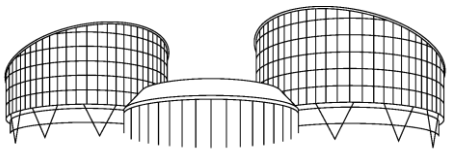

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

DECISION

Application no. 27920/08
D.P.
against Lithuania

The European Court of Human Rights (Second Section), sitting on 22 October 2013 as a Chamber composed of:

Guido Raimondi, *President*,
Danutė Jočienė,
Dragoljub Popović,
András Sajó,
Işıl Karakaş,
Paulo Pinto de Albuquerque,
Helen Keller, *judges*,
and Stanley Naismith, *Section Registrar*,

Having regard to the above application lodged on 23 May 2008,

Having regard to the declaration submitted by the respondent Government on 12 September 2013 requesting the Court to strike the application out of the list of cases and the applicant's reply to that declaration,

Having deliberated, decides as follows:

FACTS AND PROCEDURE

1. The applicant, Ms D.P., is a Lithuanian national, who was born in 1961 and lives in Kaunas. She was represented before the Court by Teisinių Paslaugų Grupė, a company providing legal services, based in Klaipėda. The Lithuanian Government ("the Government") were represented by their Agent, Ms E. Baltutytė.

A. The circumstances of the case

2. In 1989 the applicant married A.P. They divorced in 2001. They had four children – a son, R.P., born in 1988, and three daughters, E.P., born in 1990, K.P., born in 1992, and I.P., born in 2000.

1. Criminal proceedings for violence experienced by the applicant and her three children

3. As it appears from the reports by the child care authorities, the conflicts between the applicant and her former husband A.P. started as early as 1997. Moreover, the authorities considered that one of the reasons for psychological tension was the fact that the applicant and A.P. had not divided their property after their divorce in 2001.

4. In 1999 and early 2001, the applicant addressed the Kaunas City District Court by way of a private prosecution. She asked that A.P., her husband at that time, be brought to justice under Article 116 § 3 of the old Criminal Code (see paragraph 26 below) for intentional and systematic beatings, amounting to light health impairment, inflicted on her and their children R.P., E.P. and K.P.

5. Later in 2001, the Kaunas City District Court decided to transfer the material to a prosecutor, so that the latter could decide whether to start a pre-trial criminal investigation of his own motion.

6. On 19 March 2001, the Kaunas city police investigator opened criminal proceedings in respect of A.P. on the suspicion that he had systematically beaten the applicant and their three minor children R.P., E.P. and K.P. Subsequently, A.P. was charged with systematic violence, in accordance with Article 116 § 3 of the old Criminal Code. The police investigator established that from 10 August 1995 to 23 March 2003, A.P. had beaten the applicant ten times, in the presence of their children. Within that time-frame he had also beaten his minor children: R.P. four times (three times in the presence of his sisters), E.P. four times, and K.P. once. All the victims had sustained light health impairment.

7. On 18 November 2002 and in administrative proceedings before a court, A.P. was given a warning for abusing his paternal rights. The court noted that A.P. would shout at his children and threaten them; the children were afraid of him.

8. On a request for interim measures by the applicant, by a ruling of 3 February 2003 a civil court barred A.P. from contacting his children and going to their place of residence.

9. By a judgment of 11 April 2003, the Kaunas City District Court found A.P. guilty of having systematically beaten the applicant, R.P., E.P. and K.P., which corresponded to the criminal offences specified in Articles 116 § 3 and 117 § 1 of the old Criminal Code. The applicant and each of the three children testified in court. Medical reports confirmed the injuries as well as the fact

that at that time R.P. was already suffering from depression of medium severity. The court sentenced A.P. to two years of deprivation of liberty, but considered that the aim of punishment could be achieved by deferring the execution of the sentence for two years.

10. On the basis of an appeal by A.P., the Kaunas Regional Court returned the case to the trial court for a fresh examination.

