clare Dalton et al. eds., 2001) [hereinafter BATTERED WOMEN AND THE LAW].

¹³⁸ See *id.* at 501.

¹³⁹ Interview, March 6, 2001 (police officer, Warsaw).

vested with the power to hear constitutional complaints brought by individual citizens, although no domestic violence case has yet come before the Tribunal.¹⁴⁰

Poland has criminalized domestic violence in Article 207 of the state's Penal Code. Penal Code Articles 156 and 157 punish assault without regard to the relationship of the victim and the perpetrator. As a procedural matter, these provisions vest a substantial amount of authority in forensic doctors who, in determining the severity of the victim's injuries, determine the article of the Criminal Code that the perpetrator has violated. The article selected, in turn, determines whether the state or the individual victim will prosecute the case.

Often, women see divorce as their only option in a violent marriage. Poland's divorce laws, however, are designed to preserve the family unit. Women have difficulty leaving their abusers and obtaining satisfactory divorce settlements. Even when they are successful in obtaining a divorce, women often must continue to share a home with their abusive husbands because of the shortage of affordable housing in Poland.

A. The Constitution

The Polish Constitution came into force on April 2, 1997. Although several articles implicitly require the state to protect its citizens from domestic violence, these provisions are rarely invoked. Article 32, section 1, of the Constitution provides that "all persons shall be equal before the law [and] shall have the right to equal treatment by public authorities." Article 38 of the Constitution requires the state to "ensure the legal protection of the life of every human being," and Article 41, section 1, provides that "personal inviolability and security shall be ensured to everyone." Article 40 of the Constitution guarantees that "no one may be subjected to torture or cruel, inhuman, or degrading treatment. . . ." Poland fails to meet these obligations when it does not take appropriate measures to guarantee that people are free from domestic violence, because such abuse threatens the life and the security of victims and violates the right to be free from torture.¹⁴¹

The Polish Constitution also protects social and economic rights, such as the right to health and the right to housing. Article 68, section 1, of the Constitution provides that "everyone shall have the right to have his health protected." Section 2 of this Article guarantees that "equal access to health care services, financed from public funds, shall be ensured by public authorities to citizens, irrespective of their material situation."

¹⁴⁰ See *Poland: The Constitutional Tribunal*, at [http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field\(DOCID+pl0201\)>](http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field(DOCID+pl0201)>) (last visited Jan. 1, 2002). For a discussion of the Constitutional Tribunal's judgments regarding other forms of gender-based discrimination, such as laws specifying earlier retirement ages for women, see Urszula Nowakowska & Anna Swedrowska, *Women in the Labor Market*, in *POLISH WOMEN IN THE 90'S*, *supra* note 10, at 73.

¹⁴¹ See generally Rhonda Copelon, *Intimate Terror: Understanding Domestic Violence as Torture*, in *HUMAN RIGHTS OF WOMEN: NATIONAL AND INTERNATIONAL PERSPECTIVES* 116 (Rebecca Cook, ed., 1995).

Article 47 of the Constitution guarantees that “everyone shall have the right to legal protection of his private and family life [and] of his honor and good reputation and to make decisions about his personal life.” This provision, and several others in the Constitution,¹⁴² arguably may be read to prioritize the rights of the family unit above those of individual domestic violence victims. The courts have not embraced such interpretations, however, and they conflict with other more commonly accepted legal principles.

Although most violence between intimate partners happens in private while assault between non-intimates typically occurs in public, the underlying crimes are the same. In addition, the state regulates many matters in the private sphere in its laws on marriage, divorce, and reproductive rights. The state should intervene to prevent abuse within the family as well. Finally, constitutional provisions guarantee equal protection of the law; life and security; freedom from cruel, inhuman, or degrading treatment; and the right to housing—these constitutional guarantees may be violated if the protection of the family is prioritized over the right to be free from violence.

By systematically failing to protect those persons who are abused at home, the state denies them their constitutional rights. This failure to enforce laws prohibiting domestic violence violates all of the constitutional provisions discussed above.¹⁴³

B. The Criminal Justice System

1. Relevant Statutes

a. Offenses Against the Family and Guardianship, Criminal Code Article 207

The Polish Criminal Code specifically addresses domestic violence cases. Article 207, section 1, provides the following:

Whoever mentally or physically mistreats a person close to him, or another person being in a permanent or temporary state of dependence to the perpetrator, a minor, or a person who is vulnerable because of his mental or physical condition, shall be subjected to the penalty of deprivation of liberty for a term of between three months and five years.

¹⁴² Article 50 provides that “the inviolability of the home [is] ensured.” And Article 71 §1 ensures that “the State, in its social and economic policy, shall take into account the good of the family...” POL. CONST., *supra* note 84, arts. 50, 71 §1.

¹⁴³ Article 37 §1 of the Constitution states that “anyone, being under the authority of the Polish state, shall enjoy the freedoms and rights ensured by the Constitution.” Article 77 guarantees Polish citizens recourse if their rights are infringed. In particular, if a citizen feels her constitutional rights have been violated, she may bring her case to the Constitutional Tribunal, according to Article 79 §1. POL. CONST., *supra* note 84, arts. 37 §1, 77, 79 §1.

In the Polish language, “mistreatment” implies that the behavior was repeated rather than an isolated incident. As a result, many people interpret this provision to refer to a series of incidents, although the statutory language does not explicitly define the crime as such. One judge explained that, “A single act cannot constitute abuse.”¹⁴⁴ A police officer outside of Lodz agreed, explaining, “There must be a great deal of physical evidence, because one single assault is not strong enough evidence. The court requires more than a single assault if it is not serious.”¹⁴⁵ In a pilot study conducted among police and prosecutors, 21.8 percent of female police officers and female prosecutors favored a definition of domestic abuse that included a single act of battery that results in no serious health consequences for the victim.¹⁴⁶ Only 13.6 percent of the male respondents agreed.

Poland’s Supreme Court has interpreted Article 207 to refer to a series of incidents, unless the injury was serious “beyond measure.” In a 1996 case, the Court held the following:

*To be classed as an offense under Article [207], the scope of the perpetrator’s behavior cannot be limited to either systemic or single incident, if it is not accompanied by excessive (beyond measure) intensity, severity, degradation, and intent to commit acts violating values protected by law (such as bodily integrity, personal dignity, or property).*¹⁴⁷

One Warsaw prosecutor agreed with this interpretation and said a single incident would be enough to bring a case under Article 207 only “if it is a very aggressive act of violence which results in serious injury.”¹⁴⁸

Article 207 also provides sanctions for purely psychological abuse. Proving nonphysical violence is difficult, and, in practice, the law is rarely applied in cases of psychological harm. One Warsaw police officer called these cases the “most difficult”¹⁴⁹ to prove, and a prosecutor explained that he had “never seen a case where there was only psychological abuse. Usually psychological abuse and physical abuse go together.”¹⁵⁰ A police officer in Gdansk said that wholly psychological cases are “rare, very rare.”¹⁵¹ A

¹⁴⁴ Interview, March 9, 2001 (criminal court judge, Warsaw).

¹⁴⁵ Interview, March 9, 2001 (police officer, Lodz).

¹⁴⁶ See DOMESTIC VIOLENCE AGAINST WOMEN AND CHILDREN, *supra* note 89, at 23.

¹⁴⁷ See *id.* Because Poland is a civil law system, Supreme Court decisions are not binding on future cases; they do, however, offer some persuasive guidance about how statutes have been interpreted in the past.

¹⁴⁸ Interview, March 8, 2001 (prosecutor, Warsaw).

¹⁴⁹ Interview, March 6, 2001 (police officer, Warsaw).

¹⁵⁰ Interview, March 8, 2001 (prosecutor, Warsaw).

¹⁵¹ Interview, March 6, 2001 (police officer, Gdansk).

