

---

## PROTECTION FROM DOMESTIC VIOLENCE AGAINST WOMEN IN LITHUANIA: PROBLEMATIC ASPECTS DETECTED BY INTERNATIONAL INSTITUTIONS

Ramunė Jakštienė\*

*Mykolas Romeris University, Faculty of Public Security, Department of Law, Lecturer  
Putvinskio str. 70, LT 44211 Kaunas  
Tel.: +370 657 72711, e-mail: [jakstieneramune@gmail.com](mailto:jakstieneramune@gmail.com)*

---

**Annotation.** It was only in the middle of 90's, when domestic violence against women was formally recognised as a human rights violation in international law. Since then obligation to protect is placed on states not only on national, but on international level too. Effectiveness of this obligation's fulfillment is monitored by international human rights bodies, which use different procedures, for example litigation, states reporting. International institutions that recently have assessed Lithuania's progress on subject matter, have found instances of violation of right not to be tortured, recommended to improve national legislation, its enforcement, to ratify international documents.

**Keywords:** human rights, domestic violence, gender mainstreaming.

### INTRODUCTION

Domestic violence against women was long perceived as a social phenomenon or a criminal law matter rather than a human rights issue. The changes came at the 1993 World Conference on Human Rights in Vienna. In its final Declaration, states recognized that rights of women are integral part of human rights. This consensus was further developed in the Platform of Action adopted by UN Fourth World Conference on Women held in Beijing in 1995.<sup>1</sup> The concept of gender mainstreaming was adopted. It includes gender concerns both in the policy-making process and in eventual policy design.<sup>2</sup>

Domestic violence against women in Lithuania's society because of its historical, cultural background was also long viewed as a private family matter. It was called as domestic conflict and was not considered as a real violation. But high prevalence of incidents, activities of women's movement, social changes of society, Lithuania' participation in human rights treaties and international organizations led to changes in legislation too placing an obligation to protect women from domestic violence on a state. This is an evident how rights talk effects social policy of a state.<sup>3</sup> Since Lithuania is a state party to numerous human rights treaties, organizations, it bears the obligation to protect not only on national, but on

---

<sup>1</sup> Kälin W. And Künzli J. *The Law of International Human Rights Protection*. Oxford University Press, 2011. P. 365.

<sup>2</sup> Boucher A. *Gender mainstreaming in skilled immigration policy: from Beijing 1995 to the Canadian Immigration and Refugee Protection Act (2002)*. Human Rights and Social Policy. USA, 2010. P. 175.

<sup>3</sup> Neville A. *On the Margins? The Influence of „Rights Talk“ on Policy and Practice*. *Ibid*, P. 224.

international level as well. International human rights obligations are tripartite: to respect, to protect and to fulfill human rights.<sup>4</sup> Different international human rights bodies using different procedures monitor how states fulfill their obligations.

Therefore the object of this research is problematic legal aspects detected by various international institutions evaluating the protection from violence against women in Lithuania. The object is limited only to legal aspects, excluding analyses of other factors, such as financial recourses, statistics, researches, etc. For the purpose of this research the concept of „domestic violence“ is described as it is defined in various international human rights documents, including Convention on Preventing and Combating Violence Against Women and Domestic Violence (opened for signature on May 11, 2011, not in force yet): it means all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim.<sup>5</sup> International institutions in this research mean bodies of international treaties, to which Lithuania is a party.

The objective of the research is to identify and to disclose the main problematic legal aspects recently raised by international institutions monitoring how Lithuania fulfills its international obligation to protect women from domestic violence.

In order to achieve the determined aim the following tasks are settled: 1. to analyze international monitoring documents and to discover the most important deficiencies in the practice of Lithuania fulfilling its international obligation to protect women from domestic violence; 2. to discuss Lithuania's progress solving raised problematic legal aspects.

Different international human rights bodies use different state's monitoring procedures and their results give different consequences. For the purpose of this research the litigation procedures against Lithuania in European Court of Human Rights are analysed. The Court was established under European Convention for the Protection of Human Rights and Fundamental Freedoms (by Council of Europe) to ensure the observance of the engagements undertaken by the states in the Convention.<sup>6</sup> Its decisions have binding force on states. States reporting procedures to three committees were also analysed: Committee Against Torture (established under UN Convention against Torture and Other Cruel, Inhuman or Degrading

<sup>4</sup> International Human rights. Oxford University Press, 2010. P. 130-132.