11. In 2004, the Kaunas City District Court ordered a psychological evaluation of R.P., E.P. and K.P. The psychiatrists found that because of their father's behaviour from 10 August 1995 to 23 March 2002, they had developed depression and post-traumatic stress and feared their father.

12. In March 2006 and on a request by a prosecutor, the Kaunas City District Court requalified the charges in respect of A.P., for having beating three of his children, from Article 116 § 3 of the old Criminal Code to Article 138 § 2 (1, 3, 5) of the new Criminal Code.

13. By a judgment of 23 February 2007, the Kaunas City District Court discontinued the criminal proceedings because the prosecution under Article 138 § 2 (1, 3, 5) of the new Criminal Code had become time-barred. The court also considered that on 19 March 2001 the criminal case had been opened in breach of procedural rules, given that it was a police investigator who had started the criminal proceedings. For the court, it was only a court or a prosecutor who had competence to start a criminal case on the basis of a private prosecution. It followed that the pre-trial investigation had been conducted without having opened criminal proceedings, which resulted in an essential breach of criminal procedure. That being so, the court was barred from adopting an accusatory judgment.

14. The applicant appealed against the decision, arguing that A.P.'s violence in respect of her three children had been continuous and that it was unfair to discontinue the criminal proceedings. She also noted that the last episode of A.P.'s violence had taken place as recently as 30 September 2006 [R.P.'s attempted suicide, see below] and that the Kaunas police were still investigating the matter.

15. By a letter of 23 April 2007 and in reply to a request by the applicant, the prosecutors confirmed that the Kaunas city police had been conducting a pre-trial investigation into incitement to suicide. The investigation was pending.

16. On 24 April 2007, the Kaunas Regional Court discontinued the criminal proceedings in respect of A.P. on the charges of light health impairment, under Article 138 § 2 (1, 3, 5) of the new Criminal Code. The court found that the prosecution had become time-barred on 23 March 2007.

17. The applicant, in her own name and as legal representative of her two minor daughters E.P. and K.P., as well as her son R.P., lodged an appeal on points of law. They argued that by applying the statutory limitation to the prosecution of A.P. the appellate court had misinterpreted the rules of

criminal procedure. The applicant asked that the case be returned to the appellate court for a fresh examination.

18. By a final ruling of 27 November 2007, the Supreme Court upheld the lower court's reasoning to discontinue the criminal proceedings as time-barred.

2. Criminal proceedings in respect of A.P. for inciting his son's suicide

19. In January 2007 the applicant wrote to the Kaunas city police that her former husband had ignored the court ruling of 3 February 2003, by which a civil court had barred him from contacting their children. She claimed that A.P. would terrorize the children by making telephone calls and insulting them, stalking the children near their home, or by sending his friends [to talk to his children]. The applicant noted that such behaviour by A.P. caused their children a lot of emotional suffering. As to R.P., he was so depressed that on 30 September 2006 he had tried to take his own life. As a consequence, R.P. had been taken to and treated in a psychiatric hospital. The applicant asked the police investigators to charge A.P. with inciting their son to commit suicide.

20. In March 2007 the prosecutor opened a pre-trial investigation on the criminal charge that on 30 September 2006 the applicant's son R.P. had attempted to kill himself because of his father's actions. R.P. testified that on that day, which was his birthday, he had cut his veins because his father had called him and insulted him. The prosecutor later discontinued the criminal case against A.P. for inciting his son to commit suicide. The prosecutor noted that A.P. had been violent and abusive towards R.P. Nonetheless, according to witness statements and data from the telecommunications company, on 30 September 2006 A.P. had talked on the telephone to his son only for 6 seconds: A.P. had called his former home number and once R.P. had picked up the telephone, A.P. had asked him "Is it you, R.P.?", to which R.P. retorted 'Go to hell' and hung up. Accordingly, it was impossible that during such a short conversation A.P. could have offended his son. The prosecutor also held that the reason behind R.P.'s attempted suicide could also have been his complicated and depressive character which did not allow him to adapt well at school, as confirmed by psychiatrists. The prosecutor's decision could be appealed against to a higher prosecutor. The applicant stated that her son had not appealed against the decision because of his ill-health.

