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BETWEEN RIGHTS AND VALUES.
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WITH THE ISTANBUL CONVENTION

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BETWEEN RIGHTS AND VALUES. ON THE POLISH (NON)COMPLIANCE WITH THE ISTANBUL CONVENTION

Data provided by the Police of the Republic of Poland reveal that nearly 250,000 persons are affected by domestic violence annually. Between 400 and 500 women die as a result thereof. The Council of Europe Convention on preventing and combating violence against women and domestic violence of 2011 (Istanbul Convention) is a result of joint efforts undertaken by European States in order to protect women and other victims of domestic violence. The paper elaborates on the impact of the Istanbul Convention on the domestic practice in the Republic of Poland. The aim of this part is to outline the practical importance of the treaty. I present amendments made to the Polish legal system since ratification of the Treaty and discuss the impact of the Istanbul Convention on the Polish legal system, and practice. The paper discusses the findings of the research against the theoretical background, by use of the main assumptions of Integrated Theory by Oona Hathaway.

Key words: *Domestic Violence, Integrated theory, Istanbul Convention, Poland, Women.*

1. INTRODUCTION

The paper discusses whether the Council of Europe Convention on preventing and combating violence against women and domestic violence (hereinafter: The Istanbul Convention)¹ has a meaningful impact on the law and practice of the Republic of Poland. I was prompted to address the issue considering two facts. Firstly, I

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¹ Council of Europe, *The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence*, November 2014, ISBN 978-92-871-7990-6, available at: <https://www.refworld.org/docid/548165c94.html> (last visited 20 November 2020).

have noted increasing number of acts of violence directed against women in the Polish society during coronavirus outbreak (Gontarek 2020). Secondly, the deteriorating trend is surprisingly matched with rumors on possible denunciation of the Istanbul Convention by the right-wing Polish Government (Kośmiński 2020). The plan to abort obligations under the treaty coincides with massive popular protests following the controversial decision of the Polish Constitutional Court of October 22, 2020 restricting the right to legal abortion². In particular, it seems striking that Poland had made some efforts to adhere to treaty regime (as I will elaborate later in Chapter III), merely to breach a part of conventional obligations, and end up with plans to denounce the agreement, all coupled with incitements by high-ranking officials to defy compliance³. Furthermore, it is not clear why Poland plans to defy the Istanbul Convention while still adhering to the UN Convention on the Elimination of All Forms of Discrimination against Women. Intriguingly, both treaties adopt similar language, and are based on comparable social diagnosis⁴.

The problem brings about some interesting theoretical observations and issues. In particular, stipulations of human rights treaties involving controversial value-related problems seem particularly vulnerable to shifting tides of democratic process, where political parties use value-based polarization of society to gain political support of various constituencies. The vulnerability may be exacerbated with the lack of, or relative ineffectiveness of enforcement mechanisms envisaged by a treaty.

The paper argues that the Istanbul Convention has certain, yet significantly limited impact upon domestic practice in Poland. Yet, it

² According to Domagalski (2020), in Poland, the so-called “abortion compromise” allows legal abortion due to three reasons. One of them, the possibility of termination of pregnancy due to severe and incurable defects of the fetus, overturned the judgment of the Constitutional Tribunal on the abortion, deeming it unconstitutional.

³ According to Ambroziak (2017), president Andrzej Duda, when asked for commentary regarding the Istanbul Convention during an interview on national television on February 2nd, 2017 said: “first of all – do not apply.”

According to Kijowska (2018), the former Prime Minister Beata Szydło, while visiting the commune which is leading the way in not conforming to the rules of the convention, praised local leaders for ‘courage’ in doing so.

⁴ UN General Assembly. 1979. *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13, available at: <https://www.refworld.org/docid/3ae6b3970.html> (last visited 20 November 2020).

is posited that the original, limited compliance was mostly influenced by internal interest groups that persuaded the then Government. The situation has dramatically changed since 2015 when the new Government decided to articulate value-based attitude of a constituency with different views. It is also claimed that the possible denunciation of the Istanbul Convention would constitute a political maneuver in order to appease the supporters of the ruling party, who are known for being reluctant towards the Council of Europe, and perceive it as a part of the contested European Union system.

The issue is elaborated in the following parts. Firstly, the key facts on violence against women in Poland are presented and elaborated against the key obligations stemming from the Istanbul Convention. The aim of this part is to outline the practical importance of the treaty (II). Secondly, I present amendments made to the Polish legal system since ratification of the Treaty and discuss the impact of the Istanbul Convention on the Polish legal system, and practice (III). Finally, the paper discusses the findings of the research against the theoretical background. In this part, I will briefly describe main assumptions of Integrated Theory by Oona Hathaway (See Hathaway 2005). This part also explores the public and political debate in the Republic of Poland concerning The Istanbul Convention paying due heed to actors, and their motives (IV).

2. THE ISTANBUL CONVENTION AS A PRINCIPAL, INTERNATIONAL BINDING INSTRUMENT ADDRESSING GENDER-BASED VIOLENCE

Gender-based violence significantly affects the social position of women. In particular, domestic violence in Poland results in more instances of women being killed than any other type of criminal activity (WHO 2012). This dangerous phenomenon has been recently recognized by the international society as a structural problem, and not as a private family affair. In particular, the Istanbul Convention is the first regional agreement which integrally focuses on the issue. The Treaty creates a comprehensive legal framework, and approach for combating violence against the most vulnerable, and focuses on the prevention thereof, on the protection of victims, and on the prosecution of defendants. The present part of the paper succinctly outlines

