



Struggling for gender equality:
sharing Lithuanian and Bulgarian experience

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Summary

In this case study, Lithuanian and Bulgarian experts explore the laws on gender equality and domestic violence in their home countries. The authors provide an overview of the situation before the adoption of the laws, look into the adoption process, talk about the remaining challenges and lessons learnt. The experts put forward suggestions and recommendations for decision and policy makers, experts, and NGOs from the countries which are yet to introduce their own gender equality and domestic violence laws.

LITHUANIA

MAIN STATISTICAL DATA

Population, total ¹	2971905
Men (% of total) ²	1485700 (46.4%)
Women (% of total) ³	1714100 (53.6%)

PARLIAMENT⁴

Number of MPs	141
Number of women in the Parliament	34 (24.1 %)

LAWS PROTECTING WOMEN'S RIGHTS

Law on Protection against Domestic Violence ⁵	2011
Law on Equal Treatment ⁶	2003
Law on Equal Opportunities for Women and Men ⁷	1998

INSTITUTIONS PROTECTING WOMEN'S RIGHTS

Commission on Equal Opportunities for Women and Men	founded in 1998
The Office of Equal Opportunities of Women and Men	1999 - 2003
The Service of Ombudsperson for Equal Opportunities	founded on the basis of the Office of equal opportunities of women and men in 2003
Department of Gender Equality under the Ministry of Social Security and Labour	functions
European Institute for Gender Equality (EIGE)	founded in Vilnius, 2007

¹ Statistics Lithuania, 2013.

<http://db1.stat.gov.lt/statbank/selectvarval/saveselections.asp?MainTable=M3010211&PLanguage=0&TableStyle=&Buttons=&PXSId=3767&IQY=&TC=&ST=ST&rvar0=&rvar1=&rvar2=&rvar3=&rvar4=&rvar5=&rvar6=&rvar7=&rvar8=&rvar9=&rvar10=&rvar11=&rvar12=&rvar13=&rvar14=>>

² Statistics Lithuania, 2012.

<http://web.stat.gov.lt/lt/pages/view/?id=1299&PHPSESSID=twmjcuixidez>

³ Ibid.

⁴ Inter-Parliamentary Union, "Women in national parliaments", 2013

<http://www.ipu.org/wmn-e/classif.htm>

⁵ Seimas of the Republic of Lithuania, "Law on Protection against Domestic Violence", 2011.

http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=400334&p_query=smurtas&p_tr2=2

⁶ Seimas of the Republic of Lithuania, "Law on Equal Treatment", 2003.

http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=222522&p_query=&p_tr2=>

⁷ Seimas of the Republic of Lithuania, "Law on Equal Opportunities for Women and Men", 1998.

http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=276095

BULGARIA

MAIN STATISTICAL DATA ⁸	
Population, total	7284552
Men (% of total)	3545073 (48.7%)
Women (% of total)	3739479 (51.3%)
PARLIAMENT ⁹	
Number of MPs	240
Number of women in the Parliament	59 (24.6 %)
LAWS PROTECTING WOMEN'S RIGHTS ¹⁰	
Law on Protection against Domestic Violence	2005
Law on Protection against Discrimination	2004
INSTITUTIONS PROTECTING WOMEN'S RIGHTS	
Ombudsman ¹¹	founded in 2004
National council on gender equality ¹²	founded in 2004
Consultative Commission on Equal Opportunities for Women and Men and Disadvantaged Groups on the Labour Market under the Minister of Labour and Social Policy ¹³	founded in 2003
Committee on Elimination of Discrimination against Women under the Minister of Labour and Social Policy ¹⁴	functions

⁸ National Statistical Institute of Bulgaria, 2012
<<http://www.nsi.bg/otrasalen.php?otr=53&a1=1583&a2=1584&a3=1585#cont>>

⁹ Inter-Parliamentary Union, "Women in national parliaments", 2013
<<http://www.ipu.org/wmn-e/classif.htm>>

¹⁰ Krassen Stoichev, "Bulgarian Legislation and Gender Equality: a General Overview",
<<http://www.enelsyn.gr/papers/w14/Paper%20by%20Dr.%20Krassen%20Stoichev.pdf>>

¹¹ Ministry of Labour and Social Policy of Bulgaria, "Bulgarian legislation on gender equality",
<<http://www.mlsp.government.bg/equal/equalen/bglaw.asp?PageIndex=1>>

¹² Ibid.

¹³ Krassen Stoichev

¹⁴ UN, "Adoption of Gender-Equality Strategy, Domestic Violence Laws Led to Women's Improved Status, Bulgarian Delegation Tells Anti-Discrimination Committee", 2012. <<http://www.un.org/News/Press/docs/2012/wom1915.doc.htm>>

LITHUANIA

GENDER PAY GAP (%) IN UNADJUSTED FORM (AVERAGE GROSS HOURLY EARNINGS)¹⁵

2007	22.6
2008	21.6
2009	15.3
2010	14.6
2011	11.9

EDUCATION (NUMBER OF WOMEN PER 100 MEN)¹⁶

Primary and basic education	93
Secondary education	109
Vocational education	68
Higher college education	122
Higher university education	149

THE GLOBAL GENDER GAP INDEX (RANK AMONG COUNTRIES IN THE WORLD)¹⁷

2008	23
2009	30
2010	35
2011	37
2012	34
2013	28

¹⁵ Eurostat, Gender Pay Gap statistics, 2011
<<http://epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&init=1&language=en&pcode=tsdsc340&plugin=1>>

¹⁶ Statistics Lithuania, "Education 2012", Vilnius: Statistics Lithuania, 2013.

¹⁷ World Economic Forum, The Global Gender Gap Report 2013,
<http://www3.weforum.org/docs/WEF_GenderGap_Report_2013.pdf>

* The Global Gender Gap Index is a framework for capturing the magnitude and scope of gender-based disparities and tracking their progress. The Index benchmarks national gender gaps on economic, political, education and health criteria, and provides country rankings that allow for effective comparisons across regions and income groups, and over time.

BULGARIA

GENDER PAY GAP (%) IN UNADJUSTED FORM (AVERAGE GROSS HOURLY EARNINGS)¹⁸

2007	12.1
2008	12.3
2009	13.3
2010	13.0
2011	13.0

EDUCATION (NUMBER OF WOMEN PER 100 MEN)¹⁹

Secondary education	99
Vocational education	110
Higher education	121

THE GLOBAL GENDER GAP INDEX (RANK AMONG COUNTRIES IN THE WORLD)²⁰

2008	36
2009	38
2010	50
2011	51
2012	52
2013	43

¹⁸ Eurostat, Gender Pay Gap statistics, 2011.

<http://epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&init=1&language=en&pcode=tsdsc340&plugin=1>

¹⁹ National Statistical Institute of Bulgaria, 2013 <<http://www.nsi.bg/otrasalen.php?otr=36&a1=1322&a2=1323&a3=1324#cont>>

²⁰ World Economic Forum, The Global Gender Gap Report 2013

http://www3.weforum.org/docs/WEF_GenderGap_Report_2013.pdf

*The Global Gender Gap Index is a framework for capturing the magnitude and scope of gender-based disparities and tracking their progress. The Index benchmarks national gender gaps on economic, political, education and health criteria, and provides country rankings that allow for effective comparisons across regions and income groups, and over time.

Abbreviations used in the study

BGRF – Bulgarian Gender Research Foundation

CEDAW – United Nations Committee on the Elimination of Discrimination against Women

DV – Domestic violence

ECtHR – European Court of Human Rights

LPADV – Law on Protection against Domestic Violence

MAHR – Minnesota Advocates for Human Rights

NGO – Non-governmental organisation

OPF – Order for protection

VAW – Violence against woman

Introduction

The main purpose of gender equality laws and policies is to create such a society where people of both genders can equally enjoy their basic rights and realize their human potential to its full capacity. Yet to achieve substantial equality between women and men, the enactment of gender equality laws is not enough – the states must actually commit to their full implementation. Moreover, the laws should serve not only as a legal measure for equal protection of human rights, but also as a means for initiating social change by targeting deeply rooted gender-stereotypes and re-shaping the existing social attitudes, norms and practices.

One such harmful social practice rooted in gender inequality is domestic violence. As a form of gender-based violence, domestic violence is widespread around the globe, costing the lives and health of many women. Despite this, domestic violence is still widely tolerated and justified in various societies, and in some cases, is not even treated as a crime. The adoption of special laws targeting domestic violence and its root cause, and providing protection to domestic violence victims is a crucial step towards reshaping these harmful social attitudes and behaviours.

Equality of women and men is both a value and a benefit for every society. Though different parts of the world address the issue at a different pace, the direction nevertheless is clear. As noted by Kofi Annan, former UN Secretary General, *when women thrive, all of society benefits, and succeeding generations are given a better start in life.*²⁰

Despite many international agreements affirming their human rights, worldwide, women today are still much more likely than men to be poor and illiterate; they usually have less access than men to medical care, property ownership, credit, training and employment; they are far less likely than men to be politically active and far more likely to be victims of domestic violence.²¹

Though policies on gender equality in Bulgaria and Lithuania imply a society in which women and men enjoy the same opportunities, rights and obligations in all spheres of life, nevertheless, in reality the issues, still persist – such as in Lithuania, the discrimination of women in the labour market,²² or discriminatory attitudes or patriarchal stereotypes in Bulgaria.

²⁰ Kofi Annan, Message on International Women's Day, 8 March, 2003, <<https://www.un.org/events/women/iwd/2003/sgmessage.html>>

²¹ United Nations Population Fund, "Gender Equality: empowering women", <<http://www.unfpa.org/gender/empowerment.htm>>

²² Balsas.lt, "D. Grybauskaitė: discrimination of women in the labour market is one of the most pressing issues", 30 June 2011, <<http://www.balsas.lt/naujiena/544762/d-grybauskaite-moteru-diskriminacija-darbo-rinkoje-viena-opiausiu-problemu>>



Chapter 1:

Law on the Domestic Violence
against Women



LITHUANIA

Mėta Aduvavičiūtė

Lithuania's Response to the Crime of Domestic Violence: lessons learnt

In 2011 618 women in Lithuania became victims of violent crimes perpetrated by a spouse or intimate partner.²³ In 2012, this number rocketed to 4,582.²⁴ This was not an epidemic outbreak of violent crimes against women, but the impact of the new *Law on Protection against Domestic Violence* which came into force in late 2011. The police responded to 18,268 domestic violence (DV) related call-outs and launched 7,586 criminal investigations in 2012 alone.²⁵ Such overwhelming statistics revealed the true extent and seriousness of the issue. It also silenced the remaining sceptical voices that had opposed the law as an unnecessary intrusion into family life. The new law defined domestic violence as a human rights violation and imposed an obligation on the state to prevent DV, protect the victims, bring perpetrators to justice, and provide support to survivors. The law had a huge immediate impact not only on the legal protection of victims' rights, but also as an awareness raising tool sending a clear message to the public that violence in an intimate environment is treated as a serious crime by the state.