<sup>5</sup> <http://conventions.coe.int/Treaty/EN/Treaties/Html/210.htm> [interactive] [accessed 2013-05-01]. (Article 3 §b)

<sup>6</sup> European Convention for the Protection of Human Rights and Fundamental Freedoms (adopted 4 November 1950, entered into force 3 September 1953). ETS 5; 213 UNTS 221 (ECHR). (Articles 19, 46). <http://conventions.coe.int/Treaty/EN/Treaties/Html/210.htm> [interactive] [accessed 2013-05-01]. (Article 3 §b)

Treatment or Punishment)<sup>7</sup>, Committee on the Elimination of Discrimination against Women (established under UN Convention on the Elimination of All Forms of Discrimination against Women<sup>8</sup>) and Human Rights Committee (established under International Covenant on Civil and Political Rights<sup>9</sup>). Under this procedure states periodically submit their reports on progress in domestic implementation of the guarantees of relevant treaties. The review of states reports ends with concluding observations and recommendations by relevant treaty body.

## PROTECTION FROM DOMESTIC VIOLENCE AGAINST WOMEN IN LITHUANIA: PROBLEMATIC ASPECTS DETECTED BY INTERNATIONAL INSTITUTIONS

### 1. Violation of right not to be tortured

Domestic violence cases belongs to the field of competence of the European Court of Human Rights.

*Valiuliene v. Lithuania*. In Chamber judgment in the case *Valiuliene v. Lithuania*<sup>10</sup>, the European Court of Human Rights held, that there had been a violation of Article 3 (prohibition of torture and of inhuman or degrading treatment) of the Convention<sup>11</sup> because Lithuanian authorities failed to effectively investigate complaint of domestic violence.

Circumstances of the case. In order to reveal, what criminal mechanisms and in which manner were applied in this case, it is needed to disclose it's factual background thoroughly. L.Valiulienė filed a complaint to the police stating that she had been beaten by her male partner on several occasions in 2001. The police suggested L.Valiulienė to apply for a private prosecution. So she filed a suit to the court, alleging that the repeated acts of violence against her had constituted the offence of causing minor bodily harm under Article 116 § 3 of the Criminal Code in force at the material time (Article 140 § 1 of the Criminal Code, that came in force from 1 May 2003). On 21 January 2002 the court forwarded the applicant's complaint to the public prosecutor, ordering him to start his own pre-trial criminal investigation so that

<sup>7</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984, entry into force 26 June 1987. <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx> [interactive] [accessed 2013-05-01]. Articles 17, 19.

<sup>8</sup> Convention on the Elimination of All Forms of Discrimination against Women, New York, 18 December 1979 <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx> [interactive] [accessed 2013-05-01]. Articles 17, 18.

<sup>9</sup> International Covenant on Civil and Political Rights. Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976. <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx> [interactive] [accessed 2013-05-01]. Articles 28, 40.

<sup>10</sup> *Valiulienė v. Lithuania*. Application no. 33234/07. 26 March 2013.

<sup>11</sup> Article 3: No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

the examination of the case would not be delayed, because the offender failed to appear in court on a number of occasions. The investigation was subsequently suspended several times, due to offender's failure to appear in court and insufficient evidence. It was reopened on appeal in February 2004 on the ground that the investigation had not been sufficiently thorough. Prosecutor's office granted the applicant's request to remove the criminal investigator from the case because of concerns as to her impartiality. The prosecutor also noted that the criminal investigation had been delayed. On 10 June 2005 the prosecutor held that the law had changed in 2003 and a prosecution in respect of minor bodily harm should have been brought by the victim in a private capacity. Under Article 409 § 1 of the new Code of Criminal Procedure, the public prosecutor has a right to open a criminal investigation into criminal offenses normally investigated by means of private prosecution, such as the offense of causing minor bodily harm, if the crime is of public importance (that is, if it is in the public interest that the crime be solved) or if there are important reasons as to why the victim is unable to protect his or her rights. The prosecutor considered there was no reason for a public prosecution in this case. Applicant's appeals were dismissed, so she lodged two more complaints (in the end of 2005 and in the beginning of 2006), requesting private prosecution again. By a final ruling of 8 February 2007, the court dismissed the applicant's appeal, finding that any kind of prosecution had become time-barred. Article 95 § 1 of the Criminal Code in force at the material time provided that a prosecution could not be pursued if a minor intentional crime had been committed more than five years earlier. So the applicant filed a complaint to the European Court of Human Rights complaining of Lithuanian authorities' failure to investigate the repeated acts of domestic violence against her and failure to hold the perpetrator accountable because of excessively length criminal proceedings against him.

