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Protective Proceedings against a Person Committing Domestic Violence

Postępowanie zabezpieczające wobec osoby stosującej przemoc w rodzinie

ABSTRACT

The article has a scientific and research character. Its purpose is to discuss the protective proceedings against the perpetrator of domestic violence in the area of Polish civil procedure and to answer questions about the method of such security, its subject, purpose, course of the proceedings and the provision of security. The answers to these questions may have not only doctrinal but also practical value, especially since there are no scientific studies on this topic. Although the basic research method used in the article is a formal and dogmatic analysis, the practice of applying the law was also taken into account, using the analysis of the jurisprudence of common courts and the scientific discussion conducted on the basis of these judgments. This new method of securing non-monetary claims of a novation nature serves to protect people affected by domestic violence and to provide temporary legal protection by isolating the victim from the violence offender in situations where he poses a threat to the life or health of household members. Securing is subject to the prior issuing of an order or prohibition by the competent authority (Police, Military Police or court). If such an order or prohibition has been issued, the court may grant security on the terms set out in Articles 755^2 to 755^4 of the Civil Procedure Code; if there is no prior order, the security is granted on general terms (Article 755 of the Code).

Keywords: protective proceedings; domestic violence; temporary legal protection; Civil Procedure Code

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INTRODUCTION

The security against a domestic violence offender is a new means of securing non-monetary claims introduced in the Civil Procedure Code[1] in 2020 together with a new proceeding to oblige the domestic violence offender to leave the shared dwelling and its immediate surroundings and to prohibit the offender to approach to the dwelling and its immediate surroundings.[2] It is intended to quickly isolate the person affected by violence from the abuser in situations where the latter poses a threat to the lives or health of the household members.[3] The substantive-law basis for this is Article 11a ACDV.[4] An order to leave the dwelling by the abuser and the prohibition to approach the shared dwelling and its immediate surroundings may be issued by a police officer or a military police officer or by a court.[5] Court decisions obliging a domestic violence offender to leave the shared dwelling and

[1] Act of 17 November 1964 – Civil Procedure Code (consolidated text, Journal of Laws 2023, item 1550, as amended), hereinafter: CPC.

[2] The amendment was introduced by the Act of 30 April 2020 amending the Civil Procedure Code and certain other laws (Journal of Laws 2020, item 956).

[3] Justification of the draft Act of 30 April 2020 amending the Civil Procedure Code and certain other acts, Print no. 279.

[4] Act of 29 July 2005 on counteracting domestic violence (consolidated text, Journal of Laws 2021, item 1249, as amended). If a family member who shares a dwelling (or premises used to meet their current housing needs) makes cohabitation particularly burdensome due to the behaviour involving violence, the person affected by that violence may demand that the court competent according to the non-litigious proceedings provisions of the Civil Procedure Code order the offender to leave the shared dwelling and its immediate surroundings or prohibit approaching the dwelling and its immediate surroundings (Article 11a ACDV in conjunction with Article 560^2 CPC). Article 11a ACDV also applies in a situation where: the person affected by domestic violence has left the dwelling because of violence committed against this person in the dwelling; the family member who commits domestic violence has left the shared dwelling; the spouse, ascendant, descendant, sibling, affinity in the same line or step, a person in an adoption relationship and his/her spouse, as well as a person living together and another person committing domestic violence, is temporarily or irregularly staying in the dwelling together with the person affected by domestic violence. According to Article 2 (2) ACDV, domestic violence should be understood as a single or repeated intentional action or omission that infringes the rights or personal rights of family members, in particular exposing these persons to the risk of death, injury, violating their dignity, bodily integrity, freedom, including sexual freedom, causing damage to their physical or mental health, as well as causing suffering and moral harm to persons affected by that violence. According to Article 2 (1) CPC, "family member" means a close relative within the meaning of Article 115 § 11 of the Penal Code, as well as another person living or running the household jointly with other members. The immediate family members include the spouse, ascendant, descendant, sibling, affiliate in the same line or degree, the person in an adoption relationship and his/her spouse, as well as a cohabiting person (see Justification of the draft Act of 30 April 2020…).

[5] M. Strus-Wołos, *Stąpanie po polu minowym. Rzecz o nowych przepisach postępowania cywilnego o zobowiązanie osoby stosującej przemoc w rodzinie do opuszczenia wspólnie zajmowanego mieszkania i jego bezpośredniego otoczenia*, "Głos Prawa" 2020, vol. 3(2).