Every Second Lithuanian Knows a Woman who has been a Victim of Domestic Violence

According to the 2010 *Eurobarometer* survey report on domestic violence against women²⁶, a striking 48 per cent of the population in Lithuania knows at least one female victim of domestic violence within their circle of friends and family. An equally high number of people – 45 per cent of the respondents – say they know of somebody in their circle of friends and family who subjects a woman to violence. These are the highest figures in the European Union. Although it is an open question whether such statistics suggests that domestic violence is more widespread in Lithuania than in other EU countries, or people are more open and willing to talk about it, there can be no denial that domestic violence affects a large proportion of Lithuanian women.

²³ "Women victims of crimes (victimized by spouse, partner or live-in partner) 2004-2012", the statistics include violent crimes: murder, severe health impairment, non-severe health impairment, causing physical pain or minor bodily harm, rape and sexual assault, threats to kill or cause severe bodily harm. Data retrieved from Official Crime Register, Information Technology and Communications Department under the Ministry of Interior, <http://www.ird.lt/viewpage.php?page_id=200&lang=en>

²⁴ These figures should be assessed in relation to the relatively small population of Lithuania – according to official statistics of the 2011 general population survey, there were 3,043,429 inhabitants in the Republic of Lithuania. "Lithuanian 2011 Population Census in Brief", Data from Statistics Department, http://osp.stat.gov.lt/documents/10180/217110/Lietuvos_gyventojai_2011.pdf/8321a3c1-c8b9-4468-825c-52a7b753f281

²⁵ Police Department under the Ministry of Interior, "Data related with domestic violence in 2012", www.policija.lt

²⁶ Eurobarometer, "Domestic violence against women. Report", 2010. , http://ec.europa.eu/public_opinion/archives/ebs/ebs_344_en.pdf

Back in 1997-1998, sociological surveys indicated that 42,4 per cent of married or partnered women suffered physical and/or sexual violence from their current partner, or received similar threats at least once; 53,5 per cent of women suffered physical and/or sexual violence or threats in their previous marital relations.²⁷ This was not reflected in official crime statistics – figures were ranging from 633 women victims of spousal or intimate partner violence in 2004 to only 321 registered victims in 2009.²⁸ Such a huge disproportion between the percentage of women who claimed they suffered DV and the actual number of registered victims indicated that the majority of DV incidents were not reported, or, even if they were, no legal action was taken against the perpetrators.

“The Most Hidden Crime”

Before the enactment of the DV law, incidents of domestic violence in Lithuania were regarded as “domestic conflicts” or “family quarrels” where both parties, the abuser and the victim, were equally to blame. These “quarrels” were considered a private family matter in which outsiders had “no right to intrude”. The law enforcement authorities would intervene and open a criminal investigation only in the more severe cases, when the victim suffered grievous or moderate bodily harm. In all other cases, the victim herself was responsible for initiating legal proceedings by bringing about a private prosecution. The law required that the victim file a formal complaint against the perpetrator with the law enforcement authorities.

Abused women rarely dared defend themselves against their abusers by taking legal action. Even in cases, where they did, the subsequent withdrawal of the complaint was common due to threats or pressure from the abuser, or the overall vulnerability of the victim. Lack of trust in the law enforcement authorities, ingrained stereotypes surrounding the causes of domestic violence, deeply rooted victim blaming attitude, lack of support to the abused women, and an inefficient legal framework determined that the majority of domestic violence incidents went unreported. As a result, perpetrators enjoyed impunity while women remained unprotected and were left exposed to repetitive violent assaults in their intimate environment.

- * In 2006, acknowledging the need for a more focused approach to combating DV, the Lithuanian Government adopted the *National Strategy for Combating Violence Against Women* for the period 2007-2015.²⁹ The strategy described domestic violence against women as “the most hidden crime” and outlined the main challenges to an efficient DV response:
- * the legal framework placed the burden of ending violence and bringing perpetrators to justice on the victim herself;
- * the police had no efficient legal tools to protect victims with immediate intervention and protection measures;
- * legal aid was inaccessible and ineffective;

²⁷ The 22 December 2006 Resolution of the Government of the Republic of Lithuania No. 1330 „On the Approval of the National Strategy and the Action Plan for 2007-2009 for Combating Violence Against Women”, http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=306081

²⁸ The crime register was launched after the introduction of the new Criminal Code and Criminal Procedure Code in 2003

²⁹ The 22 December 2006 Resolution of the Government of the Republic of Lithuania No. 1330 „On the Approval of the National Strategy and the Action Plan for 2007-2009 for Combating Violence Against Women”

- * support services for DV survivors were fragmented and poorly funded;
- * there was a lack of research, statistical data and analysis on the prevalence of DV, the condition of women suffering DV and their needs.

The strategy stated unambiguously that violence against women had social roots - it was grounded in gender inequality and prevalent gender stereotypes that had to be challenged and reshaped. The document emphasized that social traditions and stereotypes condone and justify domestic violence, and that the level of awareness on the root causes of all forms of DV is very low. The belief is still widespread in society, that the woman herself is to blame for violence because she provokes it. Women are reluctant to leave perpetrators and seek help due to an ingrained moral obligation to preserve the family. Gender inequality, resulting in financial, social and psychological dependence on the abuser also prevents women from leaving violent relationships.

Under the national strategy, two action plans – 2007-2009 and 2010-2012 - were implemented focusing on strengthening victim support services (social, psychological, legal support services and shelters), conducting specialist training and carrying out awareness raising activities aimed at promoting the public's intolerance to violence.

In its 2008 Concluding Observations for Lithuania, the *United Nations Committee on the Elimination of Discrimination against Women* (CEDAW) noted the efforts undertaken by the state to combat violence against women, but remained concerned at the high prevalence of domestic violence, and at the absence of a specific law on DV.³⁰ The Committee was also concerned that this may lead to such violence being considered a private matter, in which the consequences of the relationship between the victim and the perpetrator are not fully understood by police and health officers, the relevant authorities and society at large. The Committee urged Lithuania to ensure that comprehensive legal and other measures are in place to address all forms of violence against women, including domestic violence. More specifically, the Committee recommended that the state elaborated and introduced without delay a specific law on domestic violence against women that provided for redress and protection for victims.

For the women's rights non-governmental organisations providing support services to the victims, it was also obvious that without an efficient legal framework in place the fight against DV was counter-productive. The support services were merely dealing with the consequences of the crime. The lack of an adequate response from the law enforcement authorities by prosecuting and punishing abusers, failed to deter the perpetrators and protect women from repetitive victimisation, thus only increasing the need for support services.

³⁰ Concluding observations of the Committee on the Elimination of Discrimination of Women: Lithuania" 8 July 2008, <http://www2.ohchr.org/english/bodies/cedaw/docs/CEDAW.C.LTU.CO.4.pdf>

Failed Justice

The Lithuanian *Criminal Code* established sanctions for causing physical pain or minor health impairment, but the person could only be held liable for such acts subject to a complaint being filed by the victim. Although the law made it possible for the prosecutor to request an investigation, it was rarely, if ever, used. In such cases a public prosecution could only be possible if the criminal activity, due to the damage caused to society, was attributable to the acts of public significance. Since domestic violence was usually considered a private family matter, the law enforcement authorities never treated it as falling into this category of crimes. Hence the law enforcement authorities would only open an investigation and initiate a public prosecution upon establishing that moderate or serious bodily harm was inflicted. Such criminal law provisions prevented the law enforcement authorities from intervening into DV cases before the violence escalated. This in turn discouraged women from reporting DV, knowing that the police would merely issue a warning or impose an administrative fine, which would only increase the risk of further attacks due to the perpetrator taking revenge for reporting him to the police.

Another serious deficiency of the legal framework was the lack of legal protection measures. In 2008 there was an amendment made to the *Criminal Code* which introduced a victim protection measure – a prohibition to approach the victim by order of the court. The offender was prohibited from contacting the victim or visiting the places where the victim was present, and, in cases where the offender and the victim shared the same premises, the court could order the offender to reside separately until the issue of the right to live in those premises was solved. However, this measure could only be applied after the abuser was convicted by the court. Another provision introduced in the *Criminal Code* was an obligation for the abuser to participate in violent behaviour changing programmes. It is important to emphasize that sending an abuser to a behaviour changing programme is a sanction and a corrective measure, *but not a victim protection measure*. The patterns of violent behaviour form over many years, and the programmes can have an effect only in very rare cases and upon condition that the abuser sincerely wants to change his behaviour. These programmes as well as family counselling and other services should never be equated to victim protection measures as is sometimes claimed by those not familiar with the specific nature of the DV crime.

The complaints filed against Lithuania before the European Court of Human Rights (ECtHR) serve as a sad illustration of how inefficient the DV response system was. The case of *Valiulienė v Lithuania* was the first domestic violence case to reach the ECtHR from a Lithuanian applicant³¹. In 2001 the applicant was beaten up by her live-in partner on at least five occasions. Her injuries were documented by a forensic expert examination. Ms Valiulienė logged a complaint with the local court regarding the continuous physical and psychological abuse she suffered from her partner. Her case was transferred from courts to prosecution offices and *vice versa* until any kind of prosecution became time barred. In 2007, she filed a petition with the ECtHR, which found that the Lithuanian state, by failing to effectively investigate the allegations of domestic violence, protect the victim and prosecute the perpetrator, violated Article 3 of the *European Convention of Human Rights*, prohibiting torture, inhuman or degrading treatment.

³¹ 23 March 2013 ECHR Judgment in the case of Valiulienė v Lithuania, Application No. 33234/07, <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-117636>

Another case pending before the ECtHR – *D.P. v Lithuania* - concerns the inability of the state to protect the applicant and her children from repeated violent assaults and abuse by her former spouse³². In the period 1995 – 2003, the applicant and her 3 children R.P., E.P. and K.P. were repeatedly beaten by her husband: she was beaten at least 10 times in front of her children, her child R.P. – 4 times, E.P. – 4 times, and K.P. – once. Along with physical violence, the victims suffered continuous psychological and emotional abuse – constant threats, verbal assaults, humiliation, bullying and other forms of psychological violence.

The criminal proceedings initiated by the applicant against her abuser lasted from 1999 until 2007, when the judiciary process was discontinued due to statutory limitations. In the midst of the proceedings her abuser was prohibited by the court to approach the victims, but despite the repetitive breaches of the court order, her abuser had not been sanctioned. Due to physical and psychological violence and abuse that continued for more than a decade, and the prolonged and ineffective judiciary proceedings, the applicant's children developed a post-traumatic stress disorder and depression which was confirmed by the court's psychologist in his expert report.

In 2008, the applicant filed a petition with the European Court of Human Rights challenging the inefficient criminal proceedings. The applicant claimed in her petition that her children "grew up in the courtroom". In 2009, the applicant's eldest son R.P. at the age of 21 took his own life. The case is currently pending before the ECtHR for its consideration on merit.