the cultural background of gender-based violence in Poland. It also presents The Istanbul Convention as a tool to eradicate both dangerous stereotypes, and social deviations as their progeny. A Polish NGO – The Center of Women’s Rights estimates that between 400 and 500 women are killed annually as a result of domestic violence (Chrzczonowicz 2016). Another scientific study gives lower, yet still horrifying figures regarding domestic violence with the death-toll amounting to 150 women killed annually (Piotrowska 2011, 119). According to the statistics revealed by the Polish Police, in 2019 alone 88.000 of victims were subjected to domestic violence, including 65.000 victims who were women (RPO 2020a). Perpetrators of domestic violence are, in most cases, men, who are responsible for relevant activities in 90% of incidents (KANTAR 2019, 7). According to a 2016 study prepared by the STER Foundation, 87% of female respondents have experienced some form of sexual harassment. Furthermore, 22% of surveyed women have been raped. In these cases, culprits were: current (22%) or ex-partner (63%). As much as 55% of rapes occurred in private apartments (Grabowska, Grzybek 2016, 8). According to EIGE report of 2017, 13% of women in Poland have been victims of violence relating to sexual activities and only 26% of cases were reported to the Police by victims (EIGE 2018, 1). The Center for Women’s Rights estimates that the principal reason of men’s violent attitude relates to the particular male’s approach to women. The approach is canvassed with the assumption that social gender roles give men an advantage, and power to subjugate women. The finding is supported by the fact that men who abuse women and children rarely use violence against people they consider as equals (Chrzczonowicz 2020). In the Polish society gender stereotypes are so well-rooted that men still refer to alleged social consent to use violence against women. Pursuant to a recent study, 11% of surveyed men, and 6% of surveyed women believe that marital rape does not exist, and that women should always agree on whatever men want regarding sex. The last position is accepted by 13% of surveyed men, and 7% of surveyed women (KANTAR 2019, 27). Nonetheless, domestic law did not acknowledge the deeply rooted imbalanced power-structure between sexes which works as a stimulus for domestic violence (du Vall 2014).

The Istanbul Convention is not the first treaty aimed at eradication of gender role stereotypes constituting a source of imbalance

between the position of women and men in human societies⁵. Yet, the potential impact of the Convention lies in the complexity of regulations counteracting violence against women, and in introduction of monitoring mechanisms designed as vehicles for ensuring compliance (Chrzczonowicz 2020).

The Istanbul Convention establishes four pillars of the legal regime aimed at protecting women. These pillars entrench four obligations of States parties: Prevention, Protection, Prosecution, and Integrated policies⁶. Prevention involves training specialists, conducting a campaign to raise awareness about violence, educating on gender equality, cooperating with non-governmental organizations, involving the media and society in the awareness-raising process. Istanbul Convention aims to improve victims' protection and support, through: police operations, specialized support services such as shelters or helplines and to ensure that information is available for victims to know what help they can get and where to look for it. The prosecution of perpetrators is ensured by the Convention by defining and criminalizing various forms of violence against women. This part also introduces a regulation on the protection of the victim against secondary victimization. Integrated policies are based on the assumption that counteracting violence against women requires the cooperation of many institutions: law enforcement agencies, the judiciary, governments, NGOs, national parliaments and local authorities, and even society as a whole⁷.

The Istanbul Convention has its own monitoring system, the Group of Experts on Combating Violence Against Women and Domestic Violence (GREVIO), to which States Parties are required to submit periodic reports. It can also make special visits to countries when necessary⁸.

⁵ For example, the 1981 UN CEDAW Convention ratified by Poland, to which the Istanbul Convention refers in the preamble, is using the same language regarding gender and gender-based discrimination.

UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, United Nations, Treaty Series, p. 13, available at: <https://www.refworld.org/docid/3ae6b3970.html> (last visited 22 November 2020).

⁶ Council of Europe, *The Istanbul Convention in Brief*, <https://www.coe.int/en/web/istanbul-convention/the-convention-in-brief#%7B%2211642062%22%3A%5B%5D%7D>, (last visited 22 November 2020).

⁷ *Ibid.*

⁸ More information on GREVIO can be found at: Council of Europe, *About GREVIO – Group of Experts on Action against Violence against Women and Domestic Violence*, <https://www.coe.int/en/web/istanbul-convention/grevio> (last visited 20 November 2020).

The Treaty has been signed by all Member States of the European Union, and ratified by 21 of them. Poland signed the Convention in 2011, and ratified the treaty in 2015 (European Parliament 2016). The Polish minister of justice announced his intention to withdraw from the Convention in July 27, 2020 (kb/kbab 2020).

The Treaty highlights the importance of stereotypes, and traditional social roles that affect the dynamics of power between women and men. The agreement also calls on signatories to conduct extensive educational activities, and campaigns to increase public awareness (Grochal 2016). Moreover, the Istanbul Convention underlines the position of non-governmental organizations focused on combating violence against women, and domestic violence. The document creates obligation for States-parties to create a required number of shelters, support centers, and a 24/7 helpline. States are bound to implement appropriate policy questioning procedures, and collect data on gender crime According to Polish Ombudsman: “The Convention has created an impetus for better policies, services and benefits, as well as for debates on violence suffered by women and girls and how to help them. Istanbul Convention positively influenced the lives of women across Europe – it initiated and led to significant changes in the law” (RPO 2020a).

3. LEGAL AMENDMENTS IMPLEMENTED TO POLISH DOMESTIC LAW UNDER INFLUENCE OF ISTANBUL CONVENTION

Now, I will examine the amendments to Polish domestic law under direct or indirect influence of ratification of Istanbul Convention. There were at least a few amendments in Polish domestic law concerning domestic violence, sexual violence and support system for the victims of such abuse, made as an effort to adjust Polish domestic law to the regulations of the Treaty. It is difficult to prove the direct impact of the Istanbul Convention on the amendments of law. However, by observing the social debate, pressure from NGOs, statements of lawmakers and the convergence of the amendments with the regulations contained in the convention, we can come to the conclusion that they were most likely related to the ratification of the document.