Warsaw-based Criminal Court judge agreed, explaining that she “never saw a case involving only psychological violence. Prosecutors do not bring these cases to the court. They are subjective. There is no medical certificate.”¹⁵²

Two other sections of Article 207 extend the proscribed prison sentence in certain situations. One such sentence amplification is contained in Article 207, section 2:

*If the act specified in section 1 is compounded with particular cruelty, the perpetrator shall be subject to the penalty of deprivation of liberty for a term of between one and ten years.*¹⁵³

In addition, Article 207, section 3, provides the following:

*If the consequence of the act specified in sections 1 or 2 is a suicide attempt by the injured person, the perpetrator shall be subject to the penalty of deprivation of liberty for a term of between two and twelve years.*¹⁵⁴

*Prosecutors only rarely invoke Article 207, sections 2 and 3.*¹⁵⁵ A judge in Warsaw commented that she had seen only “a few” cases (approximately one out of fifty) prosecuted under section 2.¹⁵⁶ One such case involved “the very brutal beating and rape of a woman who was also kept locked in a room for weeks without food.” Another case involved a husband who “poured acid on his wife and shaved her head, because he suspected she had a lover.”¹⁵⁷ According to one women’s rights advocate based in Warsaw, “The prosecutor will attempt to classify attempted murder as domestic violence under [section 1] because there is a lower penalty Prosecutors try to classify everything as domestic violence [under section 1], even when extreme cruelty is involved.”¹⁵⁸ Government statistics indicate that approximately 50 women per year attempt suicide because of their abuse.¹⁵⁹ The delegation heard of only one such case prosecuted under section 3. According to a Warsaw-based police officer, a man was prosecuted under this provision after his 19-year-old daughter attempted suicide.¹⁶⁰

¹⁵² Interview, March 9, 2001 (criminal court judge, Warsaw).

¹⁵³ See POLISH PENAL CODE art. 207 §2[hereinafter POL. PEN. C.].

¹⁵⁴ See *id.* art. 207 §3.

¹⁵⁵ One women’s rights advocate in Warsaw indicated that §2 is “never” and §3 is “very rarely” invoked. See Interview, March 3, 2001 (NGO advocate, Warsaw).

¹⁵⁶ Interview, March 9, 2001 (criminal court judge, Warsaw).

¹⁵⁷ *Id.*

¹⁵⁸ Interview, March 3, 2001 (NGO advocate, Warsaw).

¹⁵⁹ DOMESTIC VIOLENCE AGAINST WOMEN AND CHILDREN, *supra* note 89.

¹⁶⁰ Interview, March 6, 2001 (police officer, Warsaw).

Despite the fact that Poland has specifically recognized the problem of domestic violence in its penal code, problems persist. The commentary to Article 207 indicates that it seeks to protect the family above all else; individual rights to life, health, freedom, and bodily integrity are of only secondary concern.¹⁶¹ As a result, courts have interpreted Article 207 to permit a man to abuse his wife to preserve a marriage or for the woman's own "well-being." An Appeals Court in Krakow held the following:

*[A]buse may be recognized as committed through necessity imposed by the desire to preserve marriage or justified by the well-being of children or the alleged victim or any other value protected by law and more important than the dubious dignity of misconducting victims. In such circumstances, even if violence amounts to domestic abuse, it may still be recognized as not meeting the criteria of an offense under Article [207] In such circumstances, it may be recommended that the accused should be acquitted of any charges or that the penalty should not be imposed or that the victim should file a private charge against the perpetrator.*¹⁶²

Courts require proof of a pattern of abuse. Prosecutors do not typically prosecute psychological abuse, and judges typically give perpetrators suspended or minimal sentences, rarely increasing them even when extreme cruelty is involved. As a result, victims of domestic violence are not sufficiently protected under Polish law.

**b. Offenses Against Life and Health,
Penal Code Articles 156 and 157**

In addition to Article 207, which specifically criminalizes domestic violence, Poland's Penal Code includes two prohibitions on assault that are not limited to the domestic sphere. The general assault provisions of the Penal Code, Articles 156 and 157, base punishment primarily on the severity of the victim's physical injuries, not the actions of the perpetrator.¹⁶³ The severity of the crime depends on whether the victim's injuries last for more than seven days and, if they do, whether the injuries rise to the level of medium or serious. If the injuries last for seven days or less, they will be classified as light injuries. The qualification of the injury determines whether the prosecution will be public (conducted by police and prosecutors) or private (conducted by the victim, if at all).

The system is three-tiered. First, injuries lasting more than seven days that are classified "severe" are publicly prosecuted with or without the victim's consent. Second, injuries lasting more than seven days that are determined to be of medium severity are

¹⁶¹ DOMESTIC VIOLENCE AGAINST WOMEN AND CHILDREN, *supra* note 89.

¹⁶² Again, this court decision is not binding on future cases, but demonstrates common attitudes. *See id.*

¹⁶³ *See* POL. PEN. C., *supra* note 153, art. 157 §2.

publicly prosecuted without the consent of the victim when the victim and perpetrator are unrelated and when the crime was premeditated. If the parties are family members and there was no premeditation, the perpetrator will only be publicly prosecuted at the request of the victim.¹⁶⁴ And third, a victim with light injuries—those lasting for not longer than seven days—may, if she wishes, independently pursue a private prosecution, but the state will offer no assistance.

Article 156 relates to serious injuries lasting for more than seven days. These publicly prosecuted cases include acts that (i) deprive a human being of sight, hearing, speech, or the ability to procreate or (ii) inflict on another a serious crippling injury, an incurable or prolonged illness, an illness actually dangerous to life, a permanent mental illness, a permanent total or substantial incapacity to work in an occupation, or a permanent serious bodily disfigurement or deformation.

According to one forensic doctor, injuries that would fall into this category include “loss of sight, hearing, the ability to have children, [or] speaking [and] serious injuries leading to a permanent handicap or disability [or] the complete inability to work in a previous job.”¹⁶⁵ Judges may sentence perpetrators who are found guilty of these offenses to prison terms of between one and ten years. If the act was not premeditated, however, the court may impose a sentence of no more than three years.¹⁶⁶ If a defendant’s conduct led to the death of the victim, he may be sentenced to a term of two to twelve years.¹⁶⁷

Article 157 relates to medium and light injuries, defining different levels of abuse based on the severity of the harm suffered and the relationship between the perpetrator and the victim.¹⁶⁸

¹⁶⁴ See *id.* art. 157, §5 (“If the bodily injury or an impairment of health exceeds seven days, and the injured person is the person closest to the accused, the prosecution of the crime described in section 3 shall occur upon the motion of the former.”) Section 3 refers to acts without premeditation. It is important to note that victims of premeditated crimes where the perpetrators were not related to or involved with them do not have to ask for a public prosecution; one is automatically granted.

¹⁶⁵ Interview, March 9, 2001 (forensic doctor, Lodz).

¹⁶⁶ See POL. PEN. C., *supra* note 153, art. 156 §2: “If the perpetrator acts unintentionally, he shall be subject to the penalty of deprivation of liberty for up to 3 years.”

¹⁶⁷ See *id.* art. 156 §3: “If the consequence of an act specified in §1 is the death of a human being, the perpetrator shall be subject to the penalty of the deprivation of liberty for a term of between 2 and 12 years.”

¹⁶⁸ See *id.* art. 157:

§1. *Whoever causes a bodily injury or an impairment to health other than specified in Article 156 §1 shall be subject to the penalty of deprivation of liberty for a term of between 3 months and 5 years.*

§2. *Whoever causes a bodily injury or an impairment to health lasting not longer than 7 days shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to 2 years.*

§3. *If the perpetrator of the act specified in §1 or 2 acts unintentionally he shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to one year.*

For medium injuries, Article 157, section 1, provides the following:

Whoever causes a bodily injury or an impairment to health other than specified in Article 156, section 1 shall be subject to the penalty of deprivation of liberty for a term of between three months and five years.

Injuries falling under this provision include “broken arms, legs, [and] swelling with fever.”¹⁶⁹

Article 157 then addresses light injuries, stipulating that if the injury lasts no longer than seven days, prosecution may be brought only by the victim and may result in imprisonment for up to two years.