Court's assessment. The Court held that there had been a violation of Article 3 of the European Convention on Human Rights. The Court grounded its decision on its own case-law interpreting Article 3 (§ 65,66): the Court reiterated that ill-treatment must attain a minimum level of severity to fall within the scope of Article 3. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the nature and context of the treatment, its duration, its physical and mental effects and, in some instances, the sex, age and state of health of the victim (*Đordevic v. Croatia*, no. 41526/10, § 94, ECHR 2012). Treatment has been held by the Court to be “inhuman” because, *inter alia*, it was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical and mental suffering (*Labita v. Italy [GC]*, no. 26772/95, § 120, ECHR 2000-

IV). Treatment has been considered “degrading” when it was such as to arouse in its victims feelings of fear, anguish and inferiority, capable of humiliating and debasing them and possibly breaking their physical or moral resistance (*Hurtado v. Switzerland*, 28 January 1994, § 67, Series A no. 280-A; and *Wieser v. Austria*, no. 2293/03, § 36, 22 February 2007).

In the light of the foregoing, the Court considered (§ 70) that the ill-treatment of the applicant, which continually caused her physical injuries, combined with her feelings of fear and helplessness, was sufficiently serious to reach the level of severity under of Article 3 of the Convention and thus raised the Government’s positive obligation under this provision (*Milanovic v. Serbia*, no. 44614/07, § 87, 14 December 2010). The Court’s case-law (§ 73) is consistent and clear to the effect that this Article requires the implementation of adequate criminal-law mechanisms (*Beganovic v. Croatia*, no. 46423/06, § 69, 25 June 2009; *M.C. v. Bulgaria*, no. 39272/98, § 151, ECHR 2003-XII). However, the scope of the state’s positive obligations might differ between cases depending on whether the treatment contrary to Article 3 of the Convention has been inflicted by state agents by private individuals. No direct responsibility can be borne by Lithuania under the Convention in respect of the acts of the private individuals in question. But the Court reiterated (§ 74) that the obligation on the states under Article 1 to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention, taken together with Article 3, requires States to take measures to ensure that individuals within their jurisdiction are not subjected to torture or inhuman or degrading treatment or punishment, including such ill-treatment administered by private individuals (*A. v. the United Kingdom*, § 22, 23 September 1998, Reports of Judgments and Decisions 1998-VI). Article 3 requires states to put in place effective criminal-law provisions to deter of offences against personal integrity, backed up by law-enforcement machinery for the prevention, suppression and punishment of breaches of such provisions, and this requirement also extends to ill-treatment administered by private individuals. On the other hand, the obligation on the State under Article 1 cannot be interpreted as requiring the State to guarantee through its legal system that inhuman or degrading treatment is never inflicted by one individual on another or that if it is, criminal proceedings should necessarily lead to a particular sanction. In order that a State may be held responsible it must, in the view of the Court (§ 75, 77), be shown that the domestic legal system, and in particular the criminal law applicable in the circumstances of the case, failed to provide practical and effective protection of the rights guaranteed by Article 3 (*Beganovic*, cited above, § 71). Relying on mentioned relevant provisions of Lithuanian Criminal Code and Code of Criminal Procedure, The Court

concluded, that in the instant case Lithuanian law provided a sufficient regulatory framework to pursue the crimes against applicant (§ 78). Then the Court examined whether or not the practices and the manner in which those criminal-law mechanisms were implemented in the instant case, were defective to the point of constituting a violation of Lithuania's positive obligations under Article 3 of the Convention (§ 79-86). And it concluded, that they were: they did not provide adequate protection to the applicant against acts of violence. The criminal proceedings by Lithuanian authorities were discontinued because the prosecution has become time-barred, the case was never established by a competent court, and this has occurred as a result of the flaws in the actions of the relevant state authorities: having sufficient information to raise a suspicion that a crime had been committed, the investigation was suspended two times for lack of evidence; only because of persistent applicant's appeals, the prosecutors quashed the investigator's decisions as not being thorough enough; only two years after the legislative reform the prosecutor decided to return the case to the applicant for private prosecution, thus taking her back to the same situation she had been in four years previously and risking that the defendant would enjoy impunity, because the statutory time-limit for prosecution was approaching.