It's worth noting that commentators often emphasize that at the time the Treaty was adopted, Poland already had many laws on prevent-

ing violence against women that were in line with the convention's obligations (du Vall 2014). In previous years, Poland had ratified the CEDAW Convention and adopted the Beijing Declaration. Furthermore, Republic of Poland implemented said regulations to a satisfactory level, along other countries in the region, although, similarly to the current situation, dissidents directed more attention, decision-making power and budget to alcohol issues, wrongly identifying alcohol abuse as a major source of domestic violence (Avdeyeva 2007). Then, similarly to the present situation, the Polish government did not make connections between gender equality issue and domestic violence (Krizsan, Popa 2015, 12).

This chapter consists of 4 parts. Firstly, I will discuss the efforts made by Poland to adapt Polish law before ratification of the document. Secondly, I will discuss amendments in Polish law on violence against women and domestic violence in the period from 2015 to 2020. Thirdly, I will discuss which obligations included in the treaty have not been fulfilled by Poland. Finally, I discuss the overall impact of the Istanbul Convention on the Polish legal system and practice.

3.1. Changes introduced to the Polish legal system before ratification of the Istanbul Convention in 2014

Having signed the Convention, but before ratification, Poland had made efforts to eliminate at least two elements of the domestic law standing in the strike contrast to conventional stipulations.

The first amendment was related to Article 51 of the Convention. It requires police officers to assess the risk of death and further acts of violence, with particular emphasis on situations where the perpetrator has access to firearm, in order to prevent domestic violence related murders (Bieńkowska, Mazowiecka 2016). To this end, Poland introduced special proceedings in order to estimate the risk to the life, and health of people affected by domestic violence. Program of algorithms and questionnaires used by the Police was preceded by a six-month pilot and started in January 1, 2014 (Kordaczuk-Wąs 2013).

Articles 49 and 50 of Istanbul Convention oblige the state to recognize the acts described in the Treaty as crimes and imposes the obligation to prosecute these crimes.⁹ The second change regarded the

⁹ Council of Europe, The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, November 14.

procedure for prosecuting sexual offenses. The crime of rape was the only serious offense prosecuted in Poland under the application procedure. It means that the conduct of proceedings against rape perpetrators was dependent on a formal application submitted by the victim. As a result, the crime of rape seemed rather low in hierarchy of offenses. In turn, it could be perceived as a manifestation of gender discrimination as 90% of rape victims are women (Duniewska, Renkiewicz 2015)¹⁰. Prosecution of rape ex officio was one of the key points of the Istanbul Convention. The victim is no longer obligated to put forward motion for prosecution of the crime of rape, which removed the obstacle preventing the ratification of the Convention by Poland (Duniewska, Renkiewicz 2015). This amendment to criminal law emphasizes the important fact that rape is not a personal matter, but a public issue. Therefore, it is the duty of the State to prosecute the crime of rape regardless of the victim's request.

3.2. Changes introduced to the Polish legal system and practice between 2015 and 2020

Below, I will outline the principal changes introduced to the Polish national law after ratification of the Istanbul Convention. These amendments materialized due to longstanding lobbying efforts made by non-governmental organizations. They achieved a partial success persuading the Government and majority of MPs (members of Parliament) to meet the Treaty obligations. At least three principal changes were introduced in order to fulfill obligations under the Istanbul Convention.

In Article 24, the Istanbul Convention obliges States-Parties to launch nationwide, 24hour free helplines for victims of violence¹¹. Invoking the Istanbul Convention, NGOs and the Polish Ombudsman

¹⁰ According to Duniewska, Renkiewicz (2015), the change was based on the regulation of Art. 51 in Convention and inspired by Minister of Internal Affairs, who drew attention to the repeated homicide cases in the country, in which the victims were people who had previously experienced domestic violence.²⁰ Based on this case, it can be said that the Convention is undoubtedly a step towards the unification of European solutions constructed in the area of limiting and combating domestic violence and it supports the cooperation of European countries in creating better solutions regarding these pressing problems.

¹¹ Council of Europe, The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, November 14.

persuaded the State¹² to create a 24/7 telephone line for victims of domestic abuse. It offers psychological and legal help to people experiencing violence and witnesses of domestic violence. Since January 1, 2017, the National Emergency Service for Victims of Domestic Violence “Blue Line” is available 24 hours a day (Róžańska 2020).

Further amendments regarded protection of women against so-called secondary victimization. The phenomenon of secondary victimization arises when a victim of rape experiences degrading treatment in the course of judicial, and police procedures. Fear of secondary victimization often keeps women away from reporting to the police, and leaves most rape crimes in the so-called gray area (Piotrkowska, Synakiewicz 2011, 21).

Obligation of professional training of people who are working with victims of abuse is prescribed under Article 15 of Convention¹³. In order to fulfill the obligation, Poland implemented a special mode of interrogating a person who suffered sexual violence. The procedure is aimed at ensuring comfort and protection of the person reporting sexual violence. In particular, interrogation of the victim has to be limited to certain issues considering key facts and evidence. Moreover, the new regulation ensures the presence of a psychologist of the same sex as the victim (Róžańska 2020).

Finally, in Article 52, the Istanbul Convention requires States-Parties to take the necessary measures to ensure that the relevant authorities are empowered to order the perpetrator of domestic violence to leave the home immediately for an appropriate period of time¹⁴.

In order to fulfill the obligation, the Code of Civil Procedure was amended in April 2020 (RPO 2020d). The amendment introduces the fast-track procedure aimed at isolating victims and perpetrators of domestic violence. According to amended law, the police officers or gendarmerie are entitled to order a perpetrator of violence to imme-

¹² I link the pressure from NGOs with the creation of a 24-hour hotline for victims on the statements made by public figures, such as: “After much pressure, a 24/7 support phone for victims of violence was launched.” Agnieszka Grzybek from the Foundation for Equality and Emancipation “STER” in an interview with Róžańska (2020)

“It was the Convention that prompted the launch of a 24-hour line for people experiencing violence” – said Polish Ombudsman (RPO 2020b)

¹³ Council of Europe, The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, November 14.