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its immediate surroundings, or the prohibition of approaching the shared dwelling and its immediate surroundings may be issued in non-litigious proceedings under Article 560^7 § 1 CPC or protective proceedings under Article 755^2 § 1 CPC.[6] The introduction of a new method of security is intended to ensure provisional legal protection for the duration of the proceedings[7] and raises questions about the object of the security, its purpose, its nature, the course of the proceedings and the granting of security. The answers to these questions may not only be of doctrinal but also of practical value. Although the basic research method used in the article is a formal-dogmatic analysis, the practice of law application has also been taken into account using an analysis of the case law of common courts and the scientific discussion on these rulings.

OBJECT AND MANNER OF SECURITY AGAINST THE DOMESTIC VIOLENCE OFFENDER

The object of security in the proceedings to obligate the domestic violence offender to leave and to prohibit the offender from approaching the shared dwelling and its immediate surroundings is a non-monetary claim, which means that the court should impose the "security in such a way as it deems appropriate under the circumstances, without excluding the methods provided for securing monetary claims" (Article 755 § 1 CPC). The open catalogue of ways of securing non-monetary claims provided for in Articles 755^1 to 757 CPC was extended with a new method of securing non-monetary claims in the form of extension of the duration of an order to leave the dwelling immediately by the domestic violence offender or the prohibition of approaching the dwelling and its immediate surroundings issued by the Police (Article 15aa of the Police Act[8]) or by the Military Police (Article 18a (1) AMP[9]),[10] or in the form of changing the distance to the dwelling, indicated in the order or prohibition, to be complied with by the domestic violence offender, or changing the area where that person is not permitted to reside (Article 755^2 CPC). The order or prohibition, according to Article 15ak (1) of the Police Act and

[6] Justification of the draft Act of 30 April 2020…

[7] F. Manikowski, *Postępowanie w sprawie o zobowiązania osoby stosującej przemoc w rodzinie do opuszczenia wspólnie zajmowanego mieszkania i jego bezpośredniego otoczenia lub zakazania zbliżania się do mieszkania i jego bezpośredniego otoczenia – analiza badań aktowych*, "Prawo w Działaniu. Sprawy Cywilne" 2022, no. 50, p. 36.

[8] Act of 6 April 1990 on the Police (consolidated text, Journal of Laws 2023, item 171, as amended).

[9] Act of 24 August 2001 on the Military Police and military law enforcement bodies (consolidated text, Journal of Laws 2023, item 1266, as amended).

[10] F. Manikowski, *op. cit.*, p. 36.

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Article 18k AMP, shall expire 14 days after the date of issue unless the court has issued a security by which that period has been extended.[11] The court may extend the validity of the order or prohibition to a period which it considers appropriate in the case in question, however not longer than requested by the authorised, given that the court is bound by the substantive scope of the application for security in question.[12] Being bound by the scope of the application for security means that the court may not rule *ex officio* on an extension of the area or the distance from the dwelling as compared to the area or distance ruled by the police officer or military police officer if not requested to do so by the authorised (unless the guardianship court grants the security *ex officio*, according to Article 755^4 CPC – as referred to further herein). Nonetheless, the court may restrict this area or distance without approving the remainder of the application.[13]

Even though it does not follow directly from Article 755^2 CPC, the court may grant security by ordering the domestic violence offender to leave the shared dwelling and its immediate surroundings or prohibiting him/her from approaching the dwelling and its immediate surroundings also in cases where no prohibition or order has been issued by a police officer or a military police officer. This is possible in the light of Article 755 § 1 CPC and the open catalogue of claim securing methods regulated therein.[14] Prohibitions or orders are regulatory in nature and boil down to the regulation of relations, i.e. the rights and obligations between the parties for the duration of the proceedings,[15] which may also serve to ensure the effectiveness or even enforceability of the future ruling.[16]

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[11] *Ibidem*, pp. 36–37.

[12] T. Partyk, *Art. 755^2 k.p.c.*, [in:] *Kodeks postępowania cywilnego. Postępowanie nieprocesowe. Postępowanie w razie zaginięcia lub zniszczenia akt. Postępowanie zabezpieczające. Komentarz*, ed. O.M. Piaskowska, LEX/el. 2022, margin numer 9.

[13] *Ibidem*, margin number 10. See also J. Jagieła, *Art. 755 k.p.c.*, [in:] *Kodeks postępowania cywilnego*, vol. 4: *Komentarz. Art. 730–1095^1*, ed. A. Marciniak, Legalis 2020, margin number II.2; M. Muliński, *Art. 755 k.p.c.*, [in:] *Kodeks postępowania cywilnego. Komentarz*, vol. 2: *Art. 730–1217*, ed. J. Jankowski, Legalis 2019, margin number 2.

[14] T. Partyk, *op. cit.*, margin number 7.