**c. Offenses Against Sexual Liberty and Decency,
Criminal Code Article 197**

Rape is a crime under Polish law. Article 197 provides the following:

1. Whoever, by force, illegal threat, or deceit, subjects another person to sexual intercourse shall be subject to the penalty of deprivation of liberty for a term between one and ten years.
2. If the perpetrator, in the manner specified in section 1, makes another person submit to a sexual act or to perform such an act, he shall be subject to the penalty of the deprivation of liberty for a term of between three months and five years.
3. If the perpetrator commits a rape as specified in section 1 or section 2 with particular cruelty, or commits it together with another person, he shall be subject to the penalty of deprivation of liberty for a term between two and twelve years.

Article 197 does not address the relationship between the victim and the perpetrator in a case of rape. As a result, any forced sexual intercourse is prohibited regardless of whether the victim and the perpetrator are married to each other. In practice, however, marital rape is not prosecuted in the Polish legal system. In the opinion of one forensic doctor, “there is no such thing as marital rape in Poland.”¹⁷⁰ A women’s rights advocate described her frustration with the failure of the Polish criminal justice system to

§4. The prosecution of the offence specified in §2 or 3 shall, if the bodily injury or an impairment of health did not exceed 7 days, occur upon private charge [this is a bit of a strange construction—is there a better way to put it?].

§5. Of the bodily injury or an impairment of health exceeds 7 days, and the injured person is the person closest to the accused, the prosecution shall occur upon the motion of the former.

¹⁶⁹ Interview, March 9, 2001 (forensic doctor, Lodz).

¹⁷⁰ Interview, March 8, 2001 (forensic doctor, Warsaw).

recognize marital rape, “Marital rape is not in the law so it is not a crime.”¹⁷¹ This advocate described a case in which a man raped his wife while she was asleep. She said the police “could not do anything with this case.”¹⁷²

2. Procedure

a. Forensic Doctors

Forensic doctors document injuries to be used as evidence in court proceedings. They determine the severity of victims’ injuries pursuant to the Criminal Code. As a result, forensic doctors determine which domestic violence victims will have the assistance of the state in prosecuting their cases. Each forensic doctor issues a medical certificate that, in addition to listing injuries, states what criminal provision the doctor believes applies to the case.

There is no standardized form that forensic doctors must complete in domestic violence cases. Rather, individual doctors, sometimes corresponding with separate geographical districts, determine the structure of their medical certificates. Some certificates are extremely cursory, describing minimal details and identifying the relevant legal provision.¹⁷³ Others are more detailed and include a narrative of the victim’s statement, the extent of the injuries, the doctor’s perception as to whether the injuries are consistent with the victim’s story, and the relevant criminal provisions.¹⁷⁴

The forensic doctors interviewed by the delegation did not articulate a uniform standard for determining when injuries are considered to last more than seven days.¹⁷⁵ Instead, the doctors reported that they made determinations on a case-by-case basis.¹⁷⁶

A typical forensic exam, however, consists of several parts. In addition to asking questions of medical significance, such as what parts of the body are injured, doctors routinely ask questions about the attack itself that impact the investigation of the incident. These include queries about when and where the attack happened, who perpetrated the attack, what objects were used in the assault, and how the perpetrator and the victim

¹⁷¹ Interview, March 5, 2001 (NGO advocate, Warsaw).

¹⁷² *Id.*

¹⁷³ Interview, March 8, 2001 (forensic doctor, Warsaw). One doctor said that small-town practitioners, who may not have access to medical schools in their town or to up-to-date medical textbooks, might not know how to write a proper report. Another doctor reported that in small towns the medical opinion may merely provide the Penal Code article under which the injuries fit, with no additional information for the prosecutor to evaluate. *Id.*

¹⁷⁴ Interview, March 9, 2001 (forensic doctor, Lodz).

¹⁷⁵ Interviews, March 8, 2001 (forensic doctor, Warsaw); and *Id.*

¹⁷⁶ Interview, March 9, 2001 (forensic doctor, Lodz).

behaved during the incident.¹⁷⁷

Forensic doctors report manipulating their medical findings so that the results match their personal notions of fairness.¹⁷⁸ For example, one doctor reported that he will intentionally describe an injury as more severe to allow for public prosecution of the assault pursuant to the Criminal Code.¹⁷⁹ Other doctors reported that they actively attempt to keep what they perceive to be non-meritorious claims out of court by including statements in their written opinions that injuries did not necessarily occur the way the victim claimed.¹⁸⁰ One doctor even acknowledged that she viewed her responsibilities to include determining whether the woman was telling the truth, because, she said, “the victim often lies about the source of her injuries.”¹⁸¹

Some women are not able to access the forensic system at all.¹⁸² Problems arise because the office hours and locations of doctors’ offices are limited, the exams are costly, and doctors are often busy with murders and other violent crimes that they view as more important.¹⁸³ Many forensic doctors described their reluctance to get involved in domestic violence cases.¹⁸⁴ One doctor admitted disliking forensic exams because he may be called to testify in court, sometimes five years later, when he no longer remembers the case.¹⁸⁵ Another doctor acknowledged that some of her colleagues simply are not interested in domestic violence cases and perform only cursory forensic exams on the victims.¹⁸⁶

One doctor reported his inability to see how examining domestic violence victims furthered the objectives of the legal system, given that such examinations turned his attention away from the victims of “real crimes.”¹⁸⁷ As noted by one prosecutor, however, the system explicitly places domestic violence within the purview of forensic

¹⁷⁷ *Id.*

¹⁷⁸ Interviews, March 8, 2001 (forensic doctor, Warsaw); and March 9 (forensic doctor, Lodz).

¹⁷⁹ Interview, March 8 (forensic doctor, Warsaw).

¹⁸⁰ Interviews, March 8 (forensic doctor, Warsaw); and March 9 (forensic doctor, Lodz).

¹⁸¹ Interview, March 9, 2001 (forensic doctor, Lodz).

¹⁸² See Maja Korzeniewska & Urszula Nowakowska, *Women’s Health, in POLISH WOMEN IN THE 90S*, *supra* note 10, at 188.

¹⁸³ Interview, March 4, 2001 (women’s rights advocate, Warsaw).

¹⁸⁴ Interview, March 5, 2001 (legislator, Warsaw).

¹⁸⁵ Interview, March 5, 2001 (gynecologist, Warsaw).

¹⁸⁶ Interview, March 9, 2001 (forensic doctor, Lodz).

¹⁸⁷ Interview, March 5, 2001 (gynecologist, Warsaw).

doctors by making forensic certifications mandatory for public prosecutions.¹⁸⁸

b. Public Prosecutions

The requirement that a victim's injuries last more than seven days before warranting public prosecution sets an arbitrary standard that corresponds neither to the brutality of every attack nor to the severity of every victim's suffering. The state, however, only takes responsibility for prosecuting those cases in which the victims have injuries meeting the seven-day threshold. Although a prosecutor may proceed without the participation of the victim in these cases, a woman's reluctance to testify against her abuser often leads the prosecutor to close the case. Although it is sometimes possible to find corroborating evidence that does not depend on the victim's testimony, prosecutors rarely explore the use of such evidence.¹⁸⁹

c. Private Prosecutions

Article 157, section 4, of the Polish Penal Code specifies that when bodily injuries do not last longer than seven days, prosecutions are charged by individuals, not the state. Thus, a Polish victim who is unable to convince a forensic doctor that her injuries will last more than seven days must institute a criminal prosecution against the perpetrator on her own.

A domestic violence victim whose injury does not meet the statutory requirements for a public prosecution may appeal the prosecutor's decision not to prosecute.¹⁹⁰ Although the right to appeal is included in the decision, many victims are unaware of this right and, as a result, simply accept the prosecutor's decision not to publicly prosecute their case.

Assuming women know that they have a right to privately prosecute their assailants, such prosecution can only proceed if the victim is willing and able to shoulder the financial, investigatory, and prosecutorial burdens of trying the case. Many interviewees reported that, due to these financial and personal obstacles, few victims privately prosecute their attackers.¹⁹¹ As one Judge noted, "I have never seen a case in

¹⁸⁸ Interview, March 5, 2001 (prosecutor, Warsaw).