No More Impunity

Since the existing laws failed to address the crime of domestic violence in a comprehensive way, in 2009, a working group was set up by the Ministry of Social Security and Labour which prepared a draft law on the protection against domestic violence with a purpose to lay down a legal basis for necessary amendments to the *Criminal Code*, *Criminal Procedure Code*, *Civil Code* and other laws. Although the group included legal experts and representatives from various ministries, the law enforcement authority and judiciary, it failed to include non-governmental women's rights organisations and victim support services providers.³³

The lack of NGO participation in the drafting process effectively meant that the needs and interests of the victims were not represented and thus not taken into account by the drafters. This resulted in a draft law that failed to address the systemic deficiencies in victim protection. It still referred to private prosecution, and the burden of initiating legal proceedings was left on the victim. The draft law also provided that upon establishing a domestic violence incident for the first time, the police would issue an "official warning". Such measures as official warnings should never be included into DV law. A warning never stops an abuser, and in the worst case scenario it may backfire. It requires a lot of courage for the victim to call the police, and when she calls, her safety is highly at risk. If the police merely issues a warning and leaves, instead of taking immediate measures against the perpetrator, as they would in the case of any other violent crime, this *increases the risk* of violence due to the perpetrator willing to take revenge on the victim. Hence the "official warning" puts the victim in greater danger, renders her more

³² Application No. 27920/08, I lodged on 23 May 2008, <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-117636>

³³ Telephone consultations with an expert at the Centre for Equality Advancement, 18 June 2013

helpless and unprotected, and fails to deter the perpetrator from further acts of violence. The perpetrator feels more immune because his violent actions were not taken seriously by the law enforcement authorities and did not receive an adequate response and sanctions.

Another proposal that is frequently put forward as a measure of response to DV is mediation between the abuser and the victim. Mediation is possible and should only be used when the parties are involved in a dispute, but not in cases of violence because violence is a crime. If mediation is introduced in DV law, the state is approving the stereotype that both, the perpetrator and the victim, are equally accountable for the crime. By introducing mediation, the state would also be prioritizing preservation of a violent relationship over the lives, health and safety of women and children suffering DV.

Hence it must be born in mind throughout the drafting process, that the needs of victims should always take precedence over the needs of the perpetrators or the convenience of the authorities, otherwise the law will not work. The very purpose of the DV law is to provide protection to DV victims. Then it is to ensure that the perpetrators are prevented from committing further acts of violence and are brought to justice, and that the victims receive support. These are the top priorities of any DV law. The law must also ensure that the responsibility for ending violence and the burden of prosecution is placed on the authorities, and not the victim. Violent behaviour changing programmes, education, training, raising public awareness – these are all necessary means for reducing violence in society, but these means should supplement the legal protection of victims, and not replace it.

Due to the shortcomings of the draft law described above, the Parliamentary Human Rights Committee initiated a revision process and invited non-governmental organisations to provide their input. During the revision process, the NGOs consulted extensively with foreign experts on domestic violence. As a result, the draft law was considerably improved to meet the standards of a progressive DV law.

The new *Law on Protection Against Domestic Violence* defined domestic violence as an act of violation of human rights and freedom, which, due to damage caused to society, was attributable to acts of public significance.³⁴ Such qualification of domestic violence, in accordance with the *Criminal Code*, warranted public rather than private prosecution. Violence was defined “as an intentional physical, mental, sexual, economic or other influence exerted on a person by an act or omission as a result whereof the person suffers physical, property or non-pecuniary damage”. The law established that the victim of domestic violence is not only a person against whom domestic violence has been used, but also a child who has witnessed domestic violence or lives in an environment exposed to violence. „Domestic environment“ was defined as 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. The law also established a network of state-funded special support centres and imposed obligation on the state to provide special support to every DV survivor.

The law considerably strengthened the legal protection of DV victims by placing the burden of ending violence on the authorities and equipping the law enforcement authorities with legal tools to respond to the crime. It provides that upon establishing a DV incident, the police shall immediately take measures to protect a victim of violence (such as arrest of the abuser), and, taking account of the circumstances, initiate a pre-trial investigation. No complaint from the victim is required. Upon establishing a DV incident, two protection measures should be

³⁴ The Law on Protection Against Domestic Violence in the Republic of Lithuania (2011), http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=410975

imposed by the court within 48 hours - 1) the obligation of the perpetrator of violence to temporarily move out of the place of residence, if he resides together with the victim of violence; 2) the obligation of the perpetrator of violence not to approach the victim of violence, not to communicate and not to seek contact therewith. The measures are to be applied until examination of the case is complete.

Remaining Challenges

The protection measures provided for by the DV law should be aligned with existing provisions regulating criminal procedure, or, alternatively, the necessary amendments to the latter should be introduced together with the adoption of the new law. The first year of implementation of the law revealed that the courts were unwilling to impose protection measures because the *Criminal Procedure Code* provided for the application of “remand” rather than “protection” measures. Currently there is a draft law registered in Parliament for amending the DV law by introducing a direct reference to the *Criminal Procedure Code*, i.e. upon establishing the DV incident, remand measures provided for in the *Criminal Procedure Code* are to be imposed on the suspected offender to protect the victim.

Another issue that remains unaddressed is a reconciliation procedure that is still widely used in DV cases during both, pre-trial investigation and trial stage, without taking into account the specific nature of the DV crime and its repetitive pattern, and without a detailed assessment of the possible risk and danger to the victim. The issue should be addressed by introducing relevant amendments to the *Criminal Code* and conducting trainings for the law enforcement authorities and judiciary to improve their knowledge and understanding of the DV crime and why it requires a different approach than other violent crimes.

The concept of “mental violence” remains unclear for the law enforcement. It is agreed among DV experts, that mental (or psychological) violence is rather hard to recognize and prove. New, better concepts are being searched for to reflect the specific nature of DV crime and improve the response to DV. In 2013 the Government of the United Kingdom widened the definition of domestic violence to include the concept “coercive control”.³⁵ The new definition takes into account the repetitive and controlling nature of DV crime, which often encompasses various forms of continuous abuse.

Other challenges related with the implementation of the law are more of a practical nature and can be solved by providing the necessary specialist training, increasing the level of cooperation among the authorities, various agencies and NGOs, and introducing the best practices from other states.³⁶ Adequate funding is also essential for the full implementation of the law, therefore responsible institutions should plan their budget which will be required to carry out their additional functions accordingly.

³⁵ The full definition states that: “[d]omestic violence and abuse is any incident or pattern of incidents of controlling, coercive, threatening behaviour, violence or abuse between those aged 16 or over who are, or have been, intimate partners or family members regardless of gender or sexuality. The abuse can encompass, but is not limited to: psychological, physical, sexual, financial, emotional. Controlling behaviour is a range of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour. (Coercive behaviour is an act or a pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten their victim).” <<https://www.gov.uk/domestic-violence-and-abuse>>

³⁶ NGO appeal to the Heads of the State regarding the effective implementation of the Law on Protection Against Domestic Violence, March 2013

Of course, the adoption of the law should never be delayed due to financial reasons because even if underfunded, it still provides the necessary protection to victims. According to the official crime register data, in 2012 there was a significant decrease in domestic murders, especially in rural areas -104 murders in rural areas (regions, villages) in the living premises compared to 147 in 2011.³⁷ This is almost a 30 per cent decrease, which caused an overall decrease in the country's murder statistics by almost 22 per cent. The police directly relate this decrease with the changes in DV regulation.³⁸ Hence the new DV law saves lives, and this is undoubtedly its greatest achievement.

Gender Aspect

The absolute majority of domestic violence victims in Lithuania are women. This is confirmed by official statistics collected by the Police Department – 693 men, 6,472 – women and 625 – children were granted victim status in cases of domestic violence in 2012. Therefore domestic violence in Lithuania falls into the category of gender-based violence as it is defined in international human rights law. *European Council Convention on preventing and combating violence against women and domestic violence (2011) (Istanbul Convention)*³⁹ defines “gender-based violence against women as violence that is directed against a woman because she is a woman or that affects women disproportionately”.

Lithuanian DV law is gender-neutral and does not address the DV in a gender-sensitive way.

Yet, taking into account that DV mainly affects women, in the case of a gender-neutral DV law, gender aspect should be integrated in other DV regulations and policies such as national strategies, action plans and programmes. Unfortunately, after the adoption of the DV law, the implementation of the *National Strategy of Combating Violence Against Women* was discontinued. Domestic violence is also excluded from the *National Programme of Equal Opportunities between Women and Men 2010-2014*. In other words, the gender aspect disappeared from the state policies, and, as a result, Lithuania fails to fulfil its legal obligations under the *UN Convention on Elimination of All Forms of Discrimination Against Women (1979)*.

The gender aspect in combating DV is strongly emphasised by the European Council in its Istanbul Convention of 2011, and in the developing case law of the European Court of Human Rights. In the domestic violence case *Valiuliene v Lithuania*, a Portuguese judge considered in his concurring opinion that “the full effect utile of the European Convention on Human Rights can only be achieved with a gender sensitive interpretation and application of its provisions which takes in account the factual inequalities between women and men and the way they impact on women's lives” The same could be said about national laws and policies – gender-sensitive approach is a must for the states aiming to succeed in ending domestic violence.

³⁷ Data retrieved from Official Crime Register, Information Technology and Communications Department under the Ministry of Interior, <http://www.ird.lt/viewpage.php?page_id=200&lang=en>

³⁸ Unofficial discussions with regional police representatives during an round-table organised in February 2013 by the “Vilnius Women's House”

³⁹ Council of Europe Convention on preventing and combating violence against women and domestic violence (2011), <<http://conventions.coe.int/Treaty/EN/Treaties/Html/210.htm>>



BULGARIA

Genoveva Tisheva

Situation before the Adoption of the Law

Until 2005, violence against women (VAW) in Bulgaria was not perceived as a serious public problem deserving special legal regulation. The concept inherited from the previous regime that gender equality was achieved in Bulgaria was certainly one of the reasons. The deeply rooted patriarchal stereotypes which characterized the Balkan region represented an additional factor. Furthermore, the persistent public/private dichotomy confines women and the violence suffered by them to the private sphere of society. VAW is a form of discrimination against women which is most closely related to cultural stereotypes. It is among the strongest expressions of the gender stereotypes and at the same time is the tool that is being used to maintain the defined roles of women and men in society. Law is just the reflection of the relations in society. Therefore a deep change in attitudes and a decisive legal reform were needed in order to tackle violence against women in Bulgaria.