[15] A. Jakubecki, *Cele i funkcje postępowania zabezpieczającego według Kodeksu postępowania cywilnego*, [in:] *Zabezpieczenie roszczeń pieniężnych w praktyce sądowej*, ed. R. Kulski, Legalis 2022, chapter I § 5. On regulatory security, see W. Broniewicz, A. Marciniak, I. Kunicki, *Postępowanie cywilne*, Warszawa 2020, p. 751; T. Ereciński, *O zabezpieczeniu nowacyjnym*, "Przegląd Sądowy" 1992, no. 3, p. 43; J. Jagieła, [in:] *Kodeks postępowania cywilnego*, vol. 4: *Komentarz. Art. 730–1095^1*, ed. A. Marciniak, Warszawa 2020, p. 6; F. Zedler, *Postępowanie zabezpieczające i egzekucyjne. Komentarz*, vol. 1, Toruń 1995, p. 12; H. Mądrzak, *Charakter i zakres ochrony prawnej*, [in:] *Jednolitość prawa sądowego cywilnego a jego odrębności krajowe*, ed. M. Sawczuk, Lublin 1997, p. 258; J. Jagieła, *Tymczasowa ochrona prawna w postępowaniu cywilnym*, Warszawa 2007, p. 215, cited in A. Jakubecki, *Cele i funkcje…*, chapter I § 7; A. Jakubecki, [in:] *System Prawa Procesowego Cywilnego*, vol. 5: *Postępowanie zabezpieczające*, ed. A. Jakubecki, Warszawa 2016, p. 56.

[16] A. Jakubecki, [in:] *System Prawa Procesowego Cywilnego…*, p. 68.

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In protective proceedings against a domestic violence offender, the security is therefore provided through the regulation of rights and obligations which may consist in the establishment of specific orders and prohibitions.[17] Such security is an exception to the rule laid down in Article 731 CPC that the security may not aim to satisfy the claim, and the cases in which the law allows such security to be instituted are referred to as anticipatory security. It anticipates the definitive legal protection which should be provided in the adjudicatory proceedings.[18] It is therefore a temporary provision to the authorised of the same legal protection as the one to be granted by the future ruling ordering or prohibiting certain conduct.[19] By its nature, the security against a domestic violence offender is a novation security which creates a new situation between the parties to the proceedings by defining their rights and obligations.[20] Its essence is to provisionally shape the relationship between the obliged and the authorised,[21] in which the claim will only be temporarily met, leading to the creation of a certain temporary and provisional state.[22] It is pointed out in the case law that a novating security may not differ from the content of the ruling in the case, which is an anticipation of future decision, if the authorised demonstrates that he/she will be exposed to damage or other adverse effects without such security. The legal interest here is defined by the need to obtain immediate legal protection in order to protect the authorised from damage or other adverse consequences which would affect the authorised despite the fact that he/she would eventually win the case.[23] Article 730^1 § 2 CPC expressly states that one has a legal interest in security when the absence of the security "would prevent or seriously impede the execution of the decision made in the case".[24] M. Strus-Wołos

[17] T. Ereciński, *Art. 755 k.p.c.*, [in:] *Kodeks postępowania cywilnego. Komentarz*, vol. 4: *Postępowanie rozpoznawcze. Postępowanie zabezpieczające*, ed. T. Ereciński, LEX/el. 2016, margin number 6.

[18] A. Jakubecki, *Cele i funkcje…*, chapter I § 5.

[19] Idem, *Art. 755 k.p.c.*, [in:] *Kodeks postępowania cywilnego. Komentarz aktualizowany*, vol. 2: *Art. 730–1217*, ed. A. Jakubecki, LEX/el. 2019, margin number 2; idem, [in:] *System Prawa Procesowego Cywilnego…*, p. 409.

[20] On novation security, see idem, [in:] *System Prawa Procesowego Cywilnego…*, p. 409.

[21] T. Ereciński, *O zabezpieczeniu nowacyjnym…*, pp. 42–48, cited in J. Studzińska, G. Julke, [in:] *System Postępowania Cywilnego*, vol. 8: *Postępowanie zabezpieczające i egzekucyjne*, ed. K. Flaga-Gieruszyńska, Warszawa 2021, p. 30.

[22] E. Wengerek, *Postępowanie zabezpieczające i egzekucyjne*, Warszawa 2009, p. 88, cited in J. Studzińska, G. Julke, *op. cit.*, p. 30.

[23] Decision of the Court of Appeal in Poznań of 12 April 2013, I ACZ 590/13, LEX no. 1313386, decision of the Court of Appeal in Poznań of 6 May 2013, I ACZ 766/13, LEX no. 1313388 and decision of the District Court in Gdańsk of 13 January 2013, III Cz 42/13, POSAG 2013, no. 2, items 112–119, cited in J. Studzińska, G. Julke, *op. cit.*, p. 30 and M. Muliński, *op. cit.*, margin number 8.