¹⁸⁹ *Id.*

¹⁹⁰ This appeal procedure enables the victim to ask the prosecutor, in writing, to reconsider publicly prosecuting the case. After receiving the request, the prosecutor can either agree with the victim, and subsequently begin a public prosecution, or she can forward the victim's request to the Chief Prosecutor's office in Warsaw. There, the Chief Prosecutor's office determines whether the original prosecutor erred in failing to publicly prosecute; if this is the decision reached, the Chief Prosecutor officially requests a public prosecution. The original prosecutor has the power to stop the public prosecution and investigation a second time for lack of evidence, and the victim has the right to initiate a second appeal. Interview, March 5, 2001 (lawyer, Warsaw).

¹⁹¹ Interview, March 8, 2001 (prosecutor, Warsaw).

which a woman brought her own prosecution . . . [the victim] has to have an attorney, and it is very difficult.”¹⁹²

d. Subsidiary Prosecutions

Article 60, section 1, of the Criminal Procedure Code provides that a prosecutor may intervene “if the public interest so requires.”¹⁹³ In such cases, the injured person who has brought a private charge will be granted the rights of a subsidiary prosecutor.

This provision theoretically benefits domestic violence victims, in that it relieves them from having to choose between shouldering the financial burdens of a private prosecution or allowing the perpetrators to go unpunished. Subsidiary prosecutions are extremely rare, however, and there is no legal standard for determining what kind of domestic violence cases meet the “public interest” test. Prosecutors have tremendous discretion in determining whether to invoke this statute, and few choose to do so. One Warsaw prosecutor admitted that such assistance is uncommon, saying, “I have no experience in these kinds of cases.”¹⁹⁴

C. Civil Law

1. Divorce, Family and Guardianship Code, Article 56

The divorce procedure itself is designed to preserve the family unit. Article 56 of the Polish Family and Guardianship Code stipulates that to qualify for a divorce, the couple must prove that there is an “entire and permanent breakdown of marital cohabitation.”¹⁹⁵ To meet this standard, a couple must convince the presiding judge that there has been a terminal disintegration of the relationship.¹⁹⁶ “If there is any doubt, the

¹⁹² Interview, March 9, 2001 (criminal court judge, Warsaw).

¹⁹³ See POL. CRIM. PRO. C., *supra* note 110, art. 60:

§1. In the case of offences prosecuted by private accusation [?], the prosecutor shall institute proceedings, or intervene in proceedings previously instituted, if the public interest so requires.

§2. In such cases, the proceedings shall be conducted ex officio, and the injured person who has brought a private accusation [?] shall be granted the rights of a subsidiary prosecutor. The provisions of Articles 54, 55 §3 and Article 54 shall be applied to an injured person who did not previously bring such an indictment.

§3. If the prosecutor who has previously joined the proceedings withdraws his indictment, the injured person shall be restored to the rights of a private prosecutor in any further proceedings.

§4. The injured person who has not brought an indictment may, within a final time limit of 14 days from the day on which he receives notification of the prosecutor’s withdrawal, submit an indictment or a statement to the effect that he supports and maintains the indictment as a private one. If he fails to make such a statement, the court shall discontinue the proceedings.

¹⁹⁴ Interview, March 8, 2001 (prosecutor, Warsaw).

¹⁹⁵ Interview, April 12, 2001 (Polish lawyer, Washington, DC).

¹⁹⁶ POLISH FAMILY AND GUARDIANSHIP CODE §§ 56 - 61 (translation obtained by Minnesota Advocates for Human Rights) [hereinafter POL. FAM. & GUARD. C.].

interpretation is always towards maintaining marriage.”¹⁹⁷ This general policy discourages women from leaving abusive marriages.

Judges try to convince the parties to remain married. The emphasis on preserving the marriage is, in fact, built into the structure of the divorce proceeding. Before setting the first hearing date, the judge calls the spouses for a mediation session in which the judge questions the couple about whether they can reconcile. One attorney told the delegation that most attempts to obtain divorces end at this stage.¹⁹⁸

If the couple does not reconcile in this first stage, the court schedules the first hearing, in which the judge may closely examine the arguments for divorce and again counsel the couple to think differently about their marital problems. If the judge believes there is a chance that the marriage can be saved, she may suspend the proceedings until a later date. Even when couples can prove the requisite disintegration of their relationship, there are three situations in which judges may still refuse to grant divorces. The first is when a divorce would place a minor child’s interests at risk. Individual judges determine the meaning of this exception, but past examples include situations in which the child would have had to change addresses or would have suffered a decline in his or her standard of living.¹⁹⁹

The second exception is when the divorce would contradict “the principles of community life.”²⁰⁰ Again, judges have considerable discretion to use this exception to support either progressive or traditional judicial decisions. One attorney noted that the provision “means so much that it means nothing.”²⁰¹ The third exception prohibits divorce on the initiative of the spouse who is solely responsible for the marital troubles, unless the other spouse agrees to the divorce.²⁰²

The Family and Guardianship Code provides for spousal maintenance payments depending on which party is at fault for the marriage breakdown. As a result, courts determine the relative fault of each party. Three possible findings exist: neither party is

¹⁹⁷ Interview, April 12, 2001 (Polish lawyer, Washington, DC).

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ A different translation of the Polish Family and Guardianship Code indicated that the divorce would not be allowed if it was “contradictory to the rules of the societal order.” Translation received by Minnesota Advocates for Human Rights.

²⁰¹ Interview, April 12, 2001 (Polish lawyer, Washington, DC). This attorney illustrated the second exception by stating that if a wife wants to divorce an ill husband, the judge could say that it is against the “principles of community life” to allow the divorce because then the wife would not care for the husband in his illness. *Id.*

²⁰² *Id.*

at fault, both parties are at fault, or only one party is at fault.²⁰³

If both spouses agree, a couple can request that the court not assess fault. In such cases, the court may not order spousal maintenance. Article 60, section 1, stipulates, “A divorced spouse who is not ruled to be solely culpable for the breakdown of the marriage and who has insufficient income to live can demand financial help from the other spouse, estimated according to the satisfaction of the needs of the first and financial capabilities of the second spouse.”²⁰⁴

Article 58, section 3, of the Family and Guardianship Code states, “Upon the motion of one of the spouses, the court may determine property settlements in the divorce decision, if doing so would not seriously delay the divorce procedure.”²⁰⁵ Often spouses do not seek a property settlement in the context of a divorce proceeding, delaying the settlement and perpetuating the couple’s dependence on each other.

Other than divorce, the Civil Code offers little redress for domestic violence victims. Polish law does not include a mechanism to prohibit a batterer from having contact with his victim, such as a protection or restraining order.²⁰⁶ Similarly, there is no criminal provision enabling the victim to exclude a batterer from the family home.²⁰⁷ Although these measures cannot guarantee women’s safety,²⁰⁸ many Polish women

²⁰³ *Id.*

²⁰⁴ Translation obtained by Minnesota Advocates.

²⁰⁵ Translation of POL. FAM. & GUARD. C., *supra* note 196, art. 58, § 3 obtained by Minnesota Advocates.

²⁰⁶ These provisions can provide “...a wide range of protective provisions, ranging from ‘stay away’ or ‘no-contact’ orders which require the abusive partner to stay away from his victim’s home, place of work, or other neighborhood locations, or a fixed distance from her at all times, through temporary custody and support orders designed to regulate the legal consequences of a separation on an interim basis, to miscellaneous but often crucial provisions such as giving up weapons or keys. Some legislation even authorizes the imposition of restitution payments for injuries inflicted or property damage done.” *Id.*

²⁰⁷ Although these mechanisms do not have statutory recognition, police, prosecutors and judges have the discretion to order no-contact orders in some cases. As one police officer explained, “[t]he prosecutor can issue a no-contact order on police initiative. The orders can last until the end of the court proceedings. These can’t keep the perpetrator away from the house. To make the perpetrator leave the house, there must be a separate proceeding. With this no contact order, first the perpetrator must be informed about it. Then there’s a hearing with the victim to determine what happened. There needs to be proof on paper.” Interview, March 6, 2001 (police officer, Warsaw).