Concurring opinion. Judge Pinto De Albuquerque highlighted several most problematic aspects, dealing with domestic violence. The first is the definition of the exact ambit of state's positive obligation to prevent and protect. The judge described so-called Osman test (*Osman v. U.K* (2000) 29 EHRR 245), which was developed by the Court: the state answers for the wrongful conduct of non-state actors when their actions exposed real and immediate risk and their conduct was foreseeable and avoidable by the exercise of State powers. But the judge argued, that the stage of an "immediate risk" to the victim is often too late for the state to intervene. So a stricter standard is needed, especially in certain societies, like Lithuanian society, which are faced with a serious, long-lasting and widespread problem of domestic violence. That stricter standard emerges in international human rights protection and is called due diligence standard<sup>12</sup>: the duty to act arises for public authorities when the risk is already present, although not imminent. If a state knows or ought to know that a segment of its population, such as women, is subject to repeated violence and fails to prevent harm when they face a present (but not yet imminent) risk, the state can be found responsible by omission for the resulting human rights violations. The judge concluded, that states have the obligation

---

<sup>12</sup> *see also* Joseph S., *Scope of Application./International Human rights*. Oxford University Press, 2010. P. 156-157.

not only to bring to justice the alleged offenders and empower the victims of domestic violence with an active role in the criminal proceedings, but also to prevent private actors from committing or reiterating the offence and provide elementary social support measures to victims, such as post-traumatic care and shelter. Such an international positive obligation must be acknowledged, in view of the broad and long-lasting developments in international law and modern psychology, as a principle of customary international law, binding on all states.

It must be mentioned, that although current case-law on the subject matter is disparate, the Court's case-law normally shows application of Article 8 (right to respect for private life)<sup>13</sup> in domestic violence cases. Application of Article 3 is found only in specific cases (see concurring and dissenting opinions of judges). The Government of Lithuania presented the Court with a unilateral declaration, acknowledging a violation of Article 8. But the Court decided not to accept it. However, this judgment in this case isn't final. Under Articles 43 and 44 of the Convention, during the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court.

*Praškevičienė v. Lithuania*<sup>14</sup>. Another domestic violence case against Lithuania, raising the question of violation of Article 3 of the Convention, hasn't got final judgment yet either (in 2012 the Court has communicated the case to the Government). This case raises the issue of domestic violence not only against woman, but against her children too. The applicant lodged a complaint to the Court, alleging, that the criminal proceedings against her former husband were protracted and the case wasn't examined within a reasonable time. She has initiated numerous domestic criminal and civil proceedings, related to intentional and systematic beatings inflicted on her and her children, which lasted from 1999 till 2008. And in all criminal proceedings prosecution had become time-barred, because of plenty of violations by authorities of criminal procedure, numerous returns of cases for fresh examinations. The Court, as it did in *Valiulienė v. Lithuania*<sup>15</sup>, decided to examine the case from the perspective of Article 3 or, alternatively, Article 8.

---

<sup>13</sup> Article 8:

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

<sup>14</sup> *Praškevičienė v. Lithuania*. Application no. 27920/08.

<sup>15</sup> *Valiulienė, Ibid*

Summarizing these rulings against Lithuania, it's seen, that the European Court of Human Rights point the state's obligation to provide adequate protection. The Court states, that the fulfillment of this obligation strongly depends criminal-law mechanisms and practices and the manner in which they are implemented. Failure to protect may lead to a violation of human right not to be tortured.

## **2. Improvement of national legislation**

### **2.1. Specification of a crime of domestic violence**

Concluding observations on Lithuania's report, made by the Committee Against Torture (CAT/C/LTU/CO/2, 19 January 2009)<sup>16</sup> are also focused on state's obligation. It has called Lithuania to increase it's efforts to prevent, combat and punish domestic violence against women (§ 20). Additionally, regretting, that there is no specific definition of domestic violence in national legislation of Lithuania, The Committee recommended to adopt a recognition of such violence as a specific crime (§ 20).

