24 October 2011, Vilnius

EUROPEAN COURT OF HUMAN RIGHTS

Case VALIULIENĖ v. LITHUANIA

Application No. 33234/07

RESPONSE TO THE GOVERNMENT'S OBSERVATIONS

Submitted on behalf of the Applicant
ON THE ADMISSIBILITY AND MERITS OF THE CASE

I. INTRODUCTION

1. The Applicant Loreta Valiulienė (hereinafter – the Applicant) has the honour to submit to the European Court of Human Rights (hereinafter – the Court) her Observations on the admissibility and merits of the Application No. 33234/07 (hereinafter – application) lodged against Lithuania following Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter – the Convention).

2. The Court (Second Section) by the letter of 19 September 2011 notified the Applicant about the unilateral declaration of the Government of the Republic of Lithuania (hereinafter – the Government) and in the event that the Applicant refuses to agree, requested to submit the Applicant's written observations by 31 October 2011 together with any claims of just satisfaction.

3. In Part II of the Observations the Applicant presents her arguments for admissibility and merits of the application as concerns Articles 3, 6, 8 and 13 of the Convention. In Part III the Applicant presents her claims for just satisfaction.

4. The Applicant reserves the right to present to the Court further assessments and submissions in respect of the aforementioned application.

II. ARGUMENTS OF THE APPLICANT ON ADMISSIBILITY AND MERITS OF THE APPLICATION

Concerning Article 3 of the Convention

- **Level of Severity**

5. The Government submits that the treatment to which the Applicant was subjected by J.H.L. did not attain a minimum level of severity to fall within the scope of Article 3 of the Convention.

6. According to the well-establish case-law of the Court, for a particular case to fall within the scope of Article 3 of the Convention, the ill-treatment must attain a minimum level of severity. The assessment of this minimum level is, in the nature of things, 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 the health of the victim (see *Opuz v. Turkey*, 9 September 2009, Application No. 33401/02).

7. As regards the question whether the State could be held responsible, under Article 3, for the ill-treatment inflicted on persons by non-state actors, the Applicant recalls that the obligation on the State under Article 1 of the Convention 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 designed 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 (see *H.L.R. v. France*, 29 April 1997, Application No 24573/94). Children and other vulnerable individuals, in particular, are entitled to State protection, in the form of effective deterrence, against such serious breaches of personal integrity (see *A. v. the United Kingdom*, 23 September 1998, 100/1997/884/1096).

8. As regards the severity of the injuries sustained by the Applicant and the effects of the inflicted treatment, the Government argues that the ill-treatment did not reach the level of severity to fall within the scope of Article 3 as it "*did not have a permanent bodily damage*", "*did not cause short-term illness*", the Applicant "*was not beaten with considerable force*", and the injuries were "*of merely trivial nature*".

9. The Applicant submits that although the bodily injuries she sustained were minor, the actual physical force, which she has been subjected to, has not been moderate – she was kicked in the face, buttocks, and other parts of the body, grabbed by the throat, pulled by her hair, punched in the face, hit on her head. She was also threatened by J.H.L. that she would "be disposed of" had she refused to live with him and on several occasions she was refused by J.H.L into her apartment.

10. However, the Applicant notes that the ill-treatment she was subjected to did not consist of physical attacks only. The ill-treatment that the Applicant was going through also comprised of terror, threatening, abuse, causing constant suffering and distress, fear and unease, tension and other psychological affects on the Applicant.

11. This series of physical attacks and psychological terror, subjected the Applicant to a state constant suffering, feeling less human and dignified than others. Therefore, the treatment she was subjected to by J.H.L. had been an assault on her physical integrity and her dignity. According to the case-law of the Court, one of the main purposes of Article 3 is to protect precisely that – person's dignity and physical integrity (see *Tyrer v. the United Kingdom*, 25 April 1978, Application No 5856/72, para 33).

12. The Applicant also notes that in the case of *Mehmet Umit Erdem v. Turkey*, the Court found the acts of spraying pepper gas in applicant's face, hitting him with the truncheons and kicking him, which caused a 3 x 15 cm of hyperaemia (increases of blood flow in tissue) in an area on the right side of the applicant's back, sensitivity in the right femur and pain in his right shoulder *"were sufficiently serious to bring them within the scope of Article 3"* (see *Mehmet Umit Erdem v. Turkey*, 17 July 2008, Application No 42234/02, para 25).