²⁰⁸ In some instances, obtaining such an order may place women at greater risk of attack because of the batterer’s perceived loss of control. See Catherine Klein and Leslye Orloff, *Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law*, 21 HOFSTRA L. REV. 801, 814 (1993) (“Violence is often triggered by the anger aroused by threatened loss ... making the period during and after separation an extremely dangerous time.”).

right's advocates believe such injunctive remedies would often be useful.²⁰⁹

2. Problems With Enforcement

Although Poland has recognized domestic violence as a criminal offense in the law, criminal justice officials do not generally treat domestic violence seriously. As one Lodz-based police officer reported, "the most important cases are robbery, rape, murder, and assault, not domestic violence. It is pushed away."²¹⁰ A police officer in Warsaw agreed, remarking, "In Poland, if you rate domestic violence on a scale of one to ten with one being the most important and ten being the least, it's a ten."²¹¹ Such attitudes, prevalent among many members of Polish society, reflect the belief that a crime committed between intimates is less serious than the same crime committed between unrelated persons.

Some police officers reported being frustrated by domestic violence cases. Because they rarely result in punishment for the offender, some police officers find domestic violence cases less satisfying than other types of cases. One officer explained:

*Domestic violence cases are treated worse, because often they are perceived as cases that will not end up in court. There is a long wait for the court, and the police are only satisfied when they have a case that can be immediately punished. In domestic violence cases, the punishment often is not satisfying for the victim or the police.*²¹²

Officials, including police, prosecutors, and forensic doctors, often question the legitimacy of the victims' stories and their motives for bringing domestic violence claims. One forensic doctor explained that his role in a domestic violence investigation "was to establish whether the woman might have injured herself and fabricated a story of abuse."²¹³ Another doctor said, "The victim often lies about the source of her injuries. For example, she might want to accuse her husband even though he did nothing."²¹⁴ A prosecutor told the delegation that she analyzes claims of domestic violence more closely when the parties are divorcing, because the woman "may make up domestic violence . . . There are financial reasons for this because [if there is domestic violence], the man will have to pay alimony."²¹⁵ Such attitudes pose major barriers for women who want to pursue domestic violence claims.

²⁰⁹ Interview, March 4, 2001 (women's rights advocate, Warsaw).

²¹⁰ Interview, March 9, 2001 (police officer, Lodz).

²¹¹ Interview, March 6, 2001 (police officer, Warsaw).

²¹² Interview, March 9, 2001 (police officer, Lodz).

²¹³ Interview, March 8, 2001 (forensic doctor, Warsaw).

²¹⁴ Interview, March 9, 2001 (forensic doctor, Lodz).

²¹⁵ Interview, March 8, 2001 (prosecutor, Warsaw).

Other barriers include the time it takes to bring a domestic violence case to trial. Like others in the Polish legal system, these cases may remain in limbo for two to three years before the court hears evidence.²¹⁶ During this time (and even after the court offers its ruling), victims frequently continue to live with their abusers, because they lack the financial resources that would permit them to leave.²¹⁷

Stereotypical attitudes about domestic violence hinder the proper functioning of Poland's criminal response. The delegation heard many stories of judges who did not treat cases of domestic violence seriously and imposed little, if any, punishment on convicted perpetrators. In fact, nearly 90 percent of cases that proceed to trial and end in a guilty verdict result in suspended sentences,²¹⁸ especially in cases involving a perpetrator's first prosecuted offense. Several interviewees observed that suspended sentences are ineffective and do not deter perpetrators from committing subsequent acts of domestic violence.²¹⁹ Although judges appear willing to impose a sentence on some perpetrators, these cases usually involve assaults that result in the most serious injuries under the seven-day rule.

The practice of determining the severity of an injury by the number of days it takes to heal does not adequately account for psychological violence, which is difficult to quantify by any standard. The resulting difficulty in proving psychological injury essentially eliminates such violence as an independent crime under Article 207 of the Criminal Code.

Corruption among judicial officers may also impede the process. One therapist told the delegation the following story about a patient who tried to pursue a criminal prosecution but was prevented from doing so by a corrupt judicial officer:

*[Her husband] hit her. . . [but]. . . there were no bruises. The husband just gave [the prosecutor] money and laughed at her. Because it was considered to have few consequences for society, the case was dropped.*²²⁰

3. Social Response

a. Blue Line (*Niebieska Linia*)

The State Agency for Prevention of Alcohol Related Problems also oversees the

²¹⁶ DOMESTIC VIOLENCE AGAINST WOMEN AND CHILDREN, *supra* note 89.

²¹⁷ See discussion *infra* p. 28.

²¹⁸ POLISH WOMEN IN THE 90S, *supra* note 10, at 156.

²¹⁹ See *e.g.*, Interview, March 9, 2001 (forensic doctor, Lodz).

²²⁰ Interview, March 9, 2001 (psychotherapist, Warsaw).

Polish Nationwide Emergency for Family Violence Victims “Blue Line,”²²¹ a toll-free nationwide hotline for domestic violence victims. The Blue Line provides counseling through hotline operators who are “trained in the basic regulations concerning criminal, civil, and family law and [are] trained to work on the phone with people afflicted with violence.”²²²

The program claims that all operators are able to (i) give immediate psychological support and legal information to callers, (ii) teach callers about countermeasures to violence and alcoholism, (iii) motivate callers to take actions against family violence, and (iv) refer callers to local support agencies.²²³ Since 1995, the agency has kept records of each call to the hotline, and since January 1999 it has maintained a computer database that has streamlined these records. In addition to sponsoring the national hotline, the Blue Line also publishes a newsletter about domestic violence.

Many people interviewed by the delegation reported dissatisfaction with the Blue Line’s emphasis on social services over criminal prosecutions. One legislator described general frustration with the government’s lack of understanding of the causes of domestic violence:

*[The] broader issue is how violence is understood . . . [the Blue Line and Card systems] do not see it as an issue of power but alcohol. . . . It is a singular approach. [Also,] domestic violence has been drowned in general violence. . . . Official institutions don’t want to accept violence against women as a social issue.*²²⁴

b. Shelters

Women who call the Blue Line or who receive a Blue Card home intervention may receive information about government-supported shelters for battered women.²²⁵ In some parts of the country, there simply are no shelters, meaning that this option is completely foreclosed to women in these areas.²²⁶ Of the government-supported shelters in existence, activists charge that many re-victimize the women who they purport to help. At some, staff members reportedly teach women how to please their husbands to lessen

²²¹ The Blue Line is formally independent, but in practice, it is controlled by the Agency. Written comment received October, 2001 (women’s rights activist, Warsaw).

²²² THE STATE AGENCY FOR PREVENTION OF ALCOHOL RELATED PROBLEMS, THE POLISH NATIONAL EMERGENCY FOR FAMILY VIOLENCE VICTIMS (2001) (translation on file with authors).

²²³ *Id.*

²²⁴ Interview, March 5, 2001 (legislator, Warsaw).

²²⁵ Interview, March 7, 2001 (Blue Card official, Warsaw).