During the period 1995- 2005, thanks to the persistent efforts of women's NGOs, under foreign pressure and the challenge of the EU membership, the issue of VAW emerged as a relevant one and received public attention and recognition. The development by NGO--run support services for women who had suffered violence and the influence of a decade of human rights conferences during the 90s, especially the Beijing Conference and its Platform of Action, contributed to the unveiling of the phenomenon. As a result of this process, legislation in the field of VAW has been developed in Bulgaria, especially with the *Law for Combating Trafficking in Persons* and respective changes in the *Penal Code*, as well as the *Law on Protection against Domestic Violence*, the *Law on Protection from Discrimination*, and legislation on parental leave (according to which, among others, since 1st of January 2009, for the first time in Bulgarian history, fathers have a right to take 15 days paid parental leave after the child is born).

Bulgaria's accession to the European Union on 1st of January 2007 required significant changes to existing Bulgarian legislation and the introduction of new legislation with a view to achieving equal treatment of women and men. Protection from violence against women was not contained in any of the standards of the EU, and VAW is recognized only in soft law. Nevertheless, VAW cuts across many existing areas of EU competences: human rights and non-discrimination, social policy, justice and data/statistics, but it is not systematically integrated as part of these portfolios due to the absence of a specific legal base for the EU to act on violence against women.⁴⁰ So the adoption of legislation on protection from violence against women was in line with the EU policy.

Although statistics are difficult to come by due to under-reporting by victims and a lack of accurate statistics from police, prosecutors, judges and other service providers, the research made by different NGOs show that one in four women have been victims of domestic violence in Bulgaria.⁴¹ Until the adoption of the *Law on Protection against Domestic Violence*, women victims of domestic violence who dared and decided to speak out had a divorce process as the only available remedy. There were no measures for the urgent protection of victims, no special court procedure and no special provisions on domestic violence in the civil and penal law. In the period 2000-

⁴⁰ According to data from the European Women's Lobby, in the EU at least one woman in five experiences violence by an intimate partner.

⁴¹ Gender Project for Bulgaria Foundation, "Research on the incidence of domestic violence in Bulgaria, 2002

2005, women's NGOs started providing psychological and legal support to women victims of violence and were the only ones to ensure their protection. The situation of women and their children during that period is illustrated by the case brought before the ECtHR – the case *Bevacqua and S. v. Bulgaria* in 2001. The case was decided in 2008 in favour of the woman victim and her child. Ms Bevacqua and her little son were subjected to violence by her husband, and the mother was separated from her child as a result of the impunity of her husband. There were no mechanisms for protection against domestic violence and the divorce court did not take into account the acts of violence and delayed unreasonably its decision on the interim measures for the child's custody. The Court in Strasbourg found that the Bulgarian government failed to protect the mother and the child from the violence and in the situation of their separation, which constituted a violation of Article 8 of the ECHR.

Drafting and Lobbying Process

The drafting of the Law on Protection against Domestic Violence began as a non-governmental initiative. In 1999-2000 the BGRF started working on a project for legal aid for women victims of violence. This project, "Innovative strategies for combating violence against women in Bulgaria – a pilot scheme for legal aid and legal clinics," was funded by the Dutch foundation NOVIB and was implemented until 2002. As a result, during the years 2000-2002, a small group of lawyers from the BGRF, started working on a draft law on the protection against domestic violence.

After the national elections in June 2001, a favourable environment was created in parliament with the election of 26% of women in the 39th National Assembly. Subsequently, bearing in mind the favourable political situation, during the 2001 "16 days against Violence against Women" campaign, the BGRF and other women's NGOs initiated a campaign for the adoption of legislation against domestic violence. The initial draft law reached parliament at the end of 2001- beginning of 2002. A period of negotiations and meetings followed between the BGRF, other women's NGOs, MPs, and the AHR from Minnesota.

In autumn 2002, a new stage in the fight for the law began: the Minister of Justice Anton Stankov issued an order for the creation of a working group in the Ministry "for the elaboration of a draft law on quick measures for the protection of victims of domestic violence". During the work of the group in the Ministry of Justice, the BGRF and other major women's NGOs continued campaigning and lobbying activities.

On April 17, 2003, after the completion of the work by the Ministry of Justice working group, Marina Dikova officially introduced the Draft Law on Protection against Domestic Violence with a major press conference in parliament. MAHR experts joined their efforts to those of their Bulgarian colleagues for further promotion of the Draft law in parliament. Various political parties were lobbied to support the draft in the parliamentary committees. During 2003 Bulgarian women's NGOs collected signatures for lobbying parliament for the adoption of the law.

Finally, on 16 March 2005 the Bulgarian Parliament adopted the Law on the Protection against Domestic Violence (LPADV). In this process, the role of the BGRF, other women NGOs, lawyers from the network of lawyers on domestic violence, as well as the support of partner NGOs and the media were crucial. The contribution of international partners and donors was also very important.

Overview of the Law

The adoption of the LPADV was a great victory for Bulgarian women and women's NGOs and a critical step in the prevention of and protection against domestic violence. It is indicative that protection against DV is contained in a special piece of legislation. With this law the State recognizes the importance of the problems in combating DV in Bulgarian society and by that confirms that violence within the family or a partnership is not a private but a public concern. The adoption of the LPADV is a significant step toward combating domestic violence, but its effective implementation is essential for the realization of victim safety and accountability for offenders in Bulgaria.

The circle of persons protected by the Law is much broader and the Law provides special urgent procedures in cases of DV. The LPADV creates a remedy for victims of domestic violence in Bulgaria by allowing them to petition the regional court for protection. It defines domestic violence as any act or attempted act of physical, mental or sexual violence, as well as the forcible restriction of individual freedom and privacy. To warrant protection under the law, the violence must have occurred within one month of the petition and between the following main groups of persons:

- * current and former spouses;
- * current and former cohabitants;
- * persons with a child in common;
- * ascendant and descendants (e.g. parent/child);
- * siblings within four degrees; in-laws within three degrees;
- * guardian/foster parent and child relationship.
- * the child from the person with whom his/ her parent live together.

There is no official application form for a protection order in Bulgaria, but the law sets forth the required elements of an application. There is no initial cost to file for an order for protection. Depending on the outcome however, either the applicant or respondent bears the expenses. When an application is filed, the court is required to schedule a hearing within thirty days. A sibling or other direct line relative (ascending or descending) of the victim may also initiate the proceedings. The chiefs of the departments of social assistance shall initiate complaints in cases of DV against minors and persons under guardianship or with disabilities. In instances where the life or health of the victim is in imminent danger, the victim may apply for an emergency order. The regional court shall issue an emergency protection order within 24 hours of receipt of the application.

The law explicitly provides for several types of documents to be admitted as evidence at the hearing. However, it also provides that where no other evidence exists, the court shall issue a protection order based solely on the applicant's statement, attached to the application, concerning the domestic violence. If an order for protection is granted, the judge shall order the respondent to pay a fine of 200 to 1000 BG Levs (€100 to €500) and impose one or more of the following measures:

- * Order the respondent to refrain from committing further acts of domestic violence;
- * Remove the respondent from the common dwelling-house for a period of 3 to 18 months as specified by the court;

- * Prohibit the respondent from being in the vicinity of the victim, the home, the place of work, and the places where the victim has his or her social contacts or recreation, on such terms and conditions and for such a period of time from 3 to 18 months as is specified by the court;
- * Temporarily relocate the residence of the child with the parent who is the victim or with the parent who has not carried out the violent act at stake, on such terms and conditions and for such a period of time from 3 to 18 months as is specified by the court, provided that this is not inconsistent with the best interests of the child;
- * Require the respondent to attend specialized programmes;
- * Advise the victims to attend recovery programmes.

The order is subject to immediate execution. The police are responsible for executing an order providing for actions from A to C above. The police have the power to arrest the aggressor in cases of non-compliance with the order for protection by the court. The LPADV provides that the State is responsible for ensuring the implementation of programmes aimed at the prevention of and protection against domestic violence, as well as programmes providing assistance to the victims.

The major strengths of the law are: the broad circle of persons protected, the urgent protection, including the emergency order for protection, the broad measures for protection, the possibility to arrest the aggressor in cases of non-compliance with the order for protection and the principle of State support for the activities in implementation of the LPADV.

Situation after the Law Adoption: impact, challenges and barriers

The adoption of the LPADV had a great impact on the situation of women and their protection from violence. For each consecutive year since the adoption of the Law in 2005, the court statistics show that between 1,200 and 1,500 complaints were brought to the courts in different towns in Bulgaria. According to judicial statistics, over 90% of the plaintiffs are women. The fact that some of these complaints are withdrawn and the cases are closed has to be studied more deeply. The existence of the LPADV was positively assessed by the NGOs, the communities and the institutions, and also by the public at large. From the new generation of legislation, it was assessed as the law that is most used by its' citizens. The mechanisms for urgent and emergency protection of the victims also received a very positive assessment. Institutions started treating the problem of domestic violence seriously. The Ministry of the Interior started initiating and drafting annual programmes for prevention and protection against DV, issued special guidelines for police action in cases of DV and started the training of its officers. The issue of DV and the annual programmes on DV were made part of the annual Plans on Gender Equality adopted by the Council on Gender Equality and approved by the Council of Ministers.

Two years after the adoption of the LPADV, the BGRF together with the AHR from Minnesota monitored the implementation of the new law and on the situation and impact after its adoption.⁴² It resulted in a report, which identified gaps in the protection of victims both in the civil and the penal spheres. The women's NGOs dealing

⁴² AHR, BGRF, Monitoring the implementation of the Bulgarian Law on Protection against Domestic Violence, http://www.theadvocatesforhumanrights.org/uploads/final_report_2.pdf

with VAW were identified as the sole providers of services for victims but their activities were not supported by the State. The report was disseminated among NGOs and institutions in Bulgaria and influenced the new wave of law amendments that followed.

In spite of the strong and urgent measures in place for the protection of victims in civil law, women's NGOs in Bulgaria required the State to ensure increased sustainability of the work of NGOs through governmental support and increased protection of victims in the DV law. The NGOs insisted that a working group in the Ministry of Justice prepare the amendments needed, participated in the 2008 working group, and managed to achieve several major improvements in 2009: the notion of economic violence was explicitly introduced in the concept of DV, violence witnessed by a child was defined as emotional and psychological violence against the child, the protection period of the order for protection (OFP) was extended and is currently from 3 to 18 months. The State made an explicit commitment in the law to allocate a budget line each year within the budget of the Ministry of Justice to go to NGO projects for implementation of the LPADV. As a result, two tenders for NGO projects have been received so far – in 2011 and 2012. A third tender was launched in the beginning of 2013. Thus, the pressure of the NGOs and the amendments of the LPADV made the support from the State budget a reality. Although the amount allocated each year for such projects is still insufficient – only €250.000 for active NGOs in the whole country, this is clearly progress achieved by civil society.

Since the end of the 90s women's NGOs have identified a gap in the protection of victims of domestic violence – the lack of effective penal protection of victims. After the adoption of the LPADV with the civil OsFP, penal protection was still missing. Special criminal provisions covering the criminal acts of DV and providing for increased responsibility are still missing. The violation of the OFP was not criminalized. The women's NGOs, based also on the monitoring of the LPADV, campaigned for the necessary changes in the penal law. In April 2009, the Criminal Code was amended and in Article 296 of the Criminal Code the non-compliance with the order for protection was criminalized. Despite that, prosecutors are still reluctant to hold the perpetrators accountable.