13. Furthermore, the Applicant submits that the mere fact that she did not suffer long-lasting or permanent bodily damage does not allow concluding that the ill-treatment did not reach the level of severity to fall within the scope of Article 3. The Applicant recalls the case of *Tyrer v. the United Kingdom*, where the Court found violation of Article 3, even though "*the applicant did not suffer any severe or long-lasting physical effects*" (*Tyrer v. the United Kingdom,* 25 April 1978, Application No 5856/72, para 33). Neither can it be excluded that the ill-treatment may have had adverse psychological effects on the Applicant, which taken together with the bodily injuries she suffered, lead to a conclusion that the minimum threshold of severity required had been reached.

14. The Government draws the Court's attention to the fact that the medical certificates about the Applicants state of health were issued several days after the events thus they are of reduced evidential value. The Government refers to the case of *Bevacqua and S. v Bulgaria,* where the Court held that the medical certificate issued six days after the events had less evidential value (*Bevacqua and S. v Bulgaria,* 12 June 2008, Application No 71127/01, para 77). The Applicant, however, notes that in the present case, the first examination of 5 January 2001 was conducted

in respect of two incidents on 3 and 4 January, i.e. two days after and the next day following the incidents; the second examination of 7 February 2001 was conducted in respect of the incident on 4 February, i.e. three days after the incident. Furthermore, the examinations of 8 January 2001 and 30 January 2001 concerned injuries sustained the previous day, i.e. on the 7 January and 29 January 2001, respectively. Therefore, the argument made by the Government that the medical certificates are of reduced evidential value should not be accepted.

15. As concerns the duration of the treatment, the Government submits that the ill-treatment consisted "*of 5 episodes occurred during a quite short period of time, approximately 1 month*". According to the Government, those 5 violent incidents should be perceived as "*separate episodes of alleged violence*", which were not applied at a stretch. The Applicant firstly does not see how the Government concludes that 5 violent incidents, which occurred in 1 month period, were not applied at a stretch. Secondly, the Applicant wishes to emphasize that the ill-treatment by J.H.L. did not consist of 5 episodes only – violent behavior of J.H.L. was constant and lasted up until March 2001. Moreover, the Applicant recalls the cases of *Beganovic v. Croatia* (25 September 2009, Application No 46423/06), and *Tyrer v. the United Kingdom* (25 April 1978, Application No 5856/72), where the Court held a single episode of violence to reach the level of severity required for Article 3.

16. The Government also submits that after the Applicant applied to the court on 14 February, 2001, she was not subsequently injured by J.H.L. The Applicant submits that this was not the case – she has been subjected to violence several times after the institution of the proceedings and on XXX she even suffered head contusion (see Annex No 1). Moreover, on XXX J.H.L sent a threatening letter to the Applicant in which he threatened to XXX (see Annex No II)

17. The Applicant, nevertheless, does not see the relevance of this Government's argument. Even if J.H.L had not subsequently injured the Applicant, it does not lead to a conclusion that a series of 5 episodes of physical violence together with constant terror, threats and verbal abuse, is not a severe assault on Applicant's physical integrity and dignity to fall under Article 3.

18. The Government suggests that the Applicant's response to the ill-treatment should have invoked other means and mechanisms, apart from the criminal law mechanisms, such as "*applying to woman crisis centre or family support centre*". The Applicant notes that in 2001 no women crisis centre of family support centre operated in Panevėžys. Furthermore, all the women crisis centres that operated in Lithuania in 2001 were non-governmental organizations, which were not supported by the State financially, technically or in any other way.

19. The Government suggests that the Applicant "*could have used civil law mechanisms*" against the perpetrator, as well. One must note that persons with no legal background usually are not aware of all kinds of legal mechanisms they could employ in order to protect their rights. It is, therefore, the duty of the State to ensure that persons claiming violations of their rights, especially the vulnerable ones, such as victims of domestic violence, would receive a strong and thorough support and advice from the State as to what their actions might be. It is unfair, to say the least, for the Government to claim that the victim "*could have used*" other means and methods, provided that the State authorities failed to inform the Applicant back then of these possibilities and moreover they failed to react to the Applicant's complaints within the criminal proceedings.

20. The Applicant believes that the latter argument of the Government reveals the attempt of the State to diminish its responsibility for factual inaction in the sphere of domestic violence under the theoretical possibilities of invoking alternative means and mechanisms in order to protect victims' rights. If the State authorities fail to maintain and apply in practice an adequate legal framework and criminal law mechanisms affording protection against acts of violence, the victims cannot be held responsible for not looking for other options that would punish the perpetrators and help to reach just satisfaction for the victims. The responsibility to ensure accountability and guard against impunity lay with the State, not with the victim.

