



DOMESTIC VIOLENCE PROTECTION ORDER APPLICATION GAPS AS A VIOLATION OF HUMAN RIGHTS

Egidijus Nedzinskas, Renata Sliaziene

Lithuania Business College

Abstract

The article examines the main gaps of the implementation of the new version of the Law on Protection Against Domestic Violence, which entered into force in Lithuania on the 1st of July 2023, and its accompanying legislation. The topic analysed in the article is of great relevance today, because the number of criminal offences related to domestic violence in Lithuania is increasing. Domestic violence is defined as any form of physical, emotional, sexual or psychological abuse, it is a violation of human rights. The new version of the Law on Protection Against Domestic Violence introduced a new concept called the Domestic Violence Protection Order, which is a preventive protection measure designed to protect a victim of domestic violence, and which obliges abuser to move temporarily from the place of residence. This is an important step towards creating a secured society, however, there is a lack of information addressed to the problems of the implementation of Domestic Violence Protection Order in Lithuania in the context of the protection of human rights. It is therefore reasonable to investigate what problems are faced by police officers when issuing a domestic violence order and by the courts when dealing with complaints about compliance with the terms of the order issued. Thus, the object of the investigation is the Domestic Violence Protection Order. The aim of the article is to investigate the Domestic Violence Protection Order application gaps as a violation of human rights. The Objectives of the study are 1) To explore the concept of domestic violence and its legal regulation; 2) To carry out a case study of Lithuanian court practice of the Domestic Violence Protection Order application problems. The methods used for the investigation: analysis of literature and legislation and a case study of a court decision. To fulfil the purpose of the research, a specific case of court practice was analysed. In this case even several violations committed by police officers when issuing a domestic violence order for a person and checking the person's compliance with the terms of the domestic violence order were recorded and analysed in the court decision. It was found that despite police officers play an important role in ensuring the safety of the public, in some cases they decide without analysing and investigating the factual circumstances, without giving reasons and legal arguments. This creates several problems in terms of human rights protection. Thus, police officers in some cases violate the rights of the violent person and this highlights the problems faced by police officers when issuing a Domestic Violence Protection Order and by the courts when dealing with complaints about compliance with the terms of the order issued. A special attention of Lithuanian legislators should be given to these gaps of Domestic Violence Protection Order application as they can lead to the violation of human rights.

KEY WORDS: Domestic Violence, Human Rights, Criminal Offence, Domestic Violence Protection Order, Legal Responsibility.

JEL classification: K1, K10, K19

Introduction

Domestic violence is one of the most serious problems in the world and in Lithuania. To achieve a positive result in this area, it is necessary to adopt appropriate legislation and ensure that it is properly implemented. In Lithuania, legislation and its implementation are constantly being improved in the fight against domestic violence.

The new version of the Law on Protection Against Domestic Violence, and its accompanying legislation entered into force in Lithuania on the 1st of July 2023, introducing a new concept called the Domestic Violence Protection Order. The purpose of this measure is to protect and ensure the safety of a person who may be exposed to domestic violence. This means that an adult who may cause a risk of domestic violence is obliged to temporarily move out of his/her place of residence if he/she is living with a victim of domestic violence. This measure is intended to ensure the safety of the victim and to reduce the risk of violence posed by relatives, who are identified in the law as perpetrators of violence. This is an important step towards creating a safer society where individuals can feel protected from domestic violence and threats to their safety. However, the newly enforced law

caused changes also brought confusion in its application, particularly in human rights protection.

Issues of domestic violence are of high interest in scholars' investigations. Haider et al (2024) examined violations of human rights and freedoms, where women and children are usually the victims of domestic violence. Gunawan et al (2024) examined the problems of children experiencing violence, emphasizing the importance of protecting children's rights. Said et al (2024) analysed the current issues of women's rights and the problems of domestic violence under international law. Cichowski (2016) and McQuigg (2014) analysed domestic violence in the context of the protection of human rights and freedoms. Ortiz-Barred and Vives-Cases (2013), and Winstock (2016) investigated the regulation of domestic violence from a criminal law perspective and have addressed the main issues. Douglas (2015) has elaborated on the specificities of the qualification of domestic violence.

Scholars have also researched the constantly changing law on protection against domestic violence in Lithuania. Gulbickaja (2013) wrote about the application of the Law on Protection against Domestic Violence, which was in force on 15 December 2011. Bučiūnas and Velička (2017) examined the challenges of success in identifying domestic violence. Sliaziene and Nedzinskas (2023) delved into the assessment of police officers dealing with

domestic violence at the junction of the old and the new versions of the Law on Protection against Domestic Violence. On the practical side, the problems of the imposition and implementation of domestic violence orders have been focused on by the President of the Kaunas Chamber of the Kaunas District Court Purvainis (2023, 2024).