The creation of the Alliance for Protection against DV in 2008 was the result of all the process of identifying the need, drafting and campaigning for the LPADV and its amendments, of the monitoring for its implementation. It was the expression of a need of women's NGOs for solidarity, sharing and making progress together. The Alliance was officially registered in August 2009 in Varna and is currently composed of NGO members dealing with VAW in Sofia, Varna, Burgas, Pleven, Silistra, Targovishte, Pernik, Plovdiv, Haskovo and Dimitrovgrad, Russe.⁴³

As a result of the monitoring of the legislation on domestic violence, the BGRF and the Alliance for protection against DV presented alternative reports and information to the CEDAW Committee, in the course of the review of the Bulgarian governmental report in July 2012 in New York. Based on the official and the alternative reports, the CEDAW Committee made important priority recommendations to the government, including on the issue of DV. Namely, the Committee recommended an amendment of the LPADV for the more effective protection of victims through the explicit provision of shifting the burden of proof. The Committee recommended the criminalization

⁴³ The Alliance members are: "Demetra Association" – Burgas, "SOS- Families at risk"- Varna, BGRF- Sofia, Plovdiv, Bulgarian Women's Fund- Sofia, "PULS" - Pernik, "NAYA" Association- Targovishte, "Ekaterina Karavelova" Association- Silistra, "Dinamika"- Russe, "Open Door"- Pleven, "H and D Gender Perspectives"- Haskovo and Dimitrovgrad. The main objectives of the Alliance are: proposing and monitoring legislation and policy, working on the standards for quality services for victims, cooperation with institutions, analysis and research, promotion of educational activities and work with young people against violence, international cooperation

of all acts of domestic violence.⁴⁴ Two communiqués from Bulgaria relating to women who had suffered domestic violence were brought before and decided by the CEDAW Committee – *V.K. v. Bulgaria* and *Jallow v. Bulgaria*. This is indicative of the awareness of women defenders from NGOs and the fact that the protection given by the law should be even stronger.

Lessons Learnt

From a distance of all these years of active involvement in the real protection of victims of domestic violence and in the legal reform, I can assess that the process of adopting the law was very positive and inclusive of as many organisations, experts and institutions as possible. The process was unique; it used a unique momentum created by the high awareness and knowledge of NGOs, the political situation and international support.

The protection of women against DV still has room for improvement, especially in the field of criminal law. Sustainability of NGOs and the allocation of resources for them is another issue which has to be tackled by the State. The adoption of a law on gender equality and the establishment of the special institutional mechanism for equality is another direction for change. Tackling gender stereotypes, including media and advertising that is sexist will be crucial for creating an enabling environment for the application of the law.

What would we do differently? Maybe insisting more in parallel for the so needed changes in the criminal law, involving a bigger number of NGOs and experts, involving the prosecutor's office more through dialogue and seminars, and publications. We would definitely push for the reform in penal law, not waiting for the civil law reform to be passed. We would not wait for provisions about sustainability and finance.

And once again, solidarity, joint efforts and pressure (internal and external), and building coalitions are a decisive factor for the adoption, sustainability and effectiveness of the LPADV.

⁴⁴ UN, Committee on the Elimination of Discrimination against Women, "52nd session", New York, July 9-27, 2012. <http://www2.ohchr.org/english/bodies/cedaw/cedaws52.htm>

Conclusions and Recommendations:

- * The law drafting process should involve a comprehensive assessment of existing legal – civil, criminal, administrative law – frameworks and the necessary changes that have to be introduced by the special law.
- * A preferred model should be chosen on how domestic violence will be treated in legal terms. In the case of Lithuania, domestic violence is treated as a criminal act incurring criminal liability, and a criminal investigation is launched in every case upon establishing a domestic violence incident. The Lithuanian law does not provide for civil measures of protection and all DV incidents are dealt with and protection measures imposed under the criminal law procedure. The Bulgarian model is different – it provides for civil measures of protection only.
- * During the drafting process, the needs of domestic violence victims must always take precedence over the needs of the perpetrators or the convenience of institutions and agencies.
- * The burden of ending the violence must be placed on the authorities, and not the victim; the law should abolish any procedure where the victim is required to submit a complaint or in other way initiate the criminal procedure.
- * Protection measures provided for by the law should be aimed at immediate physical protection of the victim, like arresting the perpetrator, removing the perpetrator from the house, and/or prohibiting the perpetrator from approaching or seeking contact with the victim.
- * The measures should be aligned with existing criminal and other legal provisions to ensure that the authorities are able to apply them from the moment the law comes into force.
- * Consider including newly developed DV definitions that better reflect the repetitive and continuous pattern of the DV crime.
- * Introduce other important definitions that are lacking in the law such as stalking, forced marriage, and others.
- * If the legal protection of children is inadequate and fragmented, consider including special provisions in the DV law to strengthen the protection of children.
- * The law should also regulate the provision of victim support services and their funding to ensure that DV survivors receive the necessary support.
- * A cooperation and coordination mechanism among various responsible institutions should also be set up by law because a close and well-coordinated cooperation among the police, prosecution offices, social and child rights services, victim support services and NGOs is a must for making the victim protection system actually work.
- * In cases where the law is drafted by the government, the NGOs must be involved in the process because they deal directly with the victims, are well aware of their needs, and are the ones representing the interests of the victims, or, in other words, giving the victims a voice in the drafting process.

Chapter 1: Law on the Domestic Violence against Women

- * In cases where the initiative comes from NGOs, the involvement and engagement of sympathetic decision makers from the early stages of drafting is very important for further negotiation and the advocacy process; the law must have political support in parliament with strong political allies because the DV laws are usually met with quite forceful resistance.
- * With the proposal of the law, all necessary amendments to other laws should also be proposed, unless it is difficult to foresee what specific changes should be made to other laws.
- * Institutions should plan their budgets accordingly for their specific functions that will be required under the new law.
- * Efforts should be made to raise public awareness that domestic violence is not merely „bad behaviour“, but a crime as in any other violent crime.
- * Gender-sensitive approach must be integrated into the law and aimed at targeting gender stereotypes and promoting gender equality.



Chapter 2:

Law of Equal Opportunities of Women and Men



LITHUANIA

Jūratė Guzevičiūtė

Background Information

Lithuania established the rule on equality before the law in its Constitution in 1992. The Lithuanian Constitution, adopted by its citizens in the referendum, provides for the equality of all persons before the law, the court, and other State institutions and officials. It goes on to say that the rights of the human being may not be restricted, nor may a person be granted any privileges on the ground of gender, race, nationality, language, origin, social status, belief, convictions, or views.⁴⁵

Until 1998, the only two legal acts regulating equal opportunities in Lithuania were the Lithuanian Constitution and the *Law on Employment Contract*. The latter provided for the principle of equality for all employees, regardless of their sex and other factors which do not affect their professional qualifications.⁴⁶

Despite that, a research conducted in 1994 revealed that both open and hidden forms of gender discrimination existed in Lithuania. Lithuanian society, however, failed to notice that and took discrimination as a normal phenomenon of life.⁴⁷ For example, in 1994, 72% of male respondents and 54% of female respondents did not consider a priority the right of a man to work, as discrimination on the ground of gender, but rather as the norm; 31% of male respondents and 23% of female respondents thought that restrictions on women's participation in politics should not be seen as a discrimination either.⁴⁸

As one of the preconditions for Lithuania's accession to the EU, Lithuania was to amend its legal framework in such a way as to ensure full implementation of the equality principle in its national law and in practice. Lithuania was the first Eastern and Central European country to adopt the *Law on Equal Opportunities of Women and Men*.⁴⁹ The Law adopted in 1998 prohibited direct and indirect discrimination on the grounds of sex, as well as sexual harassment. The Law was applicable to all spheres of life, except for family and private life,⁵⁰ such as, for example, the roles of a man and a woman within marriage, or when raising children, etc. The implementation of the Law was granted and to be supervised by the Equal Opportunities Ombudsperson, established in 1999.

⁴⁵ Constitution of the Republic of Lithuania, 25 October 1992, Article 29, http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=275302

⁴⁶ Law of the Republic of Lithuania on Employment Contract, 28 November 1991, No I-2048, Article 2(6), http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=21130

⁴⁷ Women Information Centre, Women and Men in Lithuanian Society – 2009: research and evaluation of changes of women and men situation in all spheres, 2009, page 15

⁴⁸ Ibid.

⁴⁹ Law of the Republic of Lithuania on Equal Opportunities of Women and Men, last amended on 13 March 2012, No XI-1926, http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=421709

⁵⁰ Ibid., Article 1(2)

The adoption of the Law was the result of the long-term active work of women non-governmental organizations in Lithuania.⁵¹ When after the 1996 Parliamentary elections the number of female Parliament Members increased from 7 to 18 per cent, the major changes began: following on from the NGO work, female Parliament members established a working group for drafting the *Law on Equal Opportunities of Women and Men*.⁵²

The Law – the way it was adopted in 1998 – was a very progressive and modern regulation giving the practical implementation of the equality principle a considerable push. Although at first the idea of the legal regulation of gender equality did not receive strong support at state-institution level,⁵³ and many politicians saw the law as unsound and unnecessary,⁵⁴ after the adoption the Law overcame the sceptical point-of-view it quite soon became the norm.

Nevertheless, after the adoption of the Law, as noted by the Equal Opportunities Ombudsperson in 2002, considerable work still had to be done on the raising-awareness and education of the society. A considerable part of society was not ready to understand the impact of the Law for their everyday life and social existence.⁵⁵

Not without reason, in 2002, the Ombudsperson criticized the Ministry of Education and Science regarding the implementation of the equal opportunities principle. As an institution responsible human rights and the education of children and youth, during the first three years of the Law, the Ministry did not initiate any measures or programmes to promote a non-discrimination principle and the respect for human rights among children and youth.⁵⁶

Overview of the Law Adopted

The Law established that **equal opportunities of women and men** means implementation of human rights guaranteed in international documents on human and civil rights and in the legislation of Lithuania.⁵⁷ **Discrimination** means any direct or indirect discrimination, sexual harassment, harassment or an instruction to directly or indirectly discriminate against persons on grounds of sex.⁵⁸

The *Law on Equal Opportunities of Women and Men* was the first legal act to provide the definition of sexual harassment and to describe it as a violation of equal opportunities. **Sexual harassment** means any form of unwanted and insulting verbal communication, written or physical conduct of a sexual nature with a person with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, humiliating or offensive environment.⁵⁹

⁵¹ Office of the Equal Opportunities Ombudsperson, Annual Report, 2001, page 3

⁵² Ibid.

⁵³ Ibid.