¹⁴ *Ibid.*

diately leave an apartment cohabited with a victim if the life, health or safety of the latter are threatened. Officers enforcing the eviction are entitled to use coercive methods. The State is obliged to provide accommodation for the evicted perpetrator (RPO 2020a).

The implementation of this law was rooted in the Convention and based on the experiences of other European countries that had already introduced this law, e.g. Austria (Cedro, Nowosielska 2020). The obligations for Poland under Article 52 were used as an argument during a long-running campaign to amend the law led by women's rights NGOs and the Ombudsman, for example in a petition addressed to parliamentarians (Centrum Praw Kobiet 2018).

Oddly, the said amendment is also used in 2020 by the Minister of Justice as a proof that there is nothing else to improve within Polish domestic law regarding violence against women, and hence the Convention should be denounced (Cedro, Nowosielska 2020).

3.3. Examples of failures in meeting conventional obligations

Despite the fact that even before the ratification, the Polish legal order was quite consistent with the Treaty and despite some key amendments in the legal order, one cannot be too enthusiastic. According to alternative report of the Polish Ombudsman (RPO 2020b) and the report of Amnesty International (Amnesty International 2018), Poland is failing to completely fulfill the obligations imposed on state by the Convention. I will focus on the most evident examples.¹⁵

Article 13 of the Istanbul Convention on the Criminalization of Sexual Violence provides a definition of the crime of rape based on lack of consent¹⁶. The most glaring example of non-compliance with the treaty is the definition of the crime of rape in the Polish penal code. Now, the Polish definition of rape is not based on the concept of lack of consent, as in most European legal orders, but on the concept of bring-

¹⁵ More information can be found in reports, such as:

1. Amnesty International (2018).
2. Polish Ombudsman Alternative Report (RPO 2020c).
3. Istanbul Convention's monitoring body GREVIO is also preparing a special report on Poland's compliance that will be available in 2021.

¹⁶ Council of Europe, The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, November 14.

ing about sexual intercourse, in which the attacked person must “put up active and uninterrupted resistance” (Amnesty International 2019). The definition of rape now used in the Polish penal code dates back to 1932. Considering how much has been learned since then about sexual violence or the victim’s response to it, it seems obvious that it needs updating (Płatek 2011, 26). This contributes to a “gray area” for rape because victims do not want to report the crime for fear that they will hear that “it was not rape because they did not defend themselves”, which has been known to happen at hearings (Dudek 2020).

In this case, Articles 13 and 14 of the Convention are of significant importance as they oblige the parties to raise public awareness of stereotypes about gender roles (Art. 13) and educate the public on the matter (Art. 14). The practice of Poland does not indicate that it respects this obligation. Poland is not running a sufficient social campaign to support the equality of women and to combat stereotypes and there is no broadly understood anti-violence education or prevention (Szczeńsiak 2020). What requires special attention is raising public awareness of the respect of women’s rights and the principle of gender equality, as it is crucial to real and effective enforcement of already existing law.

It should be emphasized that the important factor is the lack of change in the way of thinking and making judgments by national judges who rule basing on gender stereotypes and do not adjudicate in accordance with the regulations in force today. There is still a lot to do regarding judicial punishment of rape perpetrators – the statistics of the Ministry of Justice show that in 2012–2016 the percentage of suspended sentences for rape varied between 34 and 43 percent with many of others getting low penalties of about 2 years. According to Deputy Minister of Justice Marcin Warchoń, such low sentences in Polish courts result from the biased mentality of judges (Szymaniak, Świętochowska 2017).

Similar situation can be observed regarding judicial punishment for murderers that kill women in domestic violence and for women killing their abuser in a form of self-defense. According to a report made by Women’s Rights Centre judges rule based on gender stereotypes – to the advantage of male perpetrators and disadvantage to female victims of violence, even using victim-blaming during hearings (Nowakowska, Kępka, Chańsk 2005). The conviction rates for domestic abuse in Poland are indeed low. According to criminologist Mag-

dalena Grzyb (2020), “every year, for approximately 75,000 registered cases of domestic violence, there are roughly 10,000 convictions”.

Article 18 of the Istanbul Convention obliges States, *inter alia*, to ensure effective cooperation with non-governmental organizations. Article 22 imposes an obligation to provide specialist support, e.g. in the form of assistance centers. However, the practice of Poland is not in line with these articles. Polish government withdrew funding for non-governmental organizations working for women’s rights, although cooperation with non-governmental organizations is emphasized in the Convention as key. Mainly due to under-financing, the availability of specialist support centers for victims of domestic violence is declining (Ambroziak 2020). It leaves victims of violence without the help of the state they need.

Economic violence is included in Article 3 of the Istanbul Convention, which defines violence. In Polish law and legal practice, however, economic violence is still not considered domestic violence and there is no punishment mechanism for its use. It leaves victims of this kind of violence deprived of legal protection (Kancelaria Senatu 2015, 7).

Also in Article 3, the definition of domestic violence includes ex-partners, ex-spouses, and people who do not live together. Domestic violence under Polish law does not apply to people who do not live together and/or are former partners (RPO 2020c, 4). This hinders the legal protection of people experiencing domestic violence by, for example, former partners with whom they still share custody of children.

Another issue is that the obligation to counteract violence rests mostly on the communes that receive little support from the State. Municipalities have a lot of room for non-compliance to the obligations of the treaty, which creates a situation where the well-being of victims of domestic abuse lies in the hands of local decision-makers, without proper supervision and protection by central authorities (RPO 2019).