21. The Applicant finally submits that the fact of the existence of alternative means and mechanisms to be invoked against the perpetrator, does not in any way eliminate the positive obligation of the State to investigate, prosecute and punish the perpetrator in accordance with the Code of Criminal Procedure.

22. The Government submits that the Applicant cannot be automatically considered as a vulnerable person due to her gender. The Applicant, however, considers herself to be the gender-based violence victim, falling within the group of "vulnerable individuals" entitled to a higher degree of the State protection. The Applicant notes that in Lithuania women are the victims of domestic violence most frequently, i.e. in more than 90 % of all domestic violence incidents; around 20 women are killed each year during the domestic violence incidents; in 2006, 63.3 % of women admitted to have been at least once subjected to domestic violence by their partners or husbands; Lithuania remains among the "leading" countries in Europe according to the numbers of gender-based violence incidents. Thus given the particular vulnerability of women in the context of domestic violence, the Applicant submits that a heightened degree of vigilance is required of the State and that the State failed to do that in the present case.

23. Therefore, the Applicant submits that the ill-treatment to which the Applicant was subjected to by J.H.L. did attain a minimum level of severity to fall within the scope of Article 3 of the Convention, and the State failed to fulfill its positive obligation under Article 1 in connection with Article 3 of the Convention.

- **State's Positive Obligation**

24. Article 3 of the Convention gives rise to a positive obligation to conduct an official investigation of ill-treatment when it is "arguable" and "raises a reasonable suspicion" (see *M.C. v Bulgaria*, 4 March 2004, Application No 39272/98; *Beganovic v. Croatia*, 25 September 2009, Application No 46423/06, para 66).

25. When national authorities fail to investigate, prosecute and punish the perpetrators of domestic violence, the State might be responsible for such acts. The *jus cogens* nature of the right to freedom from torture requires exemplary diligence on the part of the State with respect to investigation and prosecution of these acts.

26. The Applicant submits that the present case illustrates well how domestic violence often is tolerated by the State authorities, allowing the perpetrators of domestic violence to enjoy impunity. Despite the Applicant's complaint submitted to the Panevėžys district court in January 2001, requesting to initiate criminal proceedings against J.H.L., the court remained passive for more than a year. In January 2002, Panevėžys district court forwarded the Applicant's complaint to the Panevėžys district prosecutor ordering him to initiate the pre-trial

investigation. In June 2005, Panevėžys district prosecution office discontinued the investigation based on the legislative amendments adopted two years prior to the prosecution's decision. Finally, the case was terminated on the basis of becoming time-barred. The Applicant claims that the way the proceedings were conducted illustrates clearly that the State has failed to fulfill its positive obligations under Article 3.

27. The Applicant notes that a high number of women today remain affected by the failure of the State authorities to take domestic violence seriously as a real threat to life and by their unwillingness to prosecute and punish offenders in domestic violence cases appropriately.

28. Having regard to the overall ineffectiveness of the process of investigating, prosecuting and punishing, the Applicant submits that the State failed to fulfill its positive obligation under Article 3.

Concerning Article 8 of the Convention

29. The Government acknowledges that the investigation of the Applicant's complaints lasted too long and it preconditioned the termination of the case as time-barred. It goes on to admit that "*the case has not been fully investigated*", which means a breach of the State's positive obligation to afford "*effective respect for [Applicant's] private life as it is required under Article 8 of the Convention*".

30. The Applicant recalls that the concept of "private life" covers a person's physical and moral integrity (see *X and Y v. the Netherlands,* 26 March 1985, Application No 8978/80, para 22; *Sandra Jankovic v Croatia,* 14 September 2009, Application No 38478/05, para 45), which the State has a duty to protect. To that end the State is to maintain and apply in practice an adequate legal framework affording protection against acts of violence. In the Applicant's view, she was not provided adequate protection against an attack on her physical integrity and the manner in which the criminal law mechanisms were implemented were defective to the point of constituting a violation of the respondent State's positive obligations under Article 8 of the Convention.

31. According to the case-law of the Court, the State's positive obligation under Article 8 to safeguard the individual's physical integrity may extend to questions relating to the effectiveness of a criminal investigation (see *M.C. v Bulgaria*; 4 March 2004, Application No 39272/98). The Applicant notes that in the present case, a criminal investigation was entirely ineffective as it lasted so long as to become time-barred.