²²⁶ See Urszula Nowakowska, *Government Mechanisms for the Advancement of Women*, in POLISH WOMEN IN THE 90S, *supra* note 10, at 160.

the risk of violence. At other shelters, staff members negotiate with the abusers to force victims to return home.²²⁷

Shelters impose rules on the women who stay there, with varying degrees of severity. Some control the women's mail, prohibit them from taking jobs outside the shelter, require them to deposit money with the shelter manager, prohibit them from leaving the shelter without permission, and force them to be ready to work at the shelter at all times, day and night.²²⁸ One independent shelter the delegation visited is more lenient. It has an 11:00 p.m. curfew and requires women to sign out if they plan to stay away for a night. A shelter coordinator at that facility explained:

*Besides this shelter, there are only two other shelters I could recommend [in Warsaw] because of the standards they keep At the others, the coordinators do not treat the women as equals. Although there should be some rules that the women should obey, they should not feel they are unequal or a lower sort of people. Some shelters make women work on the grounds of the shelter—nowhere else. Some have curfews at 8 p.m. Some coordinators use women and children for their [own] purposes.*²²⁹

Shelter staff sometimes bend the rules to allow women to stay longer at the shelter than allowed, particularly if the woman is at risk of violence, has no housing, or has a pending case that has been delayed by the courts.²³⁰

Finally, some of the shelters that do treat women respectfully are overcrowded, underfunded, and understaffed. One shelter, a three-room apartment in central Warsaw open since September 1999, had nine women and three children staying there when the delegation visited. The waiting list, with the names of 20 women on it, requires domestic violence victims to wait an average of two to three months before a space becomes available for them. All shelter operations are overseen by two staff members: one lawyer and one psychologist. The shelter coordinator explained, "There should be more than two people, but the financial situation just allows for two people."²³¹

The idea that shelters should be used to house perpetrators, rather than victims, of domestic violence is gaining popularity among some of the people who deal with such facilities.²³² One such worker noted that "[t]here is an idea in the summertime to build a

²²⁷ *Id.* at 161.

²²⁸ *Id.*

²²⁹ Interview, March 7, 2001 (shelter coordinator, Warsaw).

²³⁰ *Id.*

²³¹ *Id.*

²³² Interview, March 7, 2001 (therapy group leader, Warsaw); interview March 8, 2001 (government official, Warsaw).

shelter for the perpetrators so they can have a place to focus on therapy. There are shelters for victims, which means that the violated women and kids have to move out of their homes, while the perpetrators stay there. It is more logical to make the perpetrator move out.”²³³

VI. INTERNATIONAL LAW

A. Overview

Poland is a member of the United Nations and the Council of Europe, and it is seeking membership in the European Union (EU). Poland’s membership in these bodies obligates it to enforce the organizations’ laws and conventions. The United Nations, the EU, and the Council of Europe have all taken affirmative steps to encourage nations to act to end violence, specifically domestic violence against women. Poland’s current and pending membership in these international bodies should encourage the Polish government to work proactively to eliminate domestic violence within its borders.

1. **Poland’s systematic failure to protect women’s right to be free from violence is a violation of its United Nations treaty obligations**

Several international instruments define Poland’s duties to protect human rights as a member of the United Nations and as a state party to several specific international human rights conventions. Poland has ratified the International Covenant on Civil and Political Rights (Political Covenant)²³⁴ and the Convention on the Elimination of All Forms of Discrimination Against Women (Women’s Convention).²³⁵ As a member of the United Nations, Poland is obligated to comply with United Nations declarations, including the Universal Declaration²³⁶ and the Declaration on the Elimination of Violence Against Women.²³⁷ The Declaration on the Elimination of Violence Against Women recognizes and condemns violence against women, including domestic violence,

²³³ *Id.*

²³⁴ International Covenant on Civil and Political Rights, G.A. res. 2200A, U.N. GAOR, 21st Sess., Supp. No. 16 at 53, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, *entered into force* March 23, 1976 [hereinafter ICCPR]. Poland ratified the Political Covenant without reservations on March 18, 1977.

²³⁵ Convention on the Elimination of All Forms of Discrimination Against Women, G.A. Res. 180, U.N. GAOR, 34th Sess., Supp. No. 46, at 193, U.N. Doc. A/34/46, *entered into force* Sept. 3, 1981 [hereinafter Women’s Convention]. Poland ratified the Women’s Convention on July 30, 1980 with a reservation to art. 29, para. 1, which permits a party to a dispute in which arbitration has failed to submit their claim to the International Court of Justice. On October 16, 1997, the Government of Poland notified the U.N. Secretary-General that it had decided to withdraw its reservation.

²³⁶ Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. GAOR, 3d Sess., at 71, U.N.Doc A/810, at 71 (1948) [hereinafter Universal Declaration].

²³⁷ Women’s Declaration, *supra* note 7. The Women’s Declaration was adopted without a roll call vote.

as a human rights abuse.²³⁸ The Beijing Declaration and Platform for Action adopted at the United Nations Fourth World Conference on Women reaffirm Poland's obligations to combat violence against women.²³⁹

Poland has an affirmative duty to abide by the terms of the treaties and conventions to which it is a party.²⁴⁰ Article 55(c) of the U.N. Charter (Charter) notes that the United Nations shall promote "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion." Article 56 of the Charter charges member states with an affirmative obligation to implement these provisions domestically and in conjunction with the United Nations.

2. Poland must act to eliminate violence against women by private actors

Although private individuals perpetrate acts of domestic violence, the government of Poland may not escape responsibility for domestic violence. The international community has explicitly recognized systematic violence against women as a human rights violation requiring a state response. When Poland fails in its obligation to protect women from violence and to punish the perpetrators, Poland violates international human rights standards.

Poland must act with "due diligence" in response to domestic violence perpetrated by private actors. The "due diligence" standard provides a benchmark to determine if Poland has fulfilled its human rights obligations. Under this standard, Poland must prevent, investigate, and punish acts that impair any of the rights Poland is obligated to protect under international human rights law. Women's Convention General Recommendation 19 provides that a state may be held responsible for acts by private individuals if the state has not acted with due diligence to fulfill its obligations under the Women's Convention.²⁴¹ The Declaration on the Elimination of Violence Against Women reaffirms this principle. This state responsibility can entail requiring states to financially compensate victims.²⁴²

²³⁸ The Committee on the Elimination of Discrimination Against Women's General Recommendation No. 19 recognizes that violence against women is a form of discrimination against women thereby falling under the terms of the Women's Convention. See General Recommendation 19, paragraph 6 in *Report of the Committee on the Elimination of Discrimination Against Women*, U.N. GAOR, 11th Sess., Supp. No. 38, at 1, U.N. Doc A/47/38 (1993) [hereinafter General Recommendation No. 19].

²³⁹ Beijing Declaration and Platform for Action, Fourth World Conference on Women, *adopted* Sept. 15, 1995, U.N. Doc. A/CONF.177/20 (1995) and U.N. Doc. A/CONF.177/20/Add.1 (1995).

²⁴⁰ Every treaty in force is binding upon the parties and must be executed in good faith. See Vienna Convention on the Law of Treaties, art. 26, 55 U.N.T.S. 331, 339.

²⁴¹ General Recommendation 19, *supra* note 238, para. 9.

²⁴² *Id.*

The Inter-American Court of Human Rights used the standard of due diligence for state responsibility for non-state actors in *Velásquez Rodríguez v. Honduras*, in which the court held a state responsible for human rights abuses perpetrated by private persons.²⁴³ The Court stated the following:

*An illegal act which violates human rights and which is initially not directly imputable to the State (for example, because it is an act of a private person or because the person responsible has not been identified) can lead to international responsibility of the State, not because of the act itself but because of the lack of due diligence to prevent the violation or to respond to it as required by the Convention. . . . The State has a legal duty to take reasonable steps to prevent human rights violations and to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure the victim receives adequate compensation.*²⁴⁴

The *Velásquez Rodríguez* decision is significant because it was the first time an international tribunal applied the due diligence standard to a specific human rights violation.²⁴⁵ It provides guidance to countries around the world on how to comply with this international legal obligation.

Poland has not fulfilled its domestic commitments to ensure equality between men and women and has failed in its international legal obligation to exercise due diligence in preventing, investigating, and punishing acts of domestic violence. Poland has not ensured that women have full access to legal remedies or law enforcement and judicial structures. The police and the judiciary have applied the law in a manner that ultimately does not hold domestic violence perpetrators accountable, thereby tacitly ensuring the perpetuation of the practice. Although Poland has established the Blue Line and Blue Card systems, critics consider these programs to be inadequate. Poland lacks support systems for victims of violence and has not yet made a commitment to educate of law enforcement officials on domestic violence.