The new Lithuania's Law on protection Against Domestic Violence<sup>17</sup> (came into force in 2011-12-15) presents the concept of domestic violence: definitions of “domestic environment” and “violence”, as well as of other factors, specifying the concept (“victim of domestic violence”, “perpetrator of violence”, “subject of domestic violence”, etc.). According to Article 2 §1 domestic environment shall mean the environment comprising the persons currently or previously linked by marriage, partnership, affinity or other close relations, also the persons having a common domicile and a common household. §5 describes violence to mean an intentional physical, mental, sexual, economic or another influence exerted on a person by an act or omission as a result whereof the person suffers physical, property or non-pecuniary damage. It is also specifically stated, that domestic violence is considered as an act of violation of human rights and freedoms (Article 1 §2). Article 12 §1 establishes, that violence incurs criminal liability. Damage, caused by the acts of domestic violence, to a person’s health, property, environment or non-pecuniary damage must be compensated in accordance with the procedure laid down by other legal acts of the Republic of Lithuania (Article 12 §2): Criminal Code, Criminal Procedure Code, Civil Code, Civil Procedure Code, etc.

<sup>16</sup> Concluding observations of the Committee against Torture. Lithuania. <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/403/04/PDF/G0940304.pdf?OpenElement> [interactive][accessed2013-04-27].

<sup>17</sup> Valstybės žinios, 2011-06-14, No. 72-3475.



So logical and systemic analyses of this law leads to a conclusion, that Committee's recommendation to specifically define domestic violence in national legislation and to recognize it as a specific crime is endorsed.

## **2.2. Adoption of the new specific law**

The new Lithuania's Law on protection Against Domestic Violence has fully endorsed yet another recommendation, made by the Committee on the Elimination of Discrimination against Women (8 July 2008)<sup>18</sup>. Observing Lithuania's progress in combating against women's discrimination, it has stated, that in accordance with its General Recommendation No. 19, the Committee urges states to ensure comprehensive legal and other measures to protect women from all forms of violence, including an adoption of specific law on domestic violence (§ 74-75). As it was already mentioned, this law defines the concept of domestic violence, sets principles (Article 3), measures of protection (Article 5,6), describes functions of police (Article 7), establishes liability (Article 12) and rights of subjects of domestic violence (Articles 10-11). This legal mechanism involves in protection against domestic violence state and municipal institutions, agencies and non-governmental organisations (Articles 3, 4 §3). It provides specific measures in various stages of protection against domestic violence: prevention of it (Article 4), ensuring protection (Articles 5, 6) and assistance to the victims (Article 8).

Some provisions of the law correspond to Committee's calling to ensure that all women who are victims of domestic violence, including rural women, have access to immediate means of redress and protection (§75). Article 5 provides an obligation for the perpetrator of violence to temporarily move out of the place of residence or not to approach the victim of violence, not to communicate and not to seek the contact. These measures are to be applied until completion of examination of a case, unless a pre-trial investigation judge imposes the pre-trial supervision measures specified in the Code of Criminal Procedure of the Republic of Lithuania, namely, detention or the obligation to reside separately from the victim. These measures are imposed by a ruling of the pre-trial investigation judge not later than within 48 hours. When an obligation is imposed on the perpetrator of violence to temporarily move out of the place of residence, police offices must immediately ensure the moving out of the perpetrator of violence (Article 7 §3). The police is also given the function to immediately take measures to protect a victim of violence and, taking account of the circumstances, initiate

---

<sup>18</sup> Concluding observations of the Committee on the Elimination of Discrimination against Women: Lithuania. 8 July 2008. <http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-LTU-CO-4.pdf> [interactive] [accessed 28/04/2013].

a pre-trial investigation and notify the prosecutor if the prosecutor's order is necessary to initiate the pre-trial investigation (Article 6). Where the circumstances of an incident of domestic violence are clear, and a criminal case concerning the commission of this act must be heard by a district court, procedural actions shall be subject to accelerated proceedings.

The Committee has also drew Lithuania's attention to the access to a sufficient number of safe and adequately funded shelters and legal aid for women who are victims of domestic violence (§ 75). The same consideration in respect of Lithuania was also expressed by Committee against Torture<sup>19</sup> and Human Rights Committee (31 August 2012)<sup>20</sup>. Correspondingly, Articles 8 §4, 2 §8 of mentioned law states, that specialised assistance centres shall provide specialised comprehensive assistance (psychological, social, health, accommodation, legal, etc.). Obviously, methods of help of such nature were also available before the adoption of the law. But now they become more specialised, accessible, concentrated, better organised. Numbers of women who suffered domestic violence and got temporary accommodation in institutions in period before the adoption of the law are shown in the Table<sup>21</sup>:

**Table 1.** Women who suffered domestic violence and got temporary accommodation in institutions\*

Year	2004	2005	2006	2007	2008	2009	2010
Number of women	1103	1112	1121	1013	978	1307	1312

\*Data of women's shelters, temporary shelters for mothers and children and shelters for the homeless, per year.