Furthermore, members of the Polish government applaud non-compliance. The former Prime Minister visiting the city of Zakopane in 2019, in a municipality that does not implement the principles of the anti-violence law and the Convention¹⁷, praised the representatives of the municipal government, calling their opposition to anti-violence

¹⁷ According to RPO (2019), The Polish Ombudsman said: “Zakopane is the only one commune in Poland that has not adopted a program to counteract domestic violence. This violates the Act on Counteracting this Violence, the Constitution and the norms of international law. It also testifies to the disregard for the victims.”

solutions “courageous”. In fact, as many as 140 municipalities in Poland have not adopted a program of counteracting domestic violence, and the state has not taken steps to enforce these provisions, leaving the residents of these municipalities who are victims of domestic abuse to themselves (Ambroziak 2020). Furthermore, when asked about the Istanbul Convention, president Andrzej Duda replied “first of all – do not apply”. It truly is shocking behavior of state representatives who encourage citizens to refrain from applying the international agreement, which has become part of the Polish legal order through ratification.

In recent years, there were some controversial ideas of the Polish government that raise further concerns about the future of victims of violence in Poland. One was the idea of changing the definition of domestic violence to one that can only be applied if the act of violence were more than one-off. The reaction of the public was so strong that the creator of the project, deputy minister of Family, Labor and Social Policy was removed from her post (Makarewicz 2019). There were also debates on introducing amendments that would allow for the creation of the so-called Blue Card (“Blue Card” is a procedure initiated in connection with a well-founded suspicion of domestic violence) only at the request of the aggrieved party – which could lead to false reduction of statistics and lack of real help for families affected by violence. This idea also sparked strong social opposition (Nowakowska 2019).

3.4. The impact of the Convention on the position of women in Polish society

The Istanbul Convention is an attempt to unify legal system of European states in such a way that the introduced regulations are most effective in protecting victims and counteracting violence. Istanbul Convention is a legal obligation to improve the situation of victims in Poland.

As I elaborated earlier, although many of the law regulations that are crucial to reducing violence against women and domestic violence are already in place, what requires special attention is raising of public awareness of the respect of women’s rights and the principle of gender equality. With a few, but crucial exceptions and unfortunate lack of a functional internal monitoring system, the Polish legal system is already largely consistent with regulations of the convention, but counteracting of domestic violence and violence against women still leaves much to be desired, as was proven in this paper.

At this point, it should be emphasized with the utmost firmness that the law in Poland still requires significant changes in order to better protect victims – one of the most important, of those described in the previous paragraph, is the change of the definition of the crime of rape and the introduction of the concept of economic violence to the legal definition of domestic violence.

It's important to highlight the fact, that Convention's significance lies not only in the legal, but also in the socio-cultural perspective. As a result of patriarchal stereotypes regarding the role of women and men in the family and public life, violence against women and domestic violence constantly do not evoke a firm objection from judges, police officers and, by large, society (du Vall 2014). I consider the social norms to be almost equally important to legal norms in regard to human rights law enforcement.

The idea of gendered policy was interestingly presented in work of Andrea Krizsan and Raluca Popa (2015). The authors made comparison between some Central and Eastern European Countries, including Poland, in adopting anti-domestic violence and pro-women's rights policies during a decade until 2015. Findings regarding Poland's style of adopting policies for combating domestic violence showed that Poland does not make a connection between domestic violence and gender equality. In the eyes of the Polish government, domestic violence was more connected to anti-alcoholism, child protection and family protection rather than women's rights, and these sectors were granted financial support (Krizsan, Popa 2015, 12). Policy adoption was also called by the authors of research as "highly controversial with strong standing given to voices contesting gender" (Krizsan, Popa 2015, 12) I think the interesting way to describe the Polish approach to implementing policies related to Istanbul Convention – while not naming women as disproportionately victimized in related issues – would be the way Krizsan and Popa described the approach of CCE countries as the ones that often adopt "policies that may meet the letter of the international norms, but not the spirit" (Krizsan, Popa 2015, 7).

It is crucial for Poland to remain a party to the Istanbul Convention if victims of domestic violence are to receive adequate help and protection, and the real causes of domestic violence are to be properly diagnosed and discussed. The non-termination of the convention is also important due to the fact that Polish law is changing very dynamically – as evidenced by the recent judgment of the Constitutional

Tribunal regarding the prohibition of abortion due to severe fetal defects. Women's rights are extremely fragile under the rule of the current party, so it is important that they are additionally protected by international law.

4. RESEARCH FINDINGS AGAINST THE THEORETICAL BACKGROUND – THE INTEGRATED THEORY

In this chapter, I will discuss the findings of the research against the theoretical framework. Firstly, I will briefly describe the integrated theory of Oona Hathaway. Secondly, I will attempt to explain the reasons behind Poland's seemingly absurd behavior towards the Istanbul Convention by using the elements of previously described integrated theory.

4.1. The Integrated Theory of International Law by Oona Hathaway

I chose the Integrated Theory (Hathaway 2005) as it constitutes an ambitious attempt to unify the three main particular approaches to the problem of States' compliance: realistic, constructivist, and liberal. The overarching grand scheme of the theory helps to overcome certain inherent limitations of the particular approaches.