[24] A. Jakubecki, *Cele i funkcje…*, chapter I § 3. On grounds for securing claims, see R. Flejszar, *Podstawy zabezpieczenia roszczeń w postępowaniu zabezpieczającym – wybrane zagadnienia (art. 730^1, 753 i 753^1 k.p.c.)*, [in:] *Ewolucja polskiego postępowania cywilnego wobec przemian*

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points out that the condition of legal interest for granting the security is also valid with regard to a security granted by the court *ex officio*. This is so because according to the general provision of Article 730[1] §§ 1 and 2 CPC, exceptions to the principle of required legal interest should be statutorily specified. If the applicant manages to make the claim plausible, he/she will most often at the same time demonstrate the existence of a legal interest in granting the security. As the substantive legal ground for the adjudicatory proceedings is Article 11a ACDV, the aim of the security proceedings will be to increase the effectiveness of the prevention of domestic violence and to ensure that the right to life, health and personal dignity is respected. In proceedings for issuing the order or prohibition, the security will often have a protective effect on all domestic violence offender's family members.[25]

COURSE OF THE PROTECTIVE PROCEEDINGS AGAINST A DOMESTIC VIOLENCE OFFENDER

As mentioned above, the court may issue a security not only in the form of an extension of an order or prohibition previously issued by the police or military police according to Article 755[2] CPC, but also as a security first granted to a person affected by domestic violence, at his/her request (if he/she proves the claim and an interest in providing the security plausible – Articles 730[1] and 732 CPC).[26] He/she is an authorised person in the substantive sense, since the security is to be provided for his/her benefit and in his/her interest.[27] The protective proceedings may also be initiated at the request of a prosecutor, the Commissioner for Human Rights, the Ombudsman for Children and *ex officio* by a guardianship court – according to Article 560[4] § 2 in conjunction with Article 755[2] § 3 CPC in connection with the notification of an order or prohibition to the Police or Military Police when one of the dwelling occupants is a minor (Article 15ad (4) of the Police Act or Article 18d (4) AMP).[28]

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politycznych, społecznych i gospodarczych. Materiały konferencyjne. Ogólnopolski Zjazd Katedr Postępowania Cywilnego Szczecin–Niechorze (28–30 września 2007 r.), eds. H. Dolecki, K. Flaga-Gieruszyńska, Warszawa 2009, pp. 147–159.

[25] M. Strus-Wołos, *Art. 755[4] k.p.c.*, [in:] *Kodeks postępowania cywilnego. Komentarz*, vol. 4: *Artykuły 730–1088*, ed. T. Wiśniewski, LEX/el. 2021, margin number 4.

[26] Eadem, *Art. 755[3] k.p.c.*, [in:] *Kodeks postępowania cywilnego. Komentarz…*, margin numbers 1–2.

[27] M. Walasik, [in:] *System Prawa Procesowego*, vol. 5: *Postępowanie zabezpieczające*, ed. A. Jakubecki, Warszawa 2016, p. 510.

[28] F. Manikowski, *op. cit.*, p. 36. Scholars in the field argue that if the court hearing the case for an order or prohibition, or the Police or Military Police, become aware that the dwelling under investigation is inhabited by a fully incapacitated person whose health or life may be endangered by

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According to Article 755[4] CPC, the guardianship court, upon being notified by the Police or the Military Police that an order or prohibition has been issued against a domestic violence offender residing with minors, is obliged to initiate proceedings *ex officio* and to promptly rule on the security as to the regulation of the manner of custody of minor children, as well as about the manner of allowed contact between the minor children and the offender, as provided for in Article 755 § 1 (4) CPC.[29] The initiation of protective proceedings *ex officio* does not deprive the statutory representative of a minor, or an adult victim of violence residing with the perpetrator in the same premises, of the possibility of filing the application with the court within 14 days from the date of issuance of the order or prohibition.[30] The filing of such an application, in turn, does not restrict the possibility of the guardianship court to establish the security to a different (broader) extent beyond the scope of the application.[31] It is emphasized in the literature that the security may regulate the contacts of the violence offender against whom an order or prohibition has been issued with the minor affected by the violence, including it may go beyond the scope of the decision on the prohibition or order, e.g. by simultaneously ruling on the restriction or prohibition of contact under Article 113[2] § 1 or Article 113[3] of the Family and Guardianship Code, establishing contacts in the presence of third parties (e.g. a probation officer) or by issuing any other order that will allow comprehensive protection of the minor.[32] The guardianship court may also issue orders, as part of the security, regulating the important matters related to the children (including the provision of psychological assistance to a minor), and may issue a security referred to in Article 755[2] § 1 CPC.[33] This means that the guardianship court can define the security in any way in terms of custody and contacts.[34] This results from the fact that the objective of the protective proceedings covering a non-pecuniary claim can

acts of violence, these authorities should notify the guardianship court under Article 572 §§ 1 and 2 in conjunction with Article 570 CPC. See M. Strus-Wołos, *Art. 755[4] k.p.c.*, margin number 2.