Concerning Article 6 and Article 13 of the Convention

32. The Applicant argues that the length of the proceedings which had commenced on 14 January 2001 had been excessive and failed to meet the "reasonable time" requirement.

33. According to the case-law of the Court, reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicants and the relevant authorities and what was at stake for the applicants in the dispute (see, *Sandra Jankovic v Croatia,* 14 September 2009, Application No 38478/05, para 67).

34. The Applicant claims that the violence she had been subjected to by J.H.L. caused physical, psychological and moral damage and she wasentitled to legal remedies. The criminal investigation mechanisms applied in Lithuania were not effective and failed to meet the "reasonable time" requirement because of the passivity of the State authorities. As a result, the Applicant failed to reach just satisfaction and the perpetrator remained unpunished. This further contributed to the currently prevailing impunity in Lithuania in relation to the incidents of domestic violence.

35. When investigating the Applicant's complaint, the State authorities failed to provide the Applicant with effective legal protection. As a result the person responsible for violating her rights was not held accountable and the Applicant did not receive an adequate compensation for the damage suffered. There is no doubt that the State authorities displayed inaction and revealed a lack of efficacy in ensuring the Applicant's right to fair trial and effective legal remedy.

36. The Applicant believes that the positive obligations of the State require by implication that an efficient criminal justice system should be set in place by which the offence can be established and the guilty parties be held accountable. A requirement of promptness and reasonable expedition is implicit in the context of an effective investigation. A prompt response by the authorities in investigating the incidents of domestic violence may generally be regarded as essential in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of tolerance of unlawful acts (see *Opuz v. Turkey*, 9 September 2009, Application No. 33401/02, para 150).

37. The Applicant is of the view that the inaction of the State authorities due to which the criminal investigation into the domestic violence has been unreasonably long and in the end terminated as time-barred, prevented the Applicant from having a fair trial and receiving an effective legal remedy. This results in the violation of Articles 6 and 13 of the Convention.

III. CLAIM FOR JUST SATISFACTION

38. The Applicant claims violation of her rights under Articles 3, 6, 8 and 13 of the Convention. In accordance with Article 41 of the Convention and Rule 60 of the Rules of the Court, the Applicant respectfully submits her claim for just satisfaction for the violation of these rights. The Applicant therefore claims a total of EUR 20,000 as non-pecuniary damages and all the necessary legal costs and expenses. These comments are submitted pursuant to Rule 60 (3) of the Rules of the Court.

39. Under Article 41 of the Convention, non-pecuniary damages should be awarded in full to anyone who has suffered a violation of the rights guaranteed by the Convention. These damages should compensate the victim for the suffering and distress caused by such violation. The Court awards non-pecuniary damages for losses that are not easily quantifiable as a result of serious violations of Convention rights. Further, the Court applies a discretionary or equitable approach to arrive at appropriate awards of satisfaction (see, *Selcuk and Asker v. Turkey*, 24 April 1998, 12/1997/798/998-999; *Orhan v. Turkey*, 18 June 2002, Application No 25656/94).

40. The Government offered the Applicant compensation in the amount of EUR 4,000. For the substantiation of the offered compensation, the Government draws the Court's attention to the three following aspects: 1) the injuries sustained by the Applicant were not severe; 2) violent

behavior did not last for a long time; 3) after the institution of the proceedings the Applicant was no longer subjected to violence.

41. The Applicant wishes to respond with regard to all three aspects. With regards to severity of injuries, the Applicant claims that the ill-treatment she was subjected to by J.H.L. was a strong assault on her physical integrity and her dignity and it also had adverse psychological effects on her. Contrary to Government's perception, the ill-treatment did not consist of physical attacks only. It also included constant psychological terror, threats and abuse, causing the Applicant constant suffering and distress. Furthermore, the actual physical force used by J.H.L has not been moderate – she was hit on her head, kicked in the face, buttocks, and other parts of the body, grabbed by the throat, pulled by her hair, punched in the face. These acts of violence, perpetrated with intention to cause physical pain, intimidate and humiliate her, resulted in the Applicant's feelings of inferiority and humiliation.
42. The Government also submits that the Applicant was not subjected to violent behavior for a long time. The Applicant as a victim of domestic violence believes that a period of 1 month of psychological terror and 5 physical attacks within it, is already long enough for a victim to feel severely assaulted on her integrity and dignity. Furthermore, the Applicant emphasizes that the ill-treatment she suffered was longer and lasted until March 2001, thus causing her even longer suffering.