According to Hathaway (2005), in order to explain a particular attitude of a State towards treaty commitments, one should take into account both interest-based, and norm-based factors. The former are motivations involving sovereign's interest. For example, it is claimed that international agreements are enforced when their aim coincides with the interest of the most powerful States, or when strong enforcement mechanisms may be put in place. It means that compliance is dependent upon external enforcement. In turn, dynamics of domestic politics is barely relevant. The later motivations may be identified with reference to certain tenets of constructivist theory (see Henkin 1968). According to this approach, the behavior of States is motivated not only by their egoistic interests, but also by ideas that are shaped through interaction between the actors of international system. The behavior of States is explained not only as a consequence of rational

choice, but also as an expression of international standards and values being adopted and internalized by States. Norm-based models shifts attention to the powerful role of ideas, and the influence of non-State actors. Moreover, institutional liberalism perspective works as a link between an interest-based (see Goldsmith, Posner 2005), and norms-based approach (see Moravcsik 1997). This perspective focuses: on domestic politics; on individuals, and interest groups (within the state) which exert pressure on governments creating compliance-pull. Hathaway argues that States make compliance-related decisions by taking into account preferences of the powerful domestic groups of interest that may “influence the government through political institutions and social practices” (Hathaway 2005).

The aforementioned assumptions materialize in four principal factors influencing compliance: domestic legal enforcement, international legal enforcement, domestic collateral consequences, and transnational collateral consequences (Hathaway 2005). The domestic enforcement mechanism involve primarily: strong and independent judiciary, and other procedures for protection of civil rights. Therefore, a State without a strong legal system of rights enforcement is more likely to ignore treaty-based obligations (Hathaway 2005). Transnational enforcement, although not exclusive, is an effective method of influencing State’s behavior. In particular, international institutions equipped with competences to apply enforcement methods (e.g. sanctions) can positively influence compliance. On the other hand, as Hathaway argues, treaties with strong enforcement systems are will be avoided by States that do not intend to fully comply with the relevant obligations (Hathaway 2005). The Integrated Theory also emphasizes significance of so-called collateral consequences. They involve, among others, reputation gains; and explicit, or implied benefits. There are two levels of collateral consequences: domestic, and transnational (Hathaway 2005). At the national level, the government realizes that decisions regarding joining, and adhering to the treaty can trigger reactions from citizens, and local groups thus affecting constituencies, and their choices during elections. States will be more inclined to accede to treaties, especially in democracies, if there is public support for them. Domestic actors (for reasons of their own attachment to treaty regulations) may be in a position to influence the government’s behavior towards the treaty, both for ratification, and for compliance. This dynamic is of particular importance in human rights activism.

However, it should be emphasized that groups trying to exert pressure may not have sufficient ties with the government, and then the impact on changing the state's behavior after accepting the commitment may be too little (Hathaway 2005). Joining or complying to the treaty may also affect perception of a State by other actors within the international society. In this way, transnational collateral consequences arise when there are reactions of other international entities (e.g. NGOs, investors, international organizations). This may include, for example: encouraging or discouraging investment in a given country receiving or not receiving financial aid from international organizations or individual donors (Hathaway 2005).

4.2. The Integrated Theory applied

In this part, I will explain Poland's attitude towards the Istanbul Convention against theoretical framework of the Integrated Theory.

4.2.1. *Domestic legal enforcement*

According to Hathaway, the lack of strong legal institutions in the State makes it more difficult for domestic actors to force the government to fulfill its obligations, especially in the absence of strong transnational enforcement mechanism. In my opinion, this assumption is reflected in the current situation in Poland. Despite ratification, the state fulfills the convention only partially, ignoring most of its obligations. Poland, as a young democracy, does not have a strong rule of law, especially since the democracy index in Poland has been decreasing in recent years. Poland's score has been falling steadily since 2015, when Law and Justice came to power. In 2019, for the first time, Poland had worse score than Hungary (Flis 2020)¹⁸. In particular, there are symptoms of deterioration regarding independence of judiciary in Poland. There are doubts about a rule of law of Polish judicial system (European Parliament 2020) and about sufficient protection of civil rights in Poland – elements that, according to integrated theory, contribute to the effectiveness of domestic legal enforcement.

¹⁸ According to Flis (2020), the authors of the Index wrote:

“In 2019, for the first time, Poland was lower than Hungary, as the ruling conservative-nationalist Law and Justice party continued its efforts to transform the state into an” illiberal democracy “, including by limiting the independence of the judiciary and consolidating media ownership in Polish hands”.

Therefore, it seems that the Polish judicial system cannot effectively create a compliance-pull.

4.2.2. Transnational legal enforcement

The Istanbul Convention does not have strong mechanisms to generate compliance-pull. The Treaty introduces merely a weak monitoring mechanism based upon periodic reports. The periodic reporting obligation means that Parties have to make data concerning gender-based violence publicly available. It also provides NGOs with the opportunity to supplement the country reports, and to use committee reports to highlight violations of women's rights and issues where combating violence against women is not properly addressed¹⁹. One may speculate that one of the principal reasons inducing the right-wing Government to denounce the Istanbul Convention is the urge to avoid the monitoring procedures (Rojek-Socha, Sewastianowicz 2020). Monitoring system is inconvenient for Poland, because it allows the disclosure and publicity of irregularities and obliges the state to perform work in the form of annual reports.

It is worth noting, that soon the situation might shift, and transnational legal enforcement might start to play a bigger role in generating compliance to Istanbul Convention. The European Union plans to introduce the provisions of the Convention as part of EU law, in the form of an EU directive (Cedro 2020a). The European Union would then have more opportunities to bring about compliance with disobedient countries, for example by bringing complaints against resistant states to the Court of Justice of the EU (Cedro 2020a).

The second amendment to EU law which is of great importance in this regard is the decision to introduce the principle of so-called "money for the rule of law", which would make the decision to grant a subsidy by the Union conditional on the respect of the rule of law and EU values. This mechanism is described by the Finnish MEP Petri Sarvamaa who said "We have created a mechanism that enables the EU to stop funding governments that do not respect our values, such as the rule of law". Polish Prime Minister Mateusz Morawiecki threatened to veto the EU budget if this rule would be implemented (Cedro 2020b). On December 10th, however, an agreement was reached between the

¹⁹ Council of Europe, The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, November 14.