However, there is a lack of information addressed to the problems of the implementation of Domestic Violence Protection Order in Lithuania in the context of the protection of human rights. No one has examined the problems related to the issuing of a domestic violence order, the control of its compliance, which may lead to violations of human rights and freedoms. It is therefore reasonable to investigate what problems are faced by police officers when issuing a domestic violence order and by the courts when dealing with complaints about compliance with the terms of the order issued, and how can this result in a violation of individual rights.

The object of the investigation is the Domestic Violence Protection Order.

In order to investigate the gaps in the application of the Order on domestic violence as a violation of human rights, the concept of domestic violence and its legal regulation are examined, and a case analysis of the application of the protection against domestic violence order in court practice is carried out.

The methods used for the investigation: analysis of literature and legislation and a case study of a court decision.

Theoretical Background

Scientific literature provides several definitions of domestic violence. Harefa (2021) states that domestic violence is defined as any form of physical, emotional, sexual or psychological abuse. Aragbuwa (2021) points out that together with women, men and children are also a subject of domestic violence. Lavédrine and Gruev-Vintila (2023) defined domestic violence as a violation of human rights and highlight that numerous studies show that the current situation is based on the concept that domestic violence is far from the experience of the victims and that criminalization and prevention of domestic violence are only partially effective. This human rights-based concept does not reduce it to some individual, psychological problem, because domestic violence is much closer to the victims' experiences, and therefore has led to legal innovations.

Judges, whose duty until now has been to prosecute and sentence offenders, have seen their role strengthened by the inclusion of protective measures against domestic violence (Jouanneau and Matteoli, 2018). However, criminal law still focuses on punishing domestic violence in violent incidents (Stark and Hester, 2019; Côté and Lapierre, 2021; Gruev-Vintila and Toledo 2021. Muller-Lagarde and Gruev-Vintila (2022) argue that victims may suffer without being under the control of the perpetrator. Despite the possibility that human rights against domestic violence will be implemented, there are still obstacles to their implementation. According to Stulginskienė (2014), the police are on the front line in the fight against domestic violence.

Article 21 of the Constitution of the Republic of Lithuania (1992) states that "it is prohibited to torture, mutilate, degrade the dignity of a human being, to treat him or her cruelly, and to impose such punishments." Based on this provision of the Constitution of the Republic of Lithuania, the Law on Protection against Domestic Violence was adopted on 26 May 2011. Thus, this law has been continuously improved, and 11 amending laws have been adopted up to 28 March 2023 and the new version with all accompanying legislation entered into force on 1 July 2023.

The essence of the Law on Protection from Domestic Violence is to ensure the safety of all persons, including children, from violence that often occurs in the domestic environment and threatens society. This legal instrument provides the legal preconditions for a rapid response to the threat of violence, for measures to prevent and protect against domestic violence, and for the provision of specialised and comprehensive assistance to those who have experienced domestic violence. Furthermore, the Act defines the competences of institutions and organisations to ensure the prevention of, protection against and specialised assistance to those who are at risk of or victims of domestic violence. This is an important step towards ensuring the safety of all individuals and preventing the threat of domestic violence.

The Law on Protection Against Domestic Violence defines what constitutes domestic violence and highlights that women are often the victims of domestic violence. It also establishes the rights of people who are at risk of or have experienced domestic violence and ensures the implementation of preventive measures against domestic violence. It also sets out the rights and obligations of those who are subject to a domestic violence protection order. The law defines specific procedures and steps on how this order can be applied for and how it can be obtained. This includes court decisions, applications and filing documents. It sets out who can appeal against this order.

The latest amendment to the Law on Protection against Domestic Violence entered into force on 1 July 2023. The introduction of a new concept in the Act, the Protection from Domestic Violence Order, as it is a preventive protection measure designed to protect a victim of domestic violence, and which obliges an adult who makes risk of domestic violence to move temporarily from the place of residence, if he/she is living with a victim of domestic violence, not to visit his/her place of residence, not to approach him/her and the adult persons and/or children living with him/her, not to communicate with them, not to seek contacts with them.

The police shall immediately carry out a domestic violence risk assessment if there are indications of a criminal offence. The police office has a duty to inform persons at risk and victims of violence of the decisions taken, either through electronic channels or in writing. Despite the common stereotype that police action is focused only on certain socially at-risk families, where violence is a daily occurrence, this is a misconception. Violence can occur in all segments of society and the provisions of the law on the protection of victims from perpetrators apply equally to all. Police officers play an

important role in ensuring the safety of the public, irrespective of social or economic status.

A simplified scheme of the issue of the Domestic Violence Order by police to the abuser and possible further scenarios are presented in Figure 1.