43. The insensitivity and reluctance to act shown by the State authorities has made the Applicant feel even more debased, helpless and vulnerable, which has further contributed to the negative psychological effects caused by physical violence such as anxiety and despair. The Applicant notes there can be no delay on the part of the State authorities in reacting to each and single domestic violence incident, let alone 5 successive incidents, and no indifference and passivity can be justified if the State is to fulfil its duty to react adequately and protect a vulnerable individual. The Applicant believes that accountability of the State is further aggravated by the fact that such indifference is of a systemic rather than accidental nature in Lithuania.

44. With regard to the fact that the Applicant was not subsequently subjected to violence after institution of proceedings, the Applicant once again notes that this was not the case: she has been subjected to violence X times after the institution of the proceedings, not to mention the ongoing psychological violence. In any case, a series of 5 episodes of physical violence and constant terror, threats and verbal abuse is severe enough to amount to inhuman or degrading treatment within the meaning of Article 3.

45. A number of previous Court's cases serve as guidance on the reasoning of the Court when assessing the necessity of awarding non-pecuniary damages. In the case of *Jalloh v. Germany* (11 July 2006, Application No 54810/00), the Court held that forcible medical intervention in order to obtain evidence of a crime from the applicant's body exceeded the minimum level of severity and thus constituted a violation of Article 3. The applicant was awarded EUR 10,000 as non-pecuniary damage. In the case of *Mehmet Umit Erdem v. Turkey* (17 July 2008, Application No 42234/02), the Court found a violation of Article 3 on account of the failure of the authorities to conduct an independent investigation into the circumstances surrounding the injuries sustained by the applicant and awarded the Applicant EUR 5,000 in respect of non-pecuniary damage. In the case of *M.C. v. Bulgaria* (4 March 2004, Application No 39272/98), the Court found a violation of the respondent State's positive obligations under both Articles 3 and 8 of the Convention and awarded the applicant with EUR 8,000 in respect of non-pecuniary

damage. In the case of *A v. the United Kingdom* (September 1998, 100/1997/884/1096), the Court held the respondent State to be liable under Article 3 for corporal punishments inflicted on a 9-year-old child, and ordered the State to pay 10,000 pounds sterling in respect of non-pecuniary damage. Finally, the Applicant draws the Court's attention to the case of *Sandra Jankovic v Croatia* (14 September 2009, Application No 38478/05), where the Court awarded applicant of EUR 3,000 in respect of non-pecuniary damage in connection with one event only, i.e. insulting, threatening and physical attack on the applicant after which she sustained blows to her elbow and tailbone. Therefore, the compensation offered by the Government cannot be seen as just satisfaction in connection to 5 episodes of physical attacks on the Applicant.

46. The Government presents its view, according to which the possibility to use civil law mechanisms in the circumstances of the present case could be considered by the Applicant as to some extent contributing to the just satisfaction for the sustained damage. The Applicant perceives this offer by the Government as another attempt to diminish its responsibility for not securing the Applicant's rights and freedoms enshrined in the Convention. Given that the Government acknowledged that it failed to maintain and apply in practice an adequate criminal law mechanisms affording protection against acts of violence, the Government should accept its full responsibility for its inaction and pay just satisfaction itself.

47. With regard to the Government's aims to prevent similar violations in the future and the recently adopted *Law on Protection from Domestic Violence* (hereinafter – the Law), the Applicant notes that the Law is not in force yet. Even though its entry into force is scheduled for 15 December, 2011, there have been several suggestions made by the Parliament members and the Police officers that the entering into force of the Law should be postponed as it is still unclear how to exactly apply the Law in practice. Furthermore, the relevant amendments of other related laws (Code of Criminal Procedure, Administrative Code) have not yet been adopted together with the Law, therefore the Applicant has strong concerns regarding the practical applicability of the Law. Finally, since the State must not only ensure an appropriate legal framework, but also the effective implementation and enforcement of it in practice, it is still too early to refer to the Law as a solution to the problem of high rates of domestic violence in the State.

48. The Applicant requests the Court not to strike the present application out of the Court's list, declare the application admissible, declare violations of Article 3, 6, 8 and 13 of the Convention and award the Applicant EUR 20,000 is respect of non-pecuniary damages and all the necessary legal costs and expenses.