Relying on the statements mentioned above, it can be concluded, that the Law on Protection Against Domestic Violence complies with the recommendations regarding new specific law and its provisions.

### 2.3. Public interest in domestic violence against women

The second major problem, related to domestic violence against women, raised by Judge Pinto de Albuquerque in the case *Valiulienė v. Lithuania*<sup>22</sup> is the failure to acknowledge

<sup>19</sup> Concluding observations of the Committee against Torture. Lithuania. §20.

<sup>20</sup> Concluding observations adopted by the Human Rights Committee at its 105th session, 9-27 July 2012. Lithuania. (31 August 2012). <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/455/76/PDF/G1245576.pdf?OpenElement> [interactive] [accessed 2013-05-01]. §6.

<sup>21</sup> Reply of Lithuania on violence against women and disability. Questionnaire for the preparation of the OHCHR analytical study on Violence against women and disability (A/HRC/RES/17/11). 18/11/2011 <http://www2.ohchr.org/english/issues/women/docs/VAWHRC20/Governments/Lithuania.doc> [interactive] [accessed 28/04/2013].

<sup>22</sup> *Valiulienė V. Lithuania, Ibid*

the public interest of prosecuting violence against women. This doesn't require public prosecutions in all cases of domestic violence, but can't be limited to exceptional cases either (Bevacqua and S. v. Bulgaria (no. 71127/01, § 77, 12 June 2008). He cited international documents (Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, Article 55, Recommendation Rec (2002), paragraphs 38 and 39, the CEDAW General Recommendation No. 28, paragraph 34), which establish the preference for a public prosecution of offences which is not entirely dependent on the will of the victim.

The importance of public interest was also expressed by the Committee on the Elimination of Discrimination against Women<sup>23</sup>: considering domestic violence against women only as a private matter, the relationship between the victim and the perpetrator are not fully understood by police and health officers, the relevant authorities and society at large.

Answering these concerns, the Law on Protection Against Domestic Violence clearly establishes, that domestic violence, due to damage caused to society, is attributable to the acts of public importance (Article 1 §1). Some preventative measures have the element of publicity too, for example, organisation of public education (including legal one) concerning domestic violence (Article 4 §3.1, §3.2). But the most important legal change is laid down in Article 7 §1: on receipt of a notice or being witnesses to the incident, police officers shall initiate pre-trial investigation. A victim of violence doesn't need to file a complaint. It means that public prosecution is guaranteed in domestic violence against women cases.

Evaluating the importance of these provisions it can be stated, that public interest and public prosecution are significant changes in Lithuania's legislation on subject matter and important instruments combating with domestic violence against women. The new law incorporates the latest developments in protection from domestic violence against women.

#### **2.4. Effective implementation of law**

Enactment of the Law on Protection against Domestic Violence, preparatory works for ratification of Convention on Preventing and Combating Violence Against Women and Domestic Violence creates legal framework in Lithuania, that well-directs coping with domestic violence against women. But the most important thing is manner and effectiveness of legal acts: are existing legal instruments and measures applied at all, are they applied in proper means. Answering to these questions in negative led European Court of Human Rights

---

<sup>23</sup> Concluding observations of the Committee on the Elimination of Discrimination against Women: Lithuania. *Ibid*, §74.

to a conclusion in the case *Valiulienė v. Lithuania*<sup>24</sup> that although Lithuanian law provided a sufficient regulatory framework to pursue domestic violence against applicant, but used practices together with the manner in which criminal-law mechanisms were implemented, did not provide adequate protection to her, constituting a violation of Article 3 of the Convention.

Similarly, noting the recent enactment of the Law on Protection against Domestic Violence, the Human Rights Committee in its Concluding observations towards Lithuania<sup>25</sup> remained concerned at the high prevalence of domestic violence against women, and the absence of effective measures to protect victims thereof. In its view state should allocate sufficient resources to ensure the effective implementation of this law.