3. Civil proceedings to restrict A.P.'s parental authority

21. By a decision of 29 January 2008, the Kaunas City District Court granted the request by the applicant, barring A.P. from contacting his daughters E.P., K.P. and I.P., this being in the interest of the children. It noted that the applicant's complaints about her former husband's violent behaviour had been examined and confirmed by police officers. A.P. had been charged

in administrative and criminal proceedings with having deliberately beaten three of their children. Medical reports confirmed the injuries. The relationship between the children and their father was very tense; the children were afraid of him. The decision was upheld by the appellate and cassation courts.

4. Further developments

22. On 12 October 2009 the applicant's son R.P. took his own life.

5. Civil proceedings for damages against A.P.

23. The applicant, as the statutory heir of her late son R.P., and her daughters initiated a number of civil court proceedings against their former husband and father, A.P., asking to be compensated for years of domestic violence.

24. On 8 June 2012 the Supreme Court awarded 8,000 Lithuanian litai (LTL) and LTL 10,000 in compensation of non-pecuniary damage, respectively, to the applicant's daughter K.P. and the applicant (as her son's R.P. heir) from A.P. The court observed that domestic violence against the applicant and the children had lasted for more than a decade. During all those years the children had felt constant fear, had not considered themselves safe at home, and this had had a psychological impact on them. Even though there was no conclusive evidence that A.P.'s behaviour was the only reason behind R.P.'s suicide, the long term negative behaviour by the boy's father had contributed to that event.

25. In similar civil proceedings for damages, on 13 January 2012 the Kaunas City District Court approved the friendly settlement agreement between E.P., the applicant's other daughter, and A.P. The latter agreed to pay his daughter a sum of LTL 12,000 in compensation for non-pecuniary damage.

B. Relevant domestic law

26. Article 116 § 1 of the old Criminal Code (in force until 30 April 2003), provided for criminal liability for intentionally causing light health impairment (*tyčinis žmogaus kūno sužalojimas, nesukėlęs sveikatos sutrikimo*). Paragraph 3 of that provision provided for criminal liability if the actions were systematic. The crime was then punishable by deprivation of liberty of up to three years. Article 117 established criminal liability for intentional physical violence or torture. Should such actions be systematic, they were punishable by deprivation of liberty for up to one year.

27. Article 140 § 1 of the Criminal Code, in force from 1 May 2003 ("the new Criminal Code"), establishes criminal liability for causing light health impairment. The crime is punishable by community service or deprivation of

liberty for up to one year. Before 1 May 2003, the offence came under Article 116 § 1 of the "old Criminal Code". It is considered to be a minor (*nesunkus*) crime.

28. Article 95 § 1 of the new Criminal Code provides that an accusatory judgment may not be adopted if the minor intentional crime was committed more than five years previously.

29. The new Criminal Code also provides:

Article 138. Non-Severe Health Impairment

"1. A person who causes bodily harm or illness to a person resulting in the victim's loss of a small part of his professional or general capacity for work or in a long-lasting illness, but without developing the after-effects indicated in paragraph 1 of Article 135 [severe health impairment] of this Code shall be punished by a restriction of liberty or by arrest or by imprisonment for a term of up to three years.

2. A person who causes bodily harm or illness which is not serious

1) to a young child;

...

3) to his close relative or family member;

...

5) to two or more persons ...

shall be punished by imprisonment for a term of up to five years."

Article 140. Causing Physical Pain or a Negligible Health Impairment

"1. A person who, by beating or other violent actions, causes to a person physical pain or a negligible bodily harm or a short-term illness shall be punished by community service or by restriction of liberty or by arrest or by imprisonment for a term of up to one year."

COMPLAINTS

30. Relying on Article 6 § 1 of the Convention the applicant complained that the criminal proceedings in respect of her former husband A.P. were protracted and the case was not examined within a reasonable time. As a result, the prosecution became time-barred and her former husband did not receive appropriate punishment by a court. She and her children felt powerless and were disappointed in the law-enforcement system in Lithuania.