[29] G. Kamieński, *Nowe postępowanie odrębne w sprawie przemocy domowej*, "Nowa Currenda" 2021, no. 2, p. 46 ff.; J. Jagieła, *Nakazanie przez Policję osobie stosującej przemoc w rodzinie opuszczenia wspólnie zajmowanego mieszkania i jego bezpośredniego otoczenia lub zakazanie zbliżania się do mieszkania i jego bezpośredniego otoczenia*, [in:] *Symbolae Andreae Marciniak dedicatae. Księga jubileuszowa dedykowana Profesorowi Andrzejowi Marciniakowi*, eds. J. Jagieła, R. Kulski, Warszawa 2022, p. 322.

[30] A. Banaszewska, *Art. 755[2] k.p.c.*, [in:] *Kodeks postępowania cywilnego. Komentarz*, ed. P. Rylski, Legalis 2022, margin number 7.

[31] M. Walasik, *op. cit.*, p. 569.

[32] M. Strus-Wołos, *Art. 755[4] k.p.c.*, margin number 1.

[33] A. Banaszewska, *Art. 755[4] k.p.c.*, [in:] *Kodeks postępowania cywilnego. Komentarz…*, margin number 4.

[34] G. Kamieński, *op. cit.*, p. 46 ff.; E. Stefańska, *Art. 755[3] k.p.c.*, [in:] *Kodeks postępowania cywilnego. Komentarz aktualizowany*, vol. 2: *Art. 478–1217*, ed. M. Manowska, LEX/el. 2022, margin number 3.

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only be attained if the court is free to determine the manners of granting security in the case of non-pecuniary performance and to adapt the method of security to the actual situation.[35]

If, on the other hand, the guardianship court, having made its own findings, considers it unnecessary to grant the security, it will rule that there are no grounds for granting it.[36]

Where the proceedings are initiated upon an application, the application for security should specify the claim, which should also include a specification of the way in which the security is to be provided. Indeed, when applying for legal protection in a protective proceeding, the authorised must specify what such protection should consist of,[37] since, as has been pointed out, the court is bound by the limits of the application, with the exception set out in Article 755^4 CPC. The application for providing the security shall be processed without delay, but no later than three days after its receipt in court (Article 755^2 § 4 CPC), which is due to the need to separate the victim from the offender as soon as possible.[38] This arrangement is special in relation to Article 737 CPC, which provides for the processing of a security application without delay, but no later than one week after the date of its receipt in court.[39]

The promptness of proceedings is also ensured by the possibility of service of documents by the Police and the Military Police (Article 560^6 in conjunction with Article 755^2 § 3 CPC) and the lack of summoning to rectify formal shortcomings in the application for security or other pleadings, in the event that the applicant fails to attach a sufficient number of copies (Article 560^4 § 2 in conjunction with Article 755^2 § 3 CPC).[40] The court draws up copies on its own and then serves them to the participants in the proceedings. Due to the nature of the proceedings and the isolation measures applied in them, the court should notify the prosecutor and serve notices of the time limits for the hearings.[41]

If the application is dismissed, the court (having considered all circumstances) may decide to uphold or lift the security, as the decision on dismissal of the application is not final at this stage (see Article 744 § 1 CPC). In such situations, there are no grounds that justify the continuation of the security any more, which means

[35] I. Gil, *Art. 755*, [in:] *Kodeks postępowania cywilnego. Komentarz*, ed. E. Marszałkowska-Krześ, Legalis 2021, margin number 2.

[36] A. Banaszewska, *Art. 755^4 k.p.c.*, margin number 4; G. Kamieński, *op. cit.*, p. 46 ff.; E. Stefańska, *op. cit.*, margin number 3.

[37] M. Walasik, *op. cit.*, p. 559.

[38] G. Kamieński, *op. cit.*, p. 46 ff.

[39] F. Manikowski, *op. cit.*, p. 37.

[40] *Ibidem*; T. Partyk, *op. cit.*, margin numbers 12–13.

[41] P. Woś, *Postępowanie względem osoby stosującej przemoc w rodzinie w Kodeksie postępowania cywilnego*, "Studia Prawnicze KUL" 2023, no. 1, pp. 72–73.