The Polish government has undertaken some positive steps in this area, but the actions have not been sufficient to prevent and punish domestic violence. The Polish government has not adequately educated its citizens, police, judges, doctors, or prosecutors about the causes and effects of domestic violence or educated victims about their rights under Polish law. Poland has not gone far enough in eliminating the conditions that foster domestic violence and make prosecution and punishment difficult,

²⁴³ *Velásquez Rodríguez Case*, Judgment of July 29, 1988, Inter-Am. Ct. of H.R. (Ser. C) No. 4 (1988), reprinted in 28 I.L.M. 291, 325 (1989) [hereinafter *Velásquez Rodríguez*].

²⁴⁴ *Id.* at 325-26.

²⁴⁵ The *Velásquez-Rodríguez* holding is technically binding only on countries in the Americas. However, its standard of state responsibility for the acts of private individuals is an international human rights norm.

such as the lack of affordable housing. Overall, the government of Poland has shown little demonstrable commitment to stopping violence against women in the family.

The Polish government's approach to domestic violence falls short of the due diligence standard. Poland has a duty to raise awareness about the issue of domestic violence, to publicly condemn it, and to provide effective and efficient remedies for women who experience it.

3. Polish women's rights to security of person and freedom from torture and cruel, inhuman, and degrading treatment are being violated

Article 3 of the Universal Declaration notes that every person "has the right to life, liberty, and security of person." Article 5 of the Universal Declaration and Article 7 of the Political Covenant provide that no person "shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."²⁴⁶ Article 6 of the Political Covenant also reaffirms the international commitment to the right to life, providing that every person "has the inherent right to life."

The United Nations Human Rights Committee issued a report on women's rights in Poland in July 1999.²⁴⁷ It concluded that, although Poland has made some efforts to introduce programs to combat domestic violence, the Committee was concerned about the large number of cases reported, the lack of any civil remedies, and the insufficient number of shelters for victims of domestic violence.²⁴⁸ Criminal prosecutions can take several years, during which time the abuser and victim often live together in a small apartment. The lack of civil protection orders affords victims little recourse other than criminal prosecution.

Poland has failed to guarantee that women are secure in their life and health and that they are safe from their abusers. As a result, Poland has failed to fulfill its international obligations under the Universal Declaration and the Political Covenant.

²⁴⁶ Poland has ratified the Convention on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 46, U.N. GAOR, 39th Sess., Supp. No. 51, at 197, U.N. Doc. A/39/51 (1984) *entered into force* June 26, 1987. Torture is defined as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions." It is argued that domestic violence involves the critical elements that constitute torture. See Innocenti Research Center, U.N. Children's Fund, *Domestic Violence Against Women and Girls*, 6 INNOCENTI DIGEST 10 (June 2000).

²⁴⁷ *Concluding Observations of the Human Rights Committee: Poland*, U.N. Human Rights Committee, 66th Sess., U.N. Doc. CCPR/C/79/Add.110 (1999).

²⁴⁸ *Id.* para. 14 (*cited in* WOMEN 2000, *supra* note 44, at 322).

4. Poland has failed to provide effective remedies for Polish women, further violating their basic human rights under international law

Governments have an international obligation to address the problem of domestic violence by providing sufficient legal and judicial remedies for battered women. Article 8 of the Universal Declaration provides that “[e]veryone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted [her] by the constitution or by law.” Article 2 of the Women’s Convention reaffirms the parties’ obligations to provide legislative and judicial remedies to victims of discrimination, and Article 2(e) states that parties shall “take all appropriate measure[s] to eliminate discrimination against women by any person, organization or enterprise.” This section requires states to remedy violence perpetrated by both the state and private parties. Article 2 of the Political Covenant requires parties to “respect” and “ensure” enjoyment of the rights enumerated in the Covenant, and it provides that any person claiming a violation shall have access to a remedy from a competent authority.²⁴⁹

Poland classifies domestic violence as a criminal offense under Article 207 of the Polish Penal Code, but the violence must be repetitive in order to be punished. The prosecutor only invokes the general assault provision of Article 157 when the woman sustains serious injuries that last for more than seven days. Cases may take years to prosecute, and the convicted abusers generally receive suspended sentences, some of which the court fails to execute when the perpetrators commit new domestic violence crimes.

To even attempt a judicial remedy, the police must arrest the perpetrator and charge him with a crime. Generally, police are reluctant to arrest perpetrators and remove them from their homes. Police response has improved in some urban areas, but perpetrators are still rarely removed from the home. When police do remove perpetrators, it is often only for overnight stays at detoxification centers.

The U.N. Committee on Economic, Social and Cultural Rights issued a report in 1999 expressing concern about the lack of domestic violence remedies in Poland, specifically the lack of safe houses for victims and the “obvious State malpractice in the field of advisory services for [victims].”²⁵⁰ Poland has failed to develop any civil remedies for victims of domestic violence. Article 4(d) of the Declaration on the Elimination of Violence Against Women calls for the development of civil sanctions to redress the wrongs suffered by victims of violence.

Poland has not met its international obligations to provide victims of domestic violence with effective remedies under the law. Women must overcome police inaction, the inability to evict their abuser from the home, and a court system that can take years to

²⁴⁹ ICCPR, *supra* note 234, art. 2, para. 3(b).

²⁵⁰ WOMEN 2000, *supra* note 44, at 321.

navigate and often ends in a suspended sentence for the perpetrator. As a result of these barriers, Poland lacks an effective judicial remedy for battered women.

a. Poland fails to comply with the Declaration on the Elimination of Violence Against Women

The U.N. General Assembly adopted the Declaration on the Elimination of Violence Against Women in 1993. Article 1 of the Declaration provides the following definition of violence against women:

Any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.

Article 4 provides guidelines to member nations on what is expected of them as citizens of the international community. These steps include effectively punishing perpetrators of violence and ensuring women have adequate means of redress, providing governmental budgetary resources for combating violence against women, developing a national plan of action that specifically addresses violence against women, ensuring that police officers and other law enforcement officials charged with implementing and enforcing domestic violence laws receive training on the issue, collecting statistics on the prevalence and nature of domestic violence, and trying to modify the cultural and social patterns and stereotypes that reinforce the view that one sex is inferior or superior to the other.

Poland has failed, among other things, to ensure that women have an adequate means of redress and that law enforcement officials and others in the civil and criminal justice system receive training concerning domestic violence.

b. Poland is in violation of the Convention on the Elimination of All Forms of Discrimination Against Women

The Women's Convention does not explicitly mention violence against women. The Committee on the Elimination of Discrimination Against Women, however, has interpreted the Women's Convention to equate violence against women with discrimination and places it squarely within the purview of the Convention. In its General Recommendation No. 19, this Committee, which oversees implementation of the Women's Convention, notes that "[g]ender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence."²⁵¹ General Recommendation 19 also reaffirms the "right to liberty and security of person" and the right to be free from "cruel, inhuman or degrading treatment or punishment" as fundamental human rights.²⁵²

²⁵¹ General Recommendation No. 19, *supra* note 238.

²⁵² *Id.* para. 7.

General Recommendation 19 specifically mentions family violence as one of the “most insidious forms of violence against women.”²⁵³ It recommends that member states report to the Committee on the existence of legislative and social remedies for domestic violence, statistical data, and any further action being undertaken to combat violence against women. The recommendation also advocates gender-sensitivity training for judicial law enforcement officials and the implementation of effective criminal penalties and civil remedies for domestic violence.²⁵⁴ Currently, only a handful of police officers and judicial officials in Poland receive education from NGOs on the dynamics of domestic violence, and then only sporadically. Police academies and law schools have not incorporated domestic violence education into their curricula. Poland’s ineffective criminal penalties and lack of effective civil remedies also contravene the provisions of General Recommendation 19.

The Committee has recommended continued public and private efforts to overcome violence against women and has noted that violence against women constitutes discrimination and “. . . seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men.”²⁵⁵

The Platform for Action further develops the provisions of the Women’s Convention and the Declaration on the Elimination of Violence Against Women. The Platform for Action gives governments comprehensive, strategic objectives for eradicating domestic violence through integrated measures aimed at preventing and eliminating violence against women. These recommendations include official government condemnation of violence, promotion and full enforcement of legislative and judicial remedies for victims, and implementation of the provisions in the Women’s Convention and other international instruments.