⁵⁴ Office of the Equal Opportunities Ombudsperson, Annual Report, 2000

⁵⁵ Office of the Equal Opportunities Ombudsperson, Annual Report, 2002

⁵⁶ Ibid.

⁵⁷ Law on Equal Opportunities of Women and Men, Article 2(1)

⁵⁸ Ibid., Article 2(2)

⁵⁹ Ibid., Article 2(6)

As noted by the Equal Opportunities Ombudsperson, the first years of implementation revealed that the investigation of complaints regarding sexual harassment is way more complicated than that of other complaints because the victims of sexual harassment are in a difficult position to provide evidence or find witnesses willing to testify.⁶⁰ It should be noted that the first text of the *Law on Equal Opportunities of Women and Men* adopted in 1998 did not have a rule on the shift of burden of proof.

The *Law on Equal Opportunities of Women and Men* is applicable to both public institutions as well as private companies.

The Law provides obligations for the **State and municipal institutions and agencies** to ensure that equal rights for women and men are guaranteed in all the legal acts drafted and enacted by them; to draw up and implement programmes and measures aimed at ensuring equal opportunities for women and men.⁶¹ The Law established the same obligation for all **employers**: to apply a uniform selection criteria when recruiting or promoting; to provide equal working conditions and opportunities to improve qualification, re-qualify, acquire practical work experience, and provide equal benefits; to provide equal pay for the same work or for the work of equivalent value, etc.⁶²

The amendments to the Law of 2002 extended the scope of the application, to cover consumers' rights: **a seller or producer of goods or a service provider** must apply equal conditions of payment and guarantees for the same products, goods and services of equal value to all consumers regardless of their sex; ensure that the information provided does not form public attitudes that one sex is superior to another, etc.⁶³ The Law also prohibits discriminatory **advertising**: one could no longer specify the requirements in job advertisements that give priority to one of the sexes, including requests about job seeker's family status, age, private life or family plans.⁶⁴

Certain cases, such as the special protection of women during pregnancy, childbirth and nursing; different cases for fulfilling military conscription for men and women; different pensionable age for women and men, etc. are not considered as discrimination based on sex.⁶⁵ Furthermore, the Law stipulates that in certain cases, specific temporary measures set forth by laws may be applied, aimed at accelerating the guaranteeing of factual equal rights for women and men and which must be repealed upon implementation of equal rights and equal opportunities for women and men.⁶⁶

It is rather a pity that Lithuanian *Law on Equal Opportunities of Women and Men* does not provide for a quota system to ensure participation of an under-represented sex on management boards. However, in autumn 2013, the European Parliament is expected to vote on the *Directive on Gender Equality on Management Boards*. Should this Directive be adopted, it will serve as a strong push towards more effective equality between women and men in employment and occupation.⁶⁷

⁶⁰ Office of the Equal Opportunities Ombudsperson, Annual Report, 2000, page 14

⁶¹ Law on Equal Opportunities of Women and Men, Article 3

⁶² Ibid., Article 5

⁶³ Ibid., Article 5(1)

⁶⁴ Ibid., Article 8

⁶⁵ Ibid., Article 6

⁶⁶ Ibid., Article 6(6)

⁶⁷ V. Blinkeviute: we support gender equality in management boards of companies, 10 July, 2013, <http://myep.delfi.lt/opinion/v-blinkeviciute-mes-uz-lyciu-lygybe-bendroviu-valdybose.d?id=61822717>

Action for Protection against Discrimination

The *Law on Equal Opportunities of Women and Men* established a new State institution – Equal Opportunities Ombudsperson, which is to supervise the implementation of the Law.⁶⁸

For that purpose, the Ombudsperson is entitled to investigate complaints related to direct and indirect discrimination, harassment and sexual harassment and to provide objective and unbiased consultations related therewith. The Ombudsperson also conducts independent investigations into cases of discrimination and independent surveys on the state of discrimination, publishes independent reports, puts forward conclusions and recommendations on any discrimination-related issues with regard to the implementation of the Law, as well as proposals to the Lithuanian state and municipal institutions and agencies concerning the improvement of legal acts and priorities in the policy on the implementation of equal rights.⁶⁹

The Equal Opportunities Ombudsperson is appointed for the term of 5 years and removed from office by the Lithuanian Parliament upon the recommendation of the Chairman of the Parliament. The number of terms the Ombudsperson can be appointed is unlimited.⁷⁰

In cases where a person thinks that discriminatory acts have been directed against her/him or that she/he has become the subject of harassment, the person has the right to appeal to the Equal Opportunities Ombudsperson, or directly to the court. An appeal to the Equal Opportunities Ombudsperson does not preclude the possibility of defending one's rights in court. Complaints concerning the violation of equal rights may be filed by an individual or a legal person.⁷¹

As of 2008, the *Law on Equal Treatment* provides that NGOs which have, in accordance with the legal act regulating their activities, the defence and representation in court of discrimination victims as one of their activities, may, on behalf of the person discriminated against, represent him/her in judicial or administrative procedures.⁷² This provision derives from EU legal acts, and is a tool of significant importance when imposing equal treatment and implementing human rights. Nevertheless, Lithuania has not yet amended its *Code of Civil Procedure* accordingly; therefore the practical implementation of such a possibility is still to be tested.

In 2004, a new provision regulating burden of proof has been introduced into the Law. The rule stipulates that when investigating the complaints or disputes of persons concerning discrimination on grounds of sex, in courts or other competent institutions, it is presumed that the fact of direct or indirect discrimination occurred; and then a person or institution against which a complaint was filed must prove that the principle of equal rights has not been violated.⁷³

⁶⁸ Law on Equal Opportunities of Women and Men, Article 10(1)

⁶⁹ Law on Equal Opportunities of Women and Men, Article 12

⁷⁰ Law on Equal Opportunities of Women and Men, Article 14

⁷¹ Law on Equal Opportunities of Women and Men, Article 18(1)

⁷² Law on Equal Treatment, 18 November 2003, No IX-1826, Article 12(2), http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=389500

⁷³ Law on Equal Opportunities of Women and Men, Article 21

When in 2008 the Lithuanian Parliament discussed the draft amendments on the burden of proof to the *Law on Equal Treatment*, the biggest arguments arose around this provision. Members of Parliament claimed that Lithuanian society was not ready for such an amendment according to which the burden of proof would shift to the accused party, which would then have to prove that she/he was not guilty. Some Parliament Members even found this to be dangerous as it might be employed as a blackmail tool.⁷⁴ The provision was, nevertheless, adopted and proved to be a very useful tool in terms of protecting human rights.

In cases where the Equal Opportunities Ombudsperson has found indications of violation of equal rights in the press, media or other sources of information, the Ombudsperson may initiate investigation on his/her own initiative.⁷⁵ Since the establishment of the Ombudsperson Office, both the number of individual complaints as well as investigations initiated by the Ombudsperson Office *ex officio*, kept increasing each year. See Diagram No 1.

Discrimination based on Gender, 1999-2004

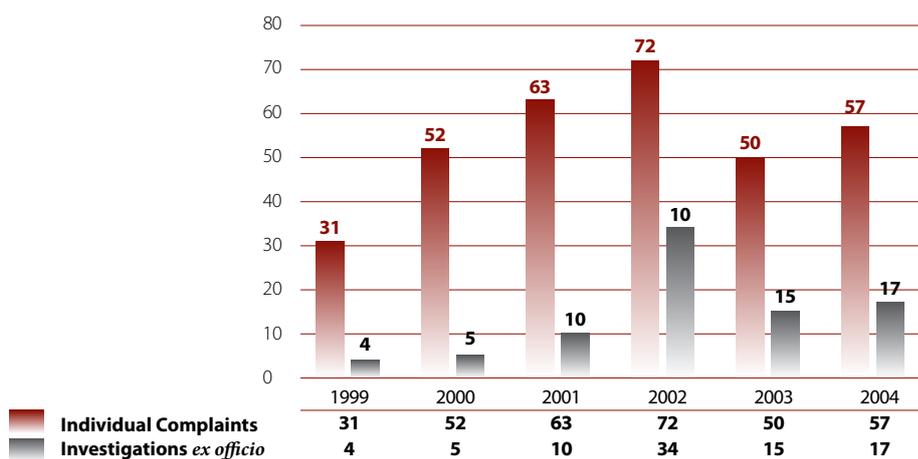


Diagram No 1: The number of individual complaints and investigation initiated by the Ombudsperson *ex officio*

The majority of the complaints were submitted by female applicants.

Since 2005, when the *Law on Equal Treatment* came into force and the competences of the Equal Opportunities Ombudsperson widened quite significantly (seven new grounds of prohibited discrimination were introduced). The complaints regarding discrimination on gender constitute around ¼ of all the complaints investigated by the Ombudsperson. See Diagram No 2.

⁷⁴ Delfi.lt, "Parliament got frightened by the draft of Law on Equal Opportunities", 17 April 2008, <http://www.delfi.lt/news/daily/lithuania/seima-isgasdino-ruosiamas-lygiu-galimybiu-istatymas.d?id=16720541>

⁷⁵ Law on Equal Opportunities of Women and Men, Article 18(3)

Discrimination based on Gender, 2005-2012

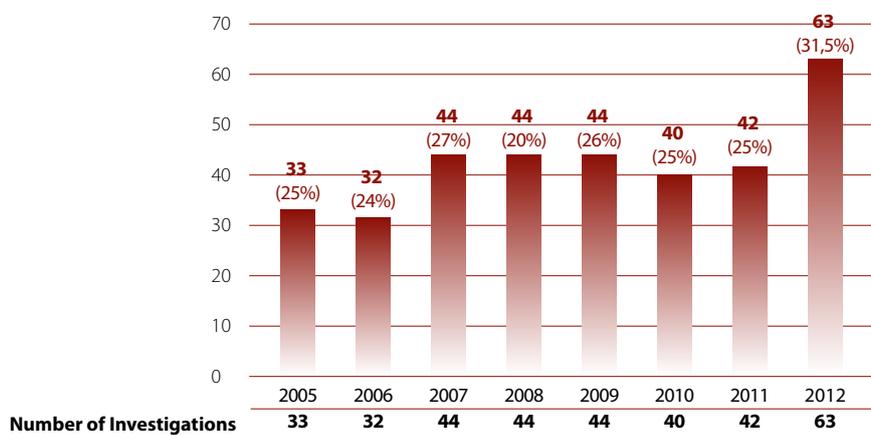


Diagram No 2: The number of complaints regarding discrimination on gender in 2005-2012

With regard to discriminatory advertising, the Ombudsperson monitors daily the advertisements in media and reacts to the discriminatory ones. The Ombudsperson observed that it is rarely the case that employers would explicitly mention the sex of the employee they prefer; usually they indicate that indirectly, by describing a particular position in female or male word. This type of formulation of the position – even though it does not explicitly refer to a particular sex a job seeker – it still, nevertheless, limits the number of possible candidates, contributes to the stereotypical approach towards female and male occupations, and therefore is prohibited by the Law.⁷⁶

The Equal Opportunities Ombudsperson, upon the investigation of the complaint, may take one of the following decisions:

- * to refer material of the investigation to a pre-trial investigation institution or prosecutor if features of a criminal act have been established;
- * to address an appropriate person or institution with a recommendation to discontinue the actions violating equal rights and to amend or repeal a legal act related thereto;
- * to hear cases of administrative offences and impose administrative sanctions;
- * to admonish for committing a violation;
- * temporarily, until making the final decision, ban an advertisement if there is sufficient evidence that the displayed or intended to be displayed advertisement can be recognised as inciting hatred and would do serious harm to the public interests, would humiliate human honour and dignity and would pose a threat to the principles of public morals;

⁷⁶ Ibid.