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that the security should be discontinued due to the necessity to respect the participant's rights, leading to allowing him/her to use the dwelling as soon as possible.[42]

If an application for establishing the security is filed prior to the opening of non-procedural proceedings for an order or prohibition, the court shall assess whether the applicant meets the criteria for being regarded as a victim of domestic violence in accordance with Article 11a (1) in conjunction with Article 2 (1) and (2) ACDV. When granting the security, the court shall set a period of not more than two weeks within which an application for the initiation of proceedings under Article 11a ACDV for the issuance of an order or prohibition will have to be filed, otherwise the security will be discontinued (Article 733 CPC). In the event of an ineffective expiry of the prescribed period, the security is discontinued by operation of law, without it being necessary to issue decision confirming the discontinuation.[43]

ESTABLISHING THE SECURITY AGAINST A DOMESTIC VIOLENCE OFFENDER

The decision on granting the security is of an anticipatory nature.[44] In the content of the decision, as in the content of the decision imposing an order or prohibition in adjudicatory proceedings, the court should determine in an objectively verifiable manner what constitutes the "immediate surroundings" of the dwelling.[45] When issuing a decision on the extension of an order or prohibition, the court – applying Article 755^2 § 1 CPC *in fine* – is in fact entitled to modify the area or distance from the dwelling specified in the order or prohibition which the domestic violence offender was obliged to adhere to (Article 560^8 in conjunction with Article 560^7 CPC), adjusting the protection of the violence-affected person to the current situation.[46]

If the court does not rule in the decision on the area or distance from the place of residence, the provisions contained in the order or prohibition issued by the Police or Military Police remain in force in this respect. Therefore, the regulation on protective proceedings differs from the regulation applicable to main proceedings, because in Article 560^7 § 1 CPC the legislature requires the court to specify, in the

[42] A. Budniak-Rogala, *Postępowanie w przedmiocie odizolowania osoby stosującej przemoc w rodzinie od osób dotkniętych tą przemocą (art. 560^2 i n. k.p.c.) – zagadnienia wybrane*, [in:] *Symbolae Andreae Marciniak dedicatae…*, p. 202.

[43] M. Strus-Wołos, *Art. 755^3 k.p.c.*, margin number 2.

[44] P. Woś, *op. cit.*, p. 72; T. Partyk, *op. cit.*, margin number 8.

[45] M. Strus-Wołos, *Art. 755^3 k.p.c.*, margin number 6.

[46] P. Woś, *op. cit.*, p. 73; G. Kamieński, *op. cit.*, p. 46 ff.; F. Manikowski, *op. cit.*, p. 38; A. Banaszewska, *Art. 755^2 k.p.c.*, margin number 9.

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decision obliging the offender to leave the dwelling, the area or distance from the dwelling to be complied with by the offender.[47]

The compliance with the order to leave the common dwelling or the prohibition of approaching the dwelling is subject to verification by the Police or the Military Police. In the decision on granting the security, the court specifies the frequency with which these services must check whether the extended order or prohibition is being breached or not. The frequency of the verification should be adjusted to the actual need of the specific case (Article 755^2 § 2 CPC),[48] although the rules of such verification are also specified in detail in legal provisions. Pursuant to Article 15ai of the Police Act and Article 18i AMP, during the period of the order or prohibition being in force, the Police (Military Police) shall check at least three times whether the order or prohibition is breached and take the necessary action. The first check takes place on the day following the issuance of the order or prohibition. The verification activities are also to be undertaken by the Police (Military Police) on the basis of a court decision on granting the security in cases for obliging a domestic violence offender to leave the jointly occupied dwelling and its immediate surroundings or prohibiting the offender from approaching the dwelling and its immediate surroundings, for which the order or prohibition has been extended.

Furthermore, in order to ensure continuity of protection for the person affected by the violence, the court shall indicate in the decision the duration of the security (Article 755^3 CPC), which is due to the temporary nature of the protective proceedings.[49] The determination of the duration of the order or prohibition is necessary in a situation where the Police or the Military Police have not previously issued an order to immediately leave the jointly occupied flat and its immediate surroundings or (or at the same time) a prohibition on approaching the dwelling and its immediate surroundings, or where the duration of the order or prohibition issued by these authorities has expired and the security is established by the court.[50] The requirement to indicate the period for which the security is granted applies to the decision issued both under Articles 755 and 755^2 CPC.[51] The security may be established for the duration of non-litigious proceedings at first instance, due to

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[47] E. Stefańska, *Art. 755^2 k.p.c.*, [in:] *Kodeks postępowania cywilnego. Komentarz…*, margin number 10.

[48] P. Woś, *op. cit.*, p. 73; G. Kamieński, *op. cit.*, p. 46 ff.; F. Manikowski, *op. cit.*, p. 38.