Poland has ratified the Women’s Convention and, as part of the U.N. General Assembly, adopted the Platform for Action. Despite incurring these obligations, Poland has systematically failed to prevent, investigate, or punish violence against women. Although the Polish government has made some effort to eliminate domestic violence, Poland has not taken sufficient measures to amend the laws that obstruct redress, to allocate resources to the research and prevention of domestic violence, or to ensure gender sensitization of the police and judiciary.

B. The European Union

²⁵³ *Id.* para. 23.

²⁵⁴ *Id.* paras. 24(b), 24(i).

²⁵⁵ *Id.* para. 1.

Poland is currently seeking membership in the EU. Poland has pledged to “harmonize” its national law with that of the EU in order to finalize membership.²⁵⁶ The political criteria for accession²⁵⁷ to be met by the candidate countries was established by the Copenhagen European Council²⁵⁸ in June 1993. For membership in the EU, candidate countries must have achieved “stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities.”²⁵⁹ The EU²⁶⁰ regards violence against women, both in public and in private, as a flagrant violation of fundamental human rights.²⁶¹ Furthermore, the European Parliament has stressed that EU accession is out of the question for states that do not respect fundamental human rights.²⁶² Poland must respect the human rights of women in order to join the EU.

The EU focused its attention on the issue of domestic violence in the year 2000.²⁶³ The Parliament urged all states²⁶⁴ to ratify and implement the Women’s Convention, withdraw reservations to the agreement, and ratify the Optional Protocol of the Women’s Convention. Additionally, the Parliament urged all governments to formulate and implement national action plans for the elimination of violence against women and other forms of degrading treatment. The plans would include appropriate legislation against all forms of domestic violence and a refusal to invoke customary, cultural, or religious considerations to avoid obligations in this respect. The EU called on governments to take the necessary measures to include domestic violence in human rights law and domestic law, with the aim of making it easier to pursue claims.²⁶⁵

²⁵⁶ Interim Agreement on Trade and Trade Related Matters between the European Economic Community and the European Coal and Steel Community, of the one part, and the Republic of Poland, of the other part, 1992 O.J. (L114) 2.

²⁵⁷ The accession negotiation process determines the conditions under which each candidate country will join the EU.

²⁵⁸ The Copenhagen criteria also require that a candidate country has achieved; [this repeats the information in the text word-for-word] the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union and the ability to take on the obligations of membership, including adherence to the aims of political, economic and monetary union. *See* 26 (6) Bull. Eur. Comm. 13 (1993).

²⁵⁹ 2000 O.J. (C 377) 351.

²⁶⁰ The European Commission works to support the effort to combat violence against women by a policy promoting equal opportunities for men and women, and the commission seeks to integrate this aspect into all Community policies, programs and actions to enable women to exercise their rights, including the right to live in an area of freedom and security. *See* 1992 O.J. (C 27) 4.

²⁶¹ 1999 O.J. (C 320) 39, 40 [hereinafter C 320].

²⁶² Resolution on respect for human rights in the European Union, 1999 O.J. (C 98) 279.

²⁶³ 2000 O.J. (C377) 340.

²⁶⁴ *Id.*

²⁶⁵ *Id.*

As part of the European campaign to raise awareness about violence against women, the EU has adopted a community action program to help prevent violence against women. The DAPHNE²⁶⁶ program (2000–2004) works to combat domestic violence by establishing networks of public and private organizations active in the pursuit of the elimination of violence against women throughout the European Community. Candidate countries may take advantage of the program, although Poland has not accepted the opportunity.²⁶⁷

The EU previously focused increased attention on violence against women in 1999, declaring a campaign against violence against women in Western Europe.²⁶⁸ As part of the campaign, the European Commission supported a comprehensive study on the prevalence of domestic violence in part of the region.

Poland submitted its application for EU membership in 1994²⁶⁹ and has set December 31, 2002, as the target date for meeting all the requirements of accession. Poland has made progress in the negotiations and the adoption of the *acquis*,²⁷⁰ but some outstanding problems still remain for Poland to solve. A great deal of work will be required to achieve and accept the *acquis* into national law and implement it. Although the EU's DAPHNE program on domestic violence is not mandatory, the recommendations and initiatives strongly condemn Poland's failure to prevent domestic violence.

C. The Council of Europe

Poland joined the Council of Europe in 1991. The Council of Europe, an organization of 41 European states, works to modernize and harmonize national legislation with the principles of human rights, to promote greater unity within Europe, and to safeguard Europe's political and cultural heritage by promoting human rights and democracy. The Council promotes human rights primarily through the European Convention on the Protection of Human Rights and Fundamental Freedoms,²⁷¹ which Poland has ratified, and through the European Court of Human Rights. The Council seeks to protect human rights and eliminate any interference with women's liberty and

²⁶⁶ 1998 O.J. (C 259) 2.

²⁶⁷ *Id.*

²⁶⁸ *See* C 320, *supra* note 261, at 39, 40.

²⁶⁹ Accession negotiations with Poland began in 1998.

²⁷⁰ The *acquis* comprises the entire body of European Community legislation. Countries must adopt the entire *acquis* upon accession to the EU and ensure its implementation and enforcement.

²⁷¹ 213 U.N.T.S. 2222, *entered into force* Sept. 3, 1953, as amended by Protocol No. 11, 1994 Eur. T.S. 155.

dignity, including interference caused by violence. As with other of its international obligations, Poland violates the European Convention when its government fails to adequately address the problem of domestic violence.

Article 2 of the Convention guarantees the right to life, Article 3 guarantees the right to live free from torture, and Article 5 grants the right to security of person, which would include all citizens of Poland. Article 13 provides the right to an effective remedy for violations of the rights of the convention, and it provides that the freedoms guaranteed in the convention shall be granted without sex discrimination. Although Poland has undertaken basic measures to protect its citizens from violence, these steps are insufficient to protect Polish women's rights under the Convention, as they systematically suffer from abuse.

The Parliamentary Assembly's Committee on Equal Opportunities for Women and Men adopted the Declaration on Zero Tolerance of Violence against Women and Girls in 1999.²⁷² The Declaration defines its subject in the following way:

Gender violence is a fundamental violation of the right to life, liberty and security, personal, mental and physical integrity, equal protection before the law, equality within the family, as well as the right not to be subjected to torture or inhuman or degrading treatment or punishment.

Violence against women, which cannot be excused by any cultural difference, is both a serious obstacle to the achievement of women's equality and a direct consequence of the inequality which persists throughout Europe. Consequently, the fight to combat domestic violence against women must be achieved by fighting for equal rights and opportunities for women.

The Committee called for respect of the Council of Europe's Summit Declaration²⁷³ and for support of DAPHNE.

The Council of Europe has demonstrated a strong desire to eradicate violence against women in its member states. As a member, Poland should observe and respect Council of Europe recommendations on the subject of violence against women.

²⁷² Report of the Committee on Equal Opportunities for Women and Men, Eur. Parl. Ass., Doc. No. 8667 (2000), at <<http://stars.coe.fr/doc/doc00/edoc8667.htm>> (last visited Dec. 10, 2001).

²⁷³ At the 1997 Council of Europe Summit, the Heads of State and Government affirmed their desire to combat domestic violence and called for continued progress with a view to achieving effective equality of opportunities between men and women.

VII. CONCLUSION

Women in Poland suffer from domestic violence at alarming rates. The Polish legal system regularly fails to protect women from violence by their partners in intimate relationships. In addition, social and economic barriers prevent women from obtaining adequate redress for domestic violence. Forensic doctors often attempt to determine the credibility of domestic violence victims rather than simply record their injuries. Police, prosecutors, forensic doctors, social service providers, and others inside and outside of the legal system mistakenly view domestic violence as a manifestation of alcoholism. As a result, cases of domestic violence are seldom prosecuted. Through its failure to respond appropriately to the needs of victims of domestic violence, the Polish government has not met its obligations under international human rights law.

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