- * to impose an obligation on the operators of the advertising activity to terminate an unauthorised advertisement and to establish the terms and conditions for the discharge of this obligation.⁷⁷

As the Annual reports reveal, the most common decision of the Ombudsperson Office is a recommendation for a certain person or institution to discontinue the actions violating equal rights and to amend or repeal a legal act. Furthermore, though administrative fines are rarely imposed by the Ombudsperson, the ones that are applied are rather low. The same might be said about the fines imposed by the courts in discrimination cases. Even though people still avoid addressing the courts with discrimination claims, the cases that do reach the court are ruled not that favourably for the applicant even in the cases of established discrimination fact. For example, in the case of Šekurova v. Embassy of Romania, where the court established the fact of discrimination on the ground of gender as the applicant was sacked, without specifying the grounds of the dismissal, the next day after she delivered a certificate about her pregnancy to the employer, the court awarded the applicant only with 5000 LTL (~1450 EUR) and 5600 LTL (~1620 EUR) approx. of non-pecuniary and pecuniary damages respectively.⁷⁸

As indicated by the European Court of Justice, sanctions must be of such a nature as to constitute appropriate compensation for the candidate discriminated against and for the employer a means of pressure which it would be unwise to disregard and which would prompt him to respect the principle of equal treatment.⁷⁹ Therefore, the case-law in discrimination cases is still to be developed in order to guarantee the full implementation of the equal opportunities principle.

⁷⁷ Law on Equal Opportunities of Women and Men, Article 24

⁷⁸ Vilnius Regional Court, Šekurova v. Embassy of Romania, Civil Case No.2-1434-798/2012, 20 March, 2012

⁷⁹ European Court of Justice, Sabine von Colson and Elisabeth Kamann v. Land Nordrhein-Westfalen, 10 April 1984, para 14, http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&numdoc=61983J0014&lg=en

Impact of the Law on Gender Equality

The adoption of the *Law on Equal Opportunities of Women and Men* not only made the way for a wider scope and more progressive anti-discrimination legal act, but also contributed a lot to the change of social attitudes towards gender equality. In 2009, 52% (in comparison to 72% in 1994) of male respondents and only 16% (in comparison to 54% in 1994) of female respondents saw as a priority the right of a man to work as the norm; 12% (in comparison to 31% in 1994) of male respondents and 5% (in comparison to 23% in 1994) of female respondents thought that restrictions on women's participation in politics should not be seen as discrimination either.⁸⁰

Another positive achievement is the growing number of complaints regarding the violations of equal opportunities submitted to the Equal Opportunities Ombudsperson Office. This tendency reveals that more people are aware of their rights and are willing to defend them.

Though society's approach towards the equality of women and men is developing in a progressive way, the development, nevertheless, is rather slow. Women perceive gender equality more favourably than men. The major impact is still played by the discriminatory patriarchal stereotypes with regard to women's and men's roles in society and in the family.

⁸⁰ Women Information Centre, "Women and Men in Lithuanian Society – 2009: research and evaluation of changes of women and men situation in all spheres", 2009, page 15



BULGARIA

Genoveva Tisheva

Background information

Prior to the adoption of the *Anti-discrimination Act* in 2004, other prohibitions of discrimination were in place under other laws governing specific fields, as well as the Constitution. Such laws are related to education, social insurance, employment and disability. A number of international instruments banning discrimination are also in effect, including the *European Convention on Human Rights*, the *European Revised Social Charter*, the *International Covenant on Civil and Political Rights*, the *International Covenant on Economic, Social and Cultural Rights*, the *Convention on the Elimination of All Forms of Discrimination Against Women*, the *Convention on the Elimination of All Forms of Racial Discrimination*, the *Convention on the Rights of the Child*, the 100 and 111 *ILO Conventions*. The Constitution and binding international law are directly applicable by domestic courts and supersede any conflicting legislation. They are enforceable against private parties as well as public bodies.

Though discrimination based on sex was banned by the Constitution and several laws, no concrete regulation and mechanisms for protection existed. At the end of the 90s Bulgarian women's NGOs presented the situation of women and their disadvantaged position in the economic processes, employment, political participation, as well as in relation to the different forms of violence suffered.

Upon its initiative and under the pressure of civil society, the Ministry of Labour and Social Policy established a broad working group for drafting a *Law on Equal Opportunities of Women and Men*. The group worked closely with national and international experts and presented a draft law in the beginning of 2001. The draft law included general provisions, established detailed protection of equality in employment, education and other fields, provisions related to positive action for achieving equality. It also projected the establishment of an Equal Opportunities Ombudsperson and respective mechanisms for equality in the legislative and executive powers.

Despite all these investments from civil society and from the State, the draft law on equal opportunities did not reach Parliament. After national elections in 2001, the new government took the direction of the adoption of a general anti-discrimination law in order to achieve compliance with all EU Directives prior to the full accession of Bulgaria to the EU. The idea of a separate law was discarded by the argument that the general law would regulate the full spectrum of anti-discrimination grounds. Later there were attempts by the NGOs and the Ministry of Labour and Social Policy to reintroduce a draft law on gender equality but with no real results.

Though the core provisions of the first draft *Law on Equal Opportunities of Women and Men* were incorporated into the new draft *Anti-discrimination Law*, no specific gender equality mechanisms were provided for. The *Anti-discrimination Law* established the Commission for Protection from Discrimination..

In the period 2001-2009, over four versions of a gender equality law reached the Council of Ministers or Parliament but with no consequences. Arguments were made by NGOs that the general law did not ensure the needed protection against gender discrimination and that a special law is needed for the regulation of this important sphere.

The *Law on Protection from Discrimination* was drafted in the period 2002-2004 by a working group formed by the Council of Ministers, representatives of the government, the judicial system, and human rights NGOs. Foreign experts, representatives of international organizations, like the ILO, and representatives from countries with strong anti-discrimination law, like the UK, supported the drafting and provided advice to the working group. The drafting process was very constructive and focused, provisions of the draft *Law on Equal Opportunities of Women and Men* of 2001 were incorporated into the new draft, the media gave large publicity to the process. Nevertheless, some academic circles, especially those working in the field of labour law, were not in favour of the law – a law, which was unique in Bulgarian history.

Overview of the Law Adopted

The *Law on Protection from Discrimination* (also referred to as the *Anti-discrimination Act*), adopted in 2004 is the main comprehensive piece of anti-discrimination legislation, universally banning discrimination on a range of protected grounds, including explicitly race/ethnicity, sex, religion/belief, sexual orientation, disability and age, nationality, citizenship, education, personal, family status, etc., and providing uniform standards of protection and remedies. It is in compliance with the *Race Directive 2000/43* and the *Equal Treatment in Employment Directive 2000/78*, the latter covering the grounds of religion or belief, disability, age or sexual orientation. With this Law, a great part of the EU gender equality *acquis* had been fully transposed in the Bulgarian legislation prior to the EU accession in 2007: *Directive 75/117 on Equal Pay*, *Directive 79/7 on the Principle of Equal Treatment for Men and Women in Matters of Social Security*, *Directive 92/85 on Pregnant Women and Maternity Leave*, *Directive 2004/113 on the Principle of Equal Treatment between Men and Women in the Access to and Supply of Goods and Services*, *Directive 2006/54 on the Implementation of the Principle of Equal Opportunities and Equal Treatment of Men and Women in Matters of Employment and Occupation (Recast)*, *Directive 2010/18 on Parental Leave*, *Directive 2010/41 on the Principle of Equal Treatment between Men and Women Engaged in an Activity in a Self-employed Capacity*.

The *Law on Protection from Discrimination* as a whole complies with the Directives, and goes beyond them in significant aspects, including material scope, list of protected grounds, forms of discrimination banned, powers of the equality body, and special judicial redress. It applies to both the public and private sector and covers all areas of life.

The *Law on Protection from Discrimination* prohibits and defines direct and indirect discrimination, including explicitly discrimination by association and by presumption. The Act defines **direct discrimination** as treating a person on protected grounds less favourably than another person is treated, has been treated, or would be treated in comparable circumstances. The Act further defines **on grounds of** as the actual, present or past, or assumed possession of one or more protected grounds by the person discriminated against, or by another person who is, in fact or presumably, associated with the person discriminated against, where this association is the cause of the discrimination.

The Act does not permit general justification for direct discrimination with respect to any ground. It provides for an exhaustive list of specific exceptions for all protected grounds, including for genuine and determining occupational requirements, for employers with a religious ethos, and for maximum and minimum ages for access to employment and education, requiring objective justification by necessity. Positive measures aimed at equalizing opportunities for disadvantaged groups are allowed, and expressly mandated.

The *Anti-discrimination Act* defines **indirect discrimination** as putting a person on protected grounds, through an apparently neutral provision, criterion or practice, at a disadvantage compared with other persons, unless such provision, criterion or practice is objectively justified by a legitimate aim and the means for achieving that aim are appropriate and necessary.

The *Anti-discrimination Act* explicitly provides that harassment, incitement to discrimination, and victimization constitute forms of discrimination. The Act defines **harassment** as any unwanted conduct related to protected grounds and manifested physically, verbally or in any other manner that has the purpose or effect of violating the dignity of a person and of creating a hostile, offensive, or intimidating environment. **Incitement to discrimination** is defined as direct and intentional encouragement of discrimination where the perpetrator is in a position to influence their audience. The definition expressly includes giving an instruction to discriminate. **Victimization** is defined as: 1) less favourable treatment of a person who has undertaken, or is presumed to have undertaken, or to undertake in the future any action for protection against discrimination; 2) less favourable treatment of a person where a person associated with them has undertaken, or is presumed to have undertaken, or to undertake in the future any action for protection against discrimination; 3) less favourable treatment of a person who refused to discriminate.

The Bulgarian notion of sexual harassment also corresponds to EU standards. The Bulgarian law goes beyond the regulation of sexual harassment at the workplace and also extends the protection to harassment in educational institutions.