[49] G. Kamieński, *op. cit.*, p. 46 ff.; P. Woś, *op. cit.*, pp. 73–74; K. Flaga-Gieruszyńska, [in:] *Kodeks postępowania cywilnego. Postępowanie zabezpieczające*, ed. J. Gołaczyński, LEX/el. 2021, subchapter 3.5.

[50] G. Julke, [in:] *System Postępowania Cywilnego*, vol. 8: *Postępowanie zabezpieczające i egzekucyjne*, ed. K. Flaga-Gieruszyńska, Warszawa 2021, p. 195.

[51] F. Manikowski, *op. cit.*, p. 38; K. Flaga-Gieruszyńska, *Art. 755^3 k.p.c.*, [in:] *Kodeks postępowania cywilnego…*, margin number 1; A. Banaszewska, *Art. 755^3 k.p.c.*, [in:] *Kodeks postępowania cywilnego. Komentarz…*, margin number 4.

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the regulation contained in Article 560^8 CPC, which imposes an obligation on the court of first instance to obligatorily rule, in the order or prohibition decision, also on the security, if granted, unless the circumstances entail the need to determine it otherwise.[52]

The court, when issuing the decision concluding the proceedings in the case, is obliged to rule therein also on the security (Article 560^8 CPC). The discontinuation of the previously granted security is necessary due to the fact that two enforcement titles for the same subject matter cannot function in legal transactions, which would be possible by applying the general rule under Article 757 CPC which provides for the possibility of parallel functioning of the security title and the enforcement title for a certain period of time.[53] This is usually justified in the literature by the fact that the decision accepting an application for the isolation of a domestic violence offender is effective and enforceable upon publication (Article 560^7 § 2 first sentence CPC), and the court may revoke and amend it in the event of a change of circumstances – even when it is final (Article 560^7 § 2 second sentence CPC), and therefore the "flexibility" of a decision issued in the adjudicatory proceedings makes it unnecessary to concurrently maintain the security.[54]

A copy of the decision on granting the security is promptly delivered by the court to the participants of the proceedings (the authorised and the obliged), together with an instruction about the relevant appeal measure, as well as to the prosecutor, the Police or the Military Police. Moreover, the decision is notified to the local interdisciplinary team (appointed by the village mayor, town mayor or city president) and the local guardianship court – if minors live in the dwelling in which domestic violence occurs (Article 755^2 § 5 CPC).[55] The systemic interpretation indicates that the norm from Article 755^2 § 5 CPC applies only to provisions in which the prohibition or order issued by the Police or Military Police has been extended. However, the literature states that the norm also applies to the granting of a security under Article 755 CPC. The *ratio legis* behind such a solution is due to the specific role that these entities play in the domestic violence prevention system.[56]

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[52] M. Strus-Wołos, *Art. 755^3 k.p.c.*, margin number 4.

[53] A. Budniak-Rogala, *op. cit.*, p. 201; P. Woś, *op. cit.*, pp. 73–74; F. Manikowski, *op. cit.*, p. 38; E. Stefańska, *Art. 755^3 k.p.c.*, margin number 4; A. Laskowska-Hulisz, *Postępowanie nieprocesowe w sprawach o zobowiązanie osoby stosującej przemoc w rodzinie do opuszczenia wspólnie zajmowanego mieszkania i jego bezpośredniego otoczenia lub zakazanie zbliżania się do mieszkania i jego bezpośredniego otoczenia*, LEX/el. 2020.

[54] Referring to the regulation under Article 560^8 CPC, Budniak-Rogala (*op. cit.*, pp. 201–202) assumes that the provision of Article 757 CPC will not be applicable to security measures established pursuant to Articles 755^2 to 755^4 CPC. See also J. Jagieła, *Nakazanie…*, p. 320.

[55] P. Woś, *op. cit.*, pp. 73–74; T. Partyk, *op. cit.*, margin number 15; A. Banaszewska, *Art. 755^2 k.p.c.*, margin number 12.

[56] F. Manikowski, *op. cit.*, pp. 38–39.

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CONCLUSIONS

It is advisable to introduce a new way of safeguarding non-monetary claims, as it serves to protect those affected by domestic violence and to provide temporary legal protection.[57] It is subject to the condition of prior issue of an order or prohibition by the competent authority (Police, Military Police or court). This means that if such an order or prohibition is not issued, the court may not provide security in accordance with the rules set out in Articles 755^2 to 755^4 CPC, but must do this based on the general terms (Article 755 CPC).[58] It is apparent from Article 755 CPC that, where the subject of security is not a monetary claim, the court shall grant the security as deems appropriate. This means that the granting of a security may also involve ordering the domestic violence offender to immediately leave the dwelling or prohibiting that person from approaching the dwelling and its immediate surroundings when the order or prohibition has not been issued by the Police or the Military Police,[59] or by issuing an order and prohibition jointly,[60] without excluding the measures provided for securing monetary claims.[61] Establishing a security on general terms means that the rules set out in Articles 755^2 to 755^4 CPC will not apply in this case, including in particular: the period of at most three days for processing the application, the court's obligation to draw up the missing copies of the application and the annexes, or the possibility for the Police (Military Police) to deliver documents.[62]