Various levels of Lithuania's authorities adopted additional acts related to application of the Law on Protection against Domestic Violence: The Description of the Activities of Specialised Assistance Centres (Valstybės žinios, 2011-06-14, No. 72-3475), The Description of response by police officers to receipt of a notice of an incident of domestic violence (Valstybės žinios, 2012-02-04, No. 16-740), The Description of the Procedure for Evicting the Perpetrator of Violence (Valstybės žinios, 2011-12-17, No. 154-7330), The Description of the Procedure of Control by Police Officers of execution of a court's imposed obligation on the perpetrator of violence to move out (Valstybės žinios, 2011-12-08, No. 15-7091). They also made decisions in the field of organising, financing, policy making, researching, etc.

Summarizing, it must be stated that although enactment of the Law on Protection against Domestic Violence per se didn't provide rapid effect combating against domestic violence, its provisions still provide significant opportunities. This is confirmed by the acts and decisions of various levels of Lithuania's authorities improving the implementation of this law and other relevant legislation in order to fulfill international obligation to protect women from domestic violence.

### **3. Ratification of international conventions**

Concluding observations by both the Committee on the Elimination of Discrimination against Women<sup>26</sup> and Committee Against Torture encouraged the Government of Lithuania to consider ratifying international human rights instruments to which it is not yet a party. The latter Committee expressly underlined the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and recommended

<sup>24</sup> *Valiulienė v. Lithuania. Ibid*

<sup>25</sup> Concluding observations adopted by the Human Rights Committee at its 105th session, 9-27 July 2012. Lithuania. *Ibid*.

<sup>26</sup> Concluding observations of the Committee on the Elimination of Discrimination against Women: Lithuania. *Ibid*, §93.

to consider making declarations under articles 21 and 22 of the Convention – on the recognition of the competence of the Committee to receive and consider individual or inter-state communications on fulfilling state's obligations under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.<sup>27</sup>

These recommendations are partially fulfilled. The President of Republic of Lithuania on 2013-04-11 proposed the Parliament to ratify mentioned Optional Protocol from 2014-01-01<sup>28</sup>.

Moreover, there is a significant progress in the actions of The President and Government of Republic of Lithuania preparing to ratify Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence, which is focussed specifically on preventing domestic violence, protecting victims and prosecuting offenders.<sup>29</sup> The Convention encompasses the latest development of international law on subject matter. Lithuania's working group has concluded, that lots of Lithuania's legal provisions are in consistent with the requirements of this Convention. But further improvement of national legislation and its implementation is needed in order to fully implement its provisions.<sup>30</sup>

So described measures shows that Lithuania's authorities aim at resuming broader international obligations to protect women from domestic violence ratifying or preparing to ratify international conventions.

## CONCLUSIONS

The European Court's of Human Rights decisions against Lithuania in cases on the issue of domestic violence against women point the state's positive obligation to provide adequate protection. The Court states, that the fulfillment of this obligation strongly depends on criminal-law mechanisms and practices and the manner in which they are implemented. Failure to do this may constitute to a violation of human right not to be tortured.

The new Lithuania's Law on protection Against Domestic Violence came into force in 2011-12-15. Logical and systemic analyses of this law leads to a conclusion, that recommendations of international institutions to specifically define domestic violence in national legislation, to recognize it as a specific crime and to adopt specific law are endorsed. Establishing public interest in domestic violence against women and public prosecution of it

<sup>27</sup> Concluding observations of the Committee against Torture. Lithuania. *Ibid*, §23-25.

<sup>28</sup> Decree of the President of Republic of Lithuania. 2013-04-11. No. 1K-1425 (Valstybės žinios, 2013-04-13, No. 38-1846).

<sup>29</sup> <http://conventions.coe.int/Treaty/EN/Treaties/Html/210.htm> [interactive] [accessed 2013-05-01]

<sup>30</sup> <http://www.socmin.lt/index.php?1255875914> [interactive] [accessed 01/05/2013]

is a significant change in Lithuania's legislation, social policy and important instrument on subject matter. Although enactment of this law per se didn't provide rapid effect combating against domestic violence, its provisions still provide significant opportunities. This is confirmed by the acts and decisions of various levels of Lithuania's authorities improving the implementation of this law and other relevant legislation.

Lithuania's authorities aim at resuming broader international obligations to protect from domestic violence ratifying or preparing to ratify international conventions, which are dedicated to protection from violence in general (The Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) or protection from domestic violence against women specifically (Convention on Preventing and Combating Violence Against Women and Domestic Violence).