31. By a letter of 26 October 2009 the applicant informed the Court that her son R.P. had killed himself two weeks before. She submitted that this would not have happened had the law-enforcement institutions not procrastinated in the criminal proceedings. Failure to obtain justice affected her children even more, besides the physical and mental violence they had been exposed to by their father.

THE LAW

32. After the failure of attempts to reach a friendly settlement, by a letter of 12 September 2013 the Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the issue of the State's accountability for failure to prevent domestic violence, raised by the application. In the light of the Court's case-law and the circumstances of the present case, the Government acknowledged that the manner in which the criminal-law mechanisms had been implemented in the instant case was defective as far as the proceedings were concerned, to the point of constituting a violation of the State's positive obligations under Article 3 of the Convention. Having regard to the fact that the violation of Article 3 was acknowledged, the Government asked the Court to take the view that it was not necessary to assess the complaint based on the same facts separately under Article 8 of the Convention.

33. The Government further considered that the sum of 6,000 euros (EUR) was adequate to redress the non-pecuniary damage caused by the Convention violation. They observed that that sum was consistent with the amounts made by the Court in similar cases where a violation of Article 3 was found. At this point they referred, in particular, to the Court's recent judgment in *Valiulienė v. Lithuania* (no. 33234/07, § 91, 26 March 2013), where a violation of Article 3 was found and the applicant was awarded the sum of EUR 5,000 in respect of non-pecuniary damage. The sum proposed in the instant case was also bigger than the one awarded by the Court in *Beganović v. Croatia* (no. 46423/06, § 102, 25 June 2009), where the Court had awarded EUR 1,000 for a violation of Article 3. The Government also referred to the Court's judgment in a recent case *Eremia v. the Republic of Moldova* (no. 3564/11, § 98, 28 May 2013), where the Court had awarded the sum of EUR 15,000 in respect of non-pecuniary damage for the three applicants jointly.

34. The Government also undertook to compensate, to a reasonable amount, the legal costs and expenses which the Court would award under the applicant's claim.

35. Lastly, the Government observed that they were to seek to take measures to prevent similar violations in future. On this point they referred to the recently adopted Law on Protection from Domestic Violence, which took effect in December 2011 (see *Valiulienė*, cited above, § 37). The law attributes domestic violence to offences of public importance. Such crimes were to be prosecuted under general criminal procedure instead of private prosecution.

36. The Government thus requested the Court to strike out the application in accordance with Article 37 of the Convention.

37. The declaration provided as follows:

> "The Government of the Republic of Lithuania ('the Government') regret that the criminal case concerning violence sustained by the applicant was not examined within

the reasonable time and became time barred. Therefore the Government wish to express – by way of a unilateral declaration – their acknowledgment that the applicant has not been ensured effective protection of the rights guaranteed by Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms ('the Convention'). The Government also undertake to adopt all necessary measures in order to avoid similar violations in future, first of all seeking effective implementation of the Law on Protection from Domestic Violence which was adopted in 2011, whereby, *inter alia*, domestic violence is attributed to crimes of public importance.

Having regard to the fact that the parties have failed to reach a friendly settlement in the present case, also to specific circumstances of the case and the case-law of the European Court of Human Rights ('the Court') in similar cases, the Government declare that aiming to close the examination of the case *D.P. v. Lithuania* (no. 27920/08) before the Court they are ready to pay the applicant the sum of EUR 6,000 (six thousand euros) as a just satisfaction. The Government also undertake to pay the applicant just satisfaction in respect of necessary and reasonable costs and expenses incurred, which the Court would award under the applicant's claim. Taxes will not be charged on the said sums. The applicant will be paid the said sums within three months from the date of notification of the decision taken by the Court pursuant to Article 37 § 1 of the Convention. In the event of failure to pay the said sums within three month period, the Government undertake to pay simple interest on the said amounts, from the expiry of that period until settlement, at a rate equal to marginal lending rate of the European Central Bank during the default period plus three percentage points.