EU members – the disputed regulation will enter into force but the conclusions are to limit its application only to matters related to the spending of funds (AF 2020).

It is worth noting, that what we can observe here can be perceived as the gradually increasing the strength of enforcement mechanism by EU institutions.

4.2.3. Domestic collateral consequences

When examining the reasons for Poland's behavior towards the Istanbul Convention, it seems to me that domestic collateral consequences may be of greatest importance.

First, the internal groups of interest most probably influenced the decision to ratify the Treaty. Commentators of the social and political debate around the Convention in Poland agree that the main pressure to sign the convention was caused by the tireless work of women's rights organizations and activists along with the visible support of the public (PAP 2014a)²⁰. The evidence supporting the significance of the role of women's organizations is the fact that the former President of Poland, Bronisław Komorowski chose the headquarters of the Women's Rights Center as the location of signing the ratification (Centrum Praw Kobiet 2020). President's gesture meant appreciation for the work that the organization had done to ensure that Poland became a party to the convention. The government also had to perceive public support for the ratification, which was investigated in 2014 by Institute of Public Affairs – according to the poll carried out then, more than half of Polish population was in favor of ratification with only 13% against it (PAP 2014b). According to integrated theory, States will be more inclined to commit to treaties, especially in democracies, if there is public support for them.

Beth A. Simmons, who came into polemic with Hathaway's theory, also stressed that domestic politics and State actors are playing crucial part in implementing women's rights policies – and human rights policies in general – because domestic actors are far more involved and affected than transnational ones in this regard (Simmons 2009, 126). According to Beth A. Simmons, international treaties can

²⁰ According to PAP (2014a), in September 2014, the day before parliament's was about to discuss the Istanbul Convention, human rights organizations and women's rights organizations issued an appeal to parliamentarians.

affect social mobilizing in many ways: making people aware of their rights, giving bigger importance to such right, creating the example of positive norms to follow and giving the bigger possibility of success in fighting for such right (Simmons 2009, 140). A state, by ratifying the treaty, is sending a message to its citizens: “I agree with the norms and rules presented in this treaty” (Simmons 2009, 143). Simmons focused on CEDAW implementation and two of her observations I find especially interesting and seemingly correct regarding the case study in this paper. First, international treaties have a stronger effect in States that are in the process of transitioning to democracy systems – citizens of such country are more likely to not be aware of some rights they have, so the international treaties may change the awareness and create a feeling of being correct in fight for rights recognized internationally (Simmons 2009, 253). Secondly, women’s rights status and power of religious institutions in the State are strongly connected (Simmons 2009, 253). Importantly, NGOs often use the international treaties to create awareness about human rights, but also to push for implementing the policies, creating pressure on government to fulfill its obligations (Simmons 2009, 142). Simmons’ observations are useful while trying to understand the situation in Poland regarding Istanbul Convention, because Poland is still not a country of stable democracy, it is still in the transition phase, therefore, similarly to Simmons observations, Polish citizens are not fully aware of their rights and the Istanbul Convention, as an international document, proves that the safety of women at home is a matter of State, not private matter. During women’s protests against the termination of the anti-violence law and in the so-called Women’s Strike protests against the ban on abortion one could observe frequent references to international law and European regulations, including the Istanbul Convention. The situation of women’s rights in Poland is closely related to the position of the church and religious organizations, which put pressure on the government against women’s rights. Last but not least, Polish NGOs often refer to the Istanbul Convention when they try to force Polish decision-makers to change legislation that would better protect women from domestic violence.

It seems that the domestic collateral consequences are also of great importance in inducing Poland’s partial compliance with the convention. Most of law amendments discussed in Chapter II were preceded by long campaigns conducted by the same organizations that previously put pressure on the government to ratify the convention.

Organizations and public figures who insisted on changing Polish law to bring it into line with the requirements of the convention were now backed by the principles of the treaty to which Poland committed itself. It is worth emphasizing that despite the achievement of certain effects, the pressure on the State after ratification was not very effective. A big positive surprise for women's organizations and citizens was that parliament adopted legal amendment allowing for the immediate isolation of the perpetrator of violence from the apartment they share with the victim. However, it came with a bit of bitterness, because after adoption of this amendment, the Minister of Justice, the main figure behind the plans to withdraw from the convention, used this amendment as an argument for supporting his claims that Istanbul Convention is no longer needed in Poland (Cedro, Nowosielska 2020). However, it should be remembered that there is public opposition to the withdrawal of the convention, which was expressed in protests in the country after the plans were announced (Pietruszka 2020).

It is worth emphasizing, however, that shortly after Poland ratified the Istanbul Convention, the dynamics of domestic politics changed. There was a change of government and the current ruling party wants to cut itself off from the political line of its predecessors quite strongly (Mierzyńska 2020a).

Poland gives contradictory signals: it is partially fulfilling the obligations of the convention, ignoring most of them and planning to terminate it. According to many observers of the current debate surrounding the withdrawal of Istanbul Convention by Poland, the State behaves in a cynical manner, trying to play its interests at the expense of women's rights. When the currently ruling party came to power, there were statements about how they disapprove of the Istanbul Convention's obligations. It is worth reminding, that when the final vote of ratification took place, all deputies of currently ruling party, Law and Justice, voted against the bill (PL GOV 2015). Importantly, the audience that the Government relied on as political capital has also changed. The constituencies of the currently ruling party in Poland are strongly associated with traditional, conservative views, the Catholic Church and *Ordo Iuris*, a religious organization (Mierzyńska 2020b)²¹. Substate actors who gained importance and influence with the change

²¹ According to Mierzyńska (2020b), "*Ordo Iuris* is today one of the most visible extremely conservative think tanks in Poland".

of government were against the ratification from the beginning and, later, against compliance with the convention (Głuchowski 2020).