Any prior issuance of an order or prohibition by the Police, Military Police or court means that the protective proceedings against the domestic violence offender are carried out under special provisions (Articles 755^2 to 755^4 CPC). However, the aforementioned provisions are not exhaustive, so E. Stefańska's view must be shared that in cases where security is granted in the form of extension of the duration of the order or prohibition, the court is obliged to also apply the general provisions on protective proceedings (Article 730 ff. CPC) as far as they are not contrary to the special regulation. In particular, Article 730^1 § 1 CPC will apply, which requires the applicant to substantiate credibility of the claim and legal interest in granting the security. However, the court's assessment in this respect should be influenced by the fact that the Police or the Military Police had previously issued an order or prohibition, which is subject to review by the court in terms of its legality and justifiability. Such a court ruling, if issued, will not bind the court examining

[57] *Ibidem*, p. 36.
[58] E. Stefańska, *Art. 755² k.p.c.*, margin number 16.
[59] P. Woś, *op. cit.*, p. 74.
[60] M. Strus-Wołos, *Art. 755³ k.p.c.*, margin number 5.
[61] G. Julke, *op. cit.*, p. 194.
[62] E. Stefańska, *Art. 755² k.p.c.*, margin number 16.

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the application for granting the security (Article 365 § 1 CPC) due to a different subject matter.[63] Other general provisions on protective proceedings that apply in cases for employing the said method of security include: Article 733 CPC (regarding granting the security prior to commencement of proceedings in a case), Article 734 CPC (on jurisdiction), Article 735 CPC (concerning the composition of the court), Article 741 CPC (concerning the appeal against the decision), Article 742 CPC (concerning the possibility of repealing or amending the decision), Article 744 CPC (regarding discontinuation of the security)[64] or Article 753 § 2 CPC (allowing the application for granting the security to be heard by a single judge in urgent cases).[65] The course of preventive proceedings against the domestic violence offender does not materially differ from preventive proceedings in other cases, and the special provisions concerning this method of protection serve, i.a., both to ensure the speed of proceedings and the best protection for people affected by violence. This is particularly evident for minor victims of violence, for whom the guardianship court can initiate *ex officio* protection proceedings.

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[63] *Ibidem*, margin number 17.

[64] *Ibidem*, margin number 18.

[65] M. Strus-Wołos, *Art. 755³ k.p.c.*, margin number 8.

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ABSTRAKT

Artykuł ma charakter naukowo-badawczy. Celem jest omówienie postępowania zabezpieczającego wobec sprawcy przemocy w rodzinie w obszarze polskiego postępowania cywilnego oraz udzielenie odpowiedzi na pytania o sposób tego zabezpieczenia, jego przedmiot, cel, przebieg postępowania i udzielenie zabezpieczenia. Odpowiedzi na te pytania mogą mieć nie tylko wartość dogmatyczną, lecz także praktyczną, zwłaszcza że brak jest naukowych opracowań dotyczących *stricte* tego tematu. Chociaż podstawową metodą badawczą zastosowaną w artykule jest analiza formalno-dogmatyczna, to uwzględniono również praktykę stosowania prawa, posługując się analizą orzecznictwa sądów powszechnych i dyskusji naukowej prowadzonej na podstawie tych judykatów. Ten nowy sposób zabezpieczenia roszczeń niepieniężnych o charakterze nowacyjnym służy ochronie osób dotkniętych przemocą w rodzinie i zapewnieniu tymczasowej ochrony prawnej poprzez odizolowanie ofiary od podmiotu stosującego przemoc w sytuacjach, gdy stwarza on zagrożenie dla życia lub zdrowia domowników. Zabezpieczenie jest uwarunkowane uprzednim wydaniem nakazu lub zakazu przez

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właściwy organ (Policję, Żandarmerię Wojskową lub sąd). Jeżeli taki nakaz lub zakaz został wydany, sąd może udzielić zabezpieczenia na zasadach określonych w art. 755^2–755^4 Kodeksu postępowania cywilnego; jeżeli brak jest wcześniejszego nakazu, wówczas udzielenie zabezpieczenia następuje na zasadach ogólnych (art. 755 Kodeksu).

Słowa kluczowe: postępowanie zabezpieczające; przemoc w rodzinie; tymczasowa ochrona prawna; Kodeks postępowania cywilnego

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