In addition to affirming the principle of equality and non-discrimination based on sex, the *Anti-discrimination Act* stipulates that special protection of pregnant women and mothers does not represent discrimination under the law. The possibility to apply positive action measures for achieving gender equality is provided for as well. Such measures are allowed along with measures in favour of disadvantaged groups in general. Thus positive action measures in favour of the under-represented sex may be taken in education and training for ensuring a balance in the participation of men and women, and as special measures for individuals or groups of persons in a disadvantaged position. In the sphere of employment relations, positive action can be taken for encouraging persons belonging to the less represented sex to apply for a certain job or position and for encouraging the vocational development and participation of workers and employees belonging to the less represented sex.

The positive action measures are allowed in the process of hiring for positions in state and local government administration in order to ensure balanced participation of men and women. It is a pity, though, that in 2006 the possibility for applying a quota system for the participation of women and men in managing and advisory bodies was abolished.

Pursuant to an amendment of the Law in August 2012, it is not considered discriminatory to treat people differently in relation to initiatives mainly or exclusively promoting entrepreneurship among women, when they are the under-represented sex, or for avoiding or compensating for disadvantages in a professional career.

Multiple discrimination is defined under the Act as discrimination on more than one of the protected grounds. The Act places a positive duty on all public bodies, central as well as local, to take as a priority positive measures to equalize opportunities for victims of multiple discrimination.

Action for Protection against Discrimination

Action for protection against discrimination may include, but is not limited to, bringing proceedings before the equality body or the court, in either victim or third-party capacity, or testifying in proceedings. Any person who assisted any action against discrimination in any way is entitled to protection from victimisation.

The Act provides the establishment of the national specialised equality body – the Commission for Protection from Discrimination. It is an independent collegiate authority composed of 9 members with adjudicating powers. It started operating in 2005 and deals with discrimination on all protected grounds.

The *Anti-discrimination Act* provides for two alternative procedures for enforcement of anti-discrimination rights: judicial proceedings before the general civil courts and specialised quasi-judicial proceedings before the independent equality body, i.e. the Commission for Protection from Discrimination. A victim can choose between the two.

A special judicial remedy is provided for as well. Both procedures are exempt from state fees, as well as costs. A shift of the burden of proof is envisaged. In the procedure for protection against discrimination, persons who consider themselves to be victims of discrimination have to *prove* instead of just *establish* facts from which it may be presumed that there has been discrimination (Article 9 of the *Law on Protection from Discrimination*). Then the burden of proof falls upon the respondent and he/she has to prove that there has been no breach of the principle of equal treatment.

The courts can make a declaration of discrimination and award compensation for damages, as well as order the respondent to take remedial action, or to abstain from, or to terminate particular action or inaction found to be in breach of the law. The Equality body can also make a finding of discrimination, and order preventive or remedial action. It can also impose financial sanctions. However, it can award no compensation to a victim. Both procedures are universally applicable to both the public and private sectors. They are legally binding. The principle of the shifting burden of proof applies to both. Complainants use both procedures, with growing intensity.

Under the Law, the Equality body assists victims of discrimination. In practice, complainants are provided with procedural advice on filing their complaints before the body. In addition, the body has standing to take court proceedings, as well as to join proceedings taken by others. In practice, however, it has not used these possibilities.

A positive element in the court procedure is the possibility for trade unions and civil society organisations to join or initiate a discrimination case on behalf of a person who has been discriminated against. When the rights of many individuals are violated, the organisations mentioned have standing to take public interest court action on their own behalf without authorisation from any particular victim. Under the Law, they have standing to represent complainants in court, as well as to intervene in proceedings in their support. They also have unconditional standing to initiate proceedings before the equality body without a particular victim. NGOs have taken a number of such public interest lawsuits and equality body proceedings. Discrimination litigation, especially when brought by NGOs, often receives coverage by the media therefore, the positive outcome is the enhanced public attention on the issues.

Sanctions for discrimination imposed by the Equality body include monetary penalties, with a maximum amount equivalent to €1,250 and binding instructions for the respondents to take particular preventive or remedial action. The Equality body actively uses its sanctioning powers, often imposing close to maximum fines, and ordering remedies, such as reinstatement, amendment of regulations, etc. It is unclear however, to what extent these

sanctions are complied with in practice, and how effective the authorities' response is, in cases where they are not. It can be assessed that for the moment the rate of implementation of the decisions of the Equality body by both public and private actors is unsatisfactory.

Court-ordered redress includes compensation with no maximum limit, and orders for respondents to take, or to abstain from specific action. The average amounts of compensation for non-pecuniary damages have been moderate, around €300, with exceptional awards of €1,250 to €2,500.

Impact of the Law on Gender Equality

Since 2004, the Act has been actively enforced in practice, generating a growing body of case law. The courts, as well as the Equality body, have adjudicated a number of cases in positive ways, with some quite progressive and strong decisions, including against institutional discrimination, as has the Supreme Administrative Court, which reviews decisions by the Commission for Protection against Discrimination. However, the authorities still have to overcome a number of deficiencies in the way they handle the concepts of discrimination law.

The case-law of the Commission for Protection against Discrimination and of the courts has not been so much focused on the issue of gender equality. Since the inception of the Equality body only about 15-20 cases were decided based on grounds of sex discrimination. The Commission is still reluctant to issue well motivated decisions with deep analysis of gender relations. The legal practice has so far focused on cases of equal pay, sexual harassment cases, related with other such labour issues and gender quotas in the education system. For example, the Commission ruled in favour of such quotas in languages and teaching university subjects in order to avoid further sex segregation in the labour market (the decision was confirmed by the Supreme Administrative Court). There also have been cases initiated by women concerning sexual harassment and there is a clear tendency that such cases are on the increase. For almost 8 years of its existence, the Commission did not manage to issue a real landmark case on gender equality. And this is a serious deficiency of this mechanism. It has to be noted that this body has even shown a negative attitude towards impact cases brought to its attention of gender stereotyping in media and advertising. In fact in a distorted way the Commission has applied the burden of proof rule to the cases of gender discrimination as a result of stereotypes and thus contributed to the tolerance towards the openly sexist advertisements in society. Therefore, the definition and effective application of the burden of proof rule has to be improved.

The effectiveness of sanctions and the level of compensation in cases of discrimination remain serious issues. No compensation was allocated in cases of sex discrimination. Therefore the Equality body is still not specialized well enough in dealing with gender equality cases.

The Commission is not responsible for promotion, monitoring and analysis of equal treatment based on sex. There is no real mechanism entrusted with such tasks among Bulgarian institutions. So the requirements of the UN instruments and documents, for a governmental mechanism for the advancement of women are not fulfilled.

Currently the protection of gender equality through the *Anti-discrimination Act* is satisfactory, more due to the written body of law rather than to the effective implementation. Clearly, a special gender equality law is still needed in Bulgaria.

Challenges and Lessons learnt

Based on the assessment that a special gender equality law is needed, Bulgarian women's NGOs, started using the mechanisms for alternative reporting before the UN bodies and treaty bodies. As a result of this NGO activism and international lobbying in the course of the *Universal Periodic Review* in November 2010, the government had to undertake the commitment for the adoption of the law within the next reporting period. This recommendation to the state was reiterated by the Human Rights Committee in July 2011, also thanks to the women's NGO pressure. In July 2012, the CEDAW Committee recommended strongly the adoption of a gender equality law and establishment of a respective institutional mechanism as well.

Under the pressure of NGOs, a special working group for the elaboration of a draft Plan on the implementation of the CEDAW recommendations was formed within the Ministry of Labour and Social Policy. The group started its work in the middle of political upheavals in February 2013 but the final draft was adopted by the end of April 2013. Unfortunately, due to the continuing political crisis, the national elections and also the instability after the elections, the document was not passed and approved by the Council of Ministers.

In the case of the adoption of a special gender equality law, a special equality body shall be established and the enforcement and overall protection will improve as well. The process is expected to begin in September 2013, according to the Draft Plan on the implementation of the CEDAW Committee recommendations.

The lessons learnt by women's NGOs through all this contradictory but yet positive process: to keep up the good and focused work and the perseverance despite different political changes and temporary failures, to request the adoption of a special gender equality law with effective institutional mechanisms and equality bodies ensuring real protection, even in parallel with a general anti-discrimination law, to make alliances of and with NGOs. The active and effective use of the international instruments and mechanisms, like the EU requirements and the requirements of the UN conventions and bodies, is another tool for success.

Conclusions and Recommendations:

- * The case of Bulgaria illustrates that the general anti-discrimination act is not enough in order to address gender based discrimination in the most effective way. A specific gender equality law with effective institutional mechanisms is necessary (even in parallel with a general anti-discrimination law) – not only for a more detailed regulation of the issue but also for educational purposes, i.e. as a clear statement of the State that discrimination based on gender is not tolerated in any way.
- * Constant gender equality educational campaigns should be implemented both at education institutions (schools, universities, colleges) and targeting society at large.
- * The drafting process of the law should include experts on gender equality, women non-governmental organizations, civil society representatives, and other interested national and international organizations. NGOs are strongly recommended to make alliances and work together.
- * Both examples – Lithuanian and Bulgarian – demonstrate that the law initially is seen by politicians and state officials as an unnecessary legal regulation of social life and thus attains a large amount of resistance. Nevertheless, initiatives and constant pressure by civil society organizations leads the way.
- * The legal regulation should explicitly indicate that the obligation to ensure equal opportunities of women and men is applicable to all State and municipal institutions and agencies, education institutions, all employers, sellers, producer of goods, service providers; the law should also ban discriminatory advertising.
- * Certain cases, such as the special protection of women during pregnancy, childbirth and nursing; different cases for fulfilling military conscription for men and women; different pensionable age for women and men, etc. should not be considered as discrimination.
- * As a minimum set, the law should prohibit direct discrimination, indirect discrimination, sexual harassment; provide for positive measures, possibility for human rights NGOs to represent discrimination victims at court or other administrative procedures; establish a rule of shifting the burden of proof. It is also recommended to directly prohibit multiple discrimination, and provide for a quota system in certain spheres.
- * With the proposal of the anti-discrimination law, all necessary amendments to other legal acts should be proposed, such as necessary amendments to the *Code of Civil Procedure* allowing an NGO to represent a person discriminated against in judicial or administrative procedures on his/her behalf.
- * An independent institution responsible for the implementation of the anti-discrimination law should be established and provided with competences to investigate individual complaints, initiate investigations *ex officio*, deal with administrative cases, impose sanctions, and provide recommendations, etc.
- * The sanctions established for violation of equal treatment should be of such a nature as to constitute appropriate compensation for the victims of discrimination and a means of pressure which it would be unwise to disregard.

Chapter 2: Law of Equal Opportunities of Women and Men

- * International mechanisms such as *Universal Periodic Review* by the UN Human Rights Council or alternative reporting system to other UN Committees (such as UN Committee on the Elimination of Discrimination against Women) should be used to push for the necessary changes and fight discriminatory attitudes and patriarchal stereotypes.
- * The Media should also be involved in this process as much as possible: relevant training for independent journalists, media owners, media companies and their staff should be organized. The implementation of the trainings should be carried out by the human rights NGOs.



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