Poland is currently building its political strategy on creating the opposition and finding a public enemy, dividing the community into “us-them”. The government realizes that by favoring the preferences of specific interest groups in the State, it secures votes and political support. In this way, the denunciation of the convention is a way to emphasize Polish sovereignty and independence from the West and its “modern values”. Conservative groups in Poland regard the convention as a threat to traditional Polish values, so the State proves its commitment to the “protection” of those values (Pietruszka 2020).

The most important conclusion from this paper is that treaties on women’s rights are treaties that are particularly vulnerable to internal dynamics and dominant narrative in the State. It is particularly relevant to countries where gender stereotypes are common along with gathering of political capital in the battle between conservative and “modern” values. Women’s rights are treated instrumentally, cynically and as a way to build the myth of the State as a defender of religious values. This battle is taking place at the expense of women’s safety – since, as the statistics I have presented clearly show, they are victims of every-day violence.

4.2.4. Transnational collateral consequences

When talking about the Istanbul Convention, which belongs to the category of human rights treaties, it is difficult to prove a direct link between the State’s behavior towards treaty obligations and foreign aid or trade, but I assume that the reputation of the state also played some role. I am not aware of any sanctions imposed on Poland in effect of Poland’s behavior towards Istanbul Convention, and it is difficult to expect loss of reputation due to discussed case, since Poland meets the convention requirements to some extent (there are no very gross violations of the protection standard). Compliance-pull in this case seems small.

By adopting the Istanbul Convention, Poland has become one of the European countries that reaffirmed the importance of protecting women from gender-based violence. The State has committed itself to greater diligence in combating violence and confirmed that European values are understood by Poland to be correct.

On the transnational level, Polish government's behavior may be explained by the will to create the myth of Poland as the last, next to Hungary, bastion of traditional family values in European Union. This myth is created as an opposition to "modern" European values. It seems that Poland has the ambition to create an alternative values-based movement supporting traditional social roles – which is confirmed e.g. by the Polish plan to create an agreement alternative to the Convention between European countries. Poland sent letters to EU members proposing to participate in the undertaking of creating an international agreement alternative to the Istanbul Convention (Ciobanu 2020). Poland also joined the international agreement of states united in the fight against access to abortion (Adamczyk 2020). Poland seems to be using an interesting strategy, trying to strengthen its international position by creating opposition to values that are not conservative, and on that basis looking for international allies. It is hard to call this strategy effective, or even in line with the real interest of the state, given the recent threat of rejection EU's favorable for Poland budget plan (Pankowska 2020), but it is certainly a signal that is being sent to the current party's constituents. In this case, the part of the integrated theory which claims that "states can also pursue goals that are not closely related to their own material well-being", seems to be accurate.

5. CONCLUSIONS

Poland ratified the Istanbul Convention in 2015 (Kucharczyk, Gabrizova 2019), then made some effort to amend Polish law in order to make Polish legal system consistent with the provisions of the Treaty only to officially announce its plans to withdraw from the Convention five years later. How to explain Poland's incoherent behavior? What factors influenced Poland's behavior towards the Istanbul Convention?

According to Integrated Theory (Hathaway 2005), in order to explain a particular attitude of a State towards treaty commitments, one should take into account both interest-based, and norm-based factors. The aforementioned assumptions materialize in four principal factors influencing compliance: domestic legal enforcement, international legal enforcement, domestic collateral consequences, and transnational collateral consequences (Hathaway 2005).

Domestic collateral consequences, such as the reaction of sub-state actors combined with the lack of domestic legal enforcement, played a key role in the process. Currently, the State's motivation seems to be to satisfy interest groups that oppose women's rights. The deterioration of the condition of the Polish legal system, especially the judicial system, makes it difficult for State actors to exert pressure on the state to fulfill their obligations.

The impact of domestic collateral consequences on non-compliance have not been balanced with either the transnational collateral consequences or the transnational legal enforcement which is too weak. Moreover, the Istanbul Convention's monitoring body GREVIO – group of experts (Council of Europe 2020) may have contributed to the decision to terminate the Convention, as the authority that falls in the ranking of democracy might be reluctant to the presence of international control.

The Istanbul Convention has become the object of a political game without a sufficient defense mechanism. In deciding on the ratification, although it was preceded by a stormy debate and delayed in time, women's organizations and international reputation seemed to play a significant role. Public support for the convention was high then as it is today. State actors, who gained importance after Law and Justice came to power, oppose the convention and see it as a threat to traditional values (Ordo Iuris 2020). It is also worth to recall that status of women's rights is strictly influenced by the position of religion in the state – unfortunately, mostly in a negative way. (Simmons 2009, 253)

Gender-based violence is deeply rooted in contested social practices and stereotypes, and is therefore very difficult to eradicate using international instruments. International instruments, like the Istanbul Convention in the case of Poland, may themselves become the subject of “political bargains”. Regardless, it is extremely important to place pressure on gender inequality as a source of violence against women, including domestic violence – and to highlight the fact that women are disproportionately victimized in some criminal acts (Krizsan, Popa 2015, 9).

However, the Treaty itself helps raising awareness of women's rights – makes women know that their rights are important and norms protecting them are widely understood as correct, also by Polish government which decided to ratify the Istanbul Convention. That itself is a powerful thing that helps social mobilizing in the fight for women's

rights. When women are aware of gender inequalities and their own rights, they are more likely to put pressure on government to implement correct policies, especially while they know the international treaty their government signed and ratified backs them up (Simmons 2009, 126).

The Istanbul Convention should not be used as an element of a political instrument in determining the dynamics of power in the State. Counteracting violence against women and domestic violence itself should be a priority for the State. The Istanbul Convention, as an international treaty, has an impact on the behavior of the State, but for the full achievement of its goals, this influence is too small. Domestic and transnational legal enforcement should be stronger if it were to be more effective in influencing State behavior.

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