## REFERENCES

1. Concluding observations adopted by the Human Rights Committee at its 105th session, 9-27 July 2012. Lithuania. (31 August 2012). <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/455/76/PDF/G1245576.pdf?OpenElement> [interactive] [accessed 2013-05-01]
2. Concluding observations of the Committee against Torture. Lithuania. <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/403/04/PDF/G0940304.pdf?OpenElement> [interactive] [accessed 2013-04-27].
3. Concluding observations of the Committee on the Elimination of Discrimination against Women: Lithuania. 8 July 2008. <http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-LTU-CO-4.pdf> [interactive] [accessed 28/04/2013].
4. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984, entry into force 26 June 1987. <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx> [interactive] [accessed 2013-05-01].
5. Convention on the Elimination of All Forms of Discrimination against Women, New York, 18 December 1979. <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx> [interactive] [accessed 2013-05-01].
6. Convention on Preventing and Combating Violence Against Women and Domestic Violence. <http://conventions.coe.int/Treaty/EN/Treaties/Html/210.htm> [interactive] [accessed 2013-05-01]
7. Decree of the President of Republic of Lithuania. 2013-04-11. No. 1K-1425 (Valstybės žinios, 2013-04-13, No. 38-1846).
8. European Convention for the Protection of Human Rights and Fundamental Freedoms (adopted 4 November 1950, entered into force 3 September 1953). ETS 5; 213 UNTS 221 (ECHR).
9. Human Rights and Social Policy. USA, 2010.
10. International Covenant on Civil and Political Rights. Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976. <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx> [interactive] [accessed 2013-05-01].

11. International Human rights. Oxford University Press, 2010.
12. Kālin W. And Künzli J. The Law of International Human Rights Protection. Oxford University Press, 2011.
13. Law on Protection Against Domestic Violence (Valstybės žinios, 2011-06-14, No. 72-3475).
14. Praškevičienė v. Lithuania. Application no. 27920/08.
15. Reply of Lithuania on violence against women and disability. Questionnaire for the preparation of the OHCHR analytical study on Violence against women and disability (A/HRC/RES/17/11). 18/11/2011  
<http://www2.ohchr.org/english/issues/women/docs/VAWHRC20/Governments/Lithuania.doc>  
[interactive] [accessed 2013-04-28].
16. Valiulienė v. Lithuania. Application no. 33234/07. 26 March 2013.

## MOTERŲ APSAUGA NUO SMURTO LIETUVOJE: TARPTAUTINIŲ INSTITUCIJŲ ATSKLEISTI PROBLEMINIAI ASPEKTAI

**Ramunė Jakštienė\***

Mykolo Romerio universitetas

### Santrauka.

Smurtas prieš moteris artimoje aplinkoje yra labai jautrus klausimas ir Lietuvoje, ir kitose valstybėse. Moterų teisių apsauga, įskaitant apsaugą nuo surto artimoje aplinkoje, yra sudėtinis žmogaus teisių apsaugos objektas. Kadangi Lietuva yra ne vieno dokumento, ne vienos tarptautinės organizacijos žmogaus teisių apsaugos srityje dalyvė, tai apsauga nuo smurto turi būti garantuojama ne tik nacionaliniu, bet ir tarptautiniu lygiu. Įvairios tarptautinės institucijos prižiūri, kaip Lietuva nacionalinėje teisėje įgyvendina tarptautinius įsipareigojimus. Naudojami priežiūros mechanizmai yra nevienodi, pvz., teismo procedūra, periodinių ataskaitų teikimo procedūra. Tarptautinės institucijos, neseniai vertinusios situaciją Lietuvoje, konstatavo teisės nebūti kankinamam pažeidimą, rekomendavo tobulinti nacionalinę teisinę sistemą, efektyvinti jos praktinį taikymą, ratifikuoti tarptautinius dokumentus.

**Pagrindinės sąvokos:** žmogaus teisės, smurtas artimoje aplinkoje, lyčių aspekto integravimas.

**Ramunė Jakštienė\***, Mykolas Romeris University, Faculty of Public Security, Department of Law, lecturer. Research interests: safety and protection of human rights, administrative law.

**Ramunė Jakštienė** \* Mykolo Romerio universiteto Viešojo saugumo fakulteto, Teisės katedros lektorė. Mokslinių tyrimų sritis: saugumas ir žmogaus teisių apsauga