Having regard to the fact that the case-law of the Court is well established as far as the scope and nature of the State obligation to ensure proper and effective investigation of a person's complaints concerning incurred violence, the Government are of the view that respect for human rights as defined in the Convention does not require further examination of the application.

In the light of the above, the Government request to acknowledge this declaration as a reason to strike out the case from the Court's case list, as referred to in Article 37 § 1 (c) of the Convention."

38. By a letter of 9 October 2013, the applicant indicated that she was not satisfied with the terms of the unilateral declaration on the ground that the sum proposed by the Government was too low.

39. The Court recalls that Article 37 of the Convention provides that it may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to one of the conclusions specified, under (a), (b) or (c) of paragraph 1 of that Article. Article 37 § 1 (c) enables the Court in particular to strike a case out of its list if:

"for any other reason established by the Court, it is no longer justified to continue the examination of the application."

40. It also recalls that in certain circumstances, it may strike out an application under Article 37 § 1(c) on the basis of a unilateral declaration by a respondent Government even if the applicant wishes the examination of the case to be continued.

41. To this end, the Court will examine carefully the declaration in the light of the principles emerging from its case-law, in particular the *Tahsin Acar* judgment (*Tahsin Acar v. Turkey* (preliminary issue) [GC],

no. 26307/95, §§ 75-77, ECHR 2003-VI); *WAZA Spółka z o.o. v. Poland* (dec.), no. 11602/02, 26 June 2007; and *Sulwińska v. Poland* (dec.), no. 28953/03, 18 September 2007).

42. The Court has established in a number of cases, including one brought against Lithuania, its practice concerning complaints about domestic violence and one's right to protection from inhuman or degrading treatment (see, for example, see *Sandra Janković v. Croatia*, no. 38478/05, §§ 31, 44 and 45, 5 March 2009; *Hajduová v. Slovakia*, no. 2660/03, §§ 45 and 46, 30 November 2010; *Beganović*, cited above, §§ 70 and 71; *Eremia*, cited above, §§ 72 and 73; *Valiulienė*, cited above, §§ 74 and 75).

43. The Court notes that the Government's declaration contains a clear acknowledgment that the applicant's right not to be subjected to inhuman and degrading treatment has not been respected within the meaning of Article 3 of the Convention.

44. Having regard to the nature of the admissions contained in the Government's declaration, as well as the amount of compensation proposed – which is consistent with the amount awarded in the very recent case of *Valiulienė* (cited above) – the Court considers that it is no longer justified to continue the examination of the application (Article 37 § 1(c)).

45. Moreover, in light of the above considerations, and in particular given the clear and extensive case-law on the topic, the Court is satisfied that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue the examination of the application (Article 37 § 1 *in fine*).

46. The Court also notes that the applicant claimed reimbursement of legal costs and expenses before the domestic courts and the Court amounting to 7,000 euros. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum (see *El Majjaoui and Stichting Touba Moskee v. the Netherlands* (striking out) [GC], no. 25525/03, § 39, 20 December 2007). In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the applicant EUR 4,000.

47. Finally, the Court emphasises that, should the Government fail to comply with the terms of their unilateral declaration, the application could be restored to the list in accordance with Article 37 § 2 of the Convention (*Josipović v. Serbia* (dec.), no. 18369/07, 4 March 2008).

For these reasons, the Court by a majority

Takes note of the terms of the respondent Government's declaration under Article 3 of the Convention and of the modalities for ensuring compliance with the undertakings referred to therein;

Holds

(a) that the respondent State is to pay the applicant, within three months, EUR 4,000 (four thousand euros) in respect of costs and expenses, plus any tax that may be chargeable to the applicant, to be converted into Lithuanian litas at the rate applicable at the date of settlement; and

(b) that from the expiry of the above-mentioned three months until settlement, simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Decides to strike the application out of its list of cases in accordance with Article 37 § 1 (c) of the Convention.

Stanley Naismith
Registrar

Guido Raimondi
President