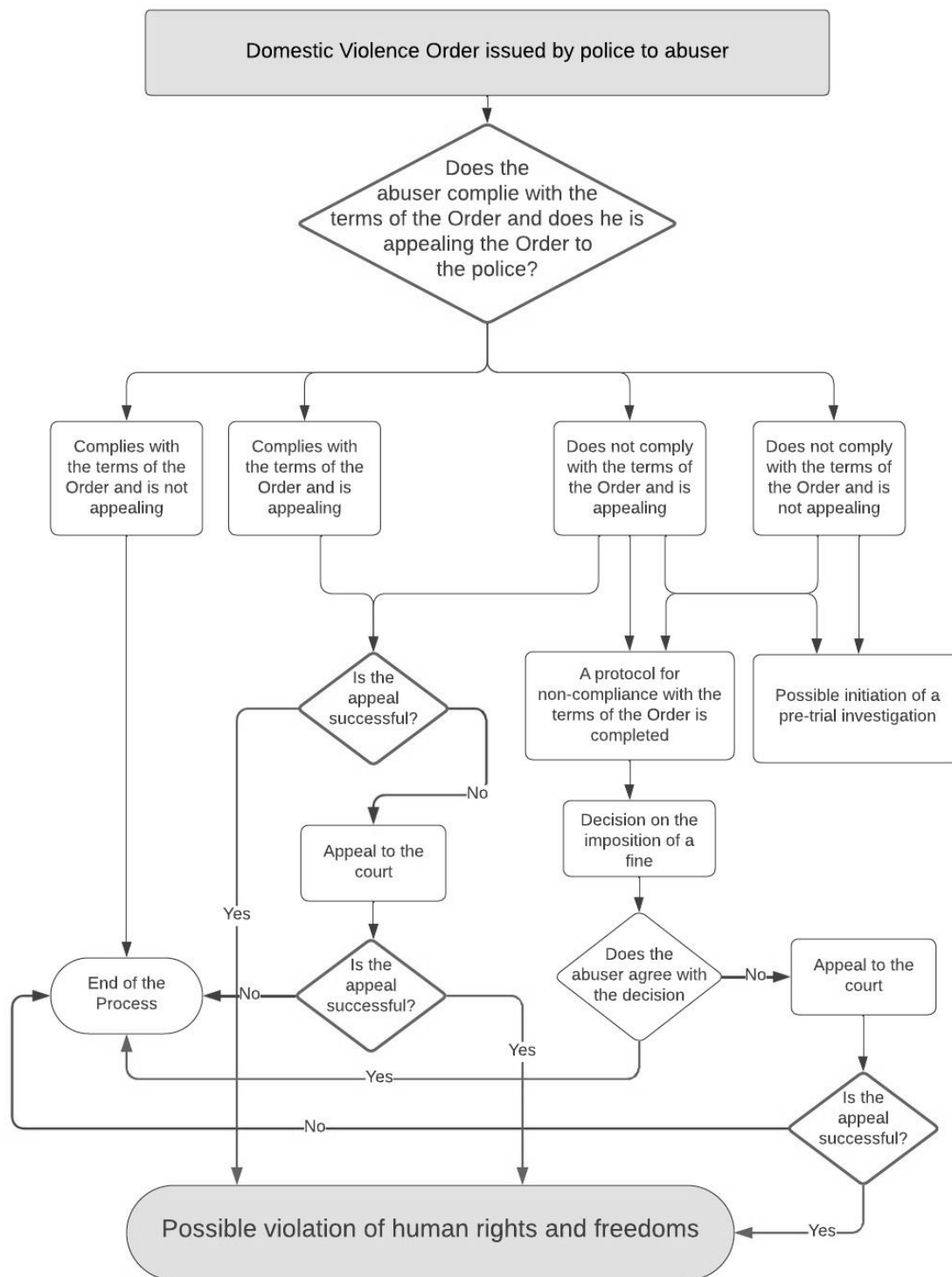


Fig. 1. Simplified scheme of the issue of the Domestic Violence Order and possible scenarios

However, according to Purvainis (2023), in some cases police officers decide without analysing and investigating the factual circumstances, without giving reasons and legal arguments. This creates several problems for those who disagree with the decisions and

appeal them to the courts. This approves that there are some gaps in application of domestic violence order that should be investigated.

Methodology

To investigate domestic violence order application gaps as a violation of human rights, a case study is used in this article, which provides an opportunity to thoroughly analyse and describe one fact in a real context and explain the phenomenon under investigation, especially when the boundaries between the phenomenon and its context are not clear. Case studies are increasingly being used as a reliable research strategy (Stake, 2000). This is a qualitative research strategy where one or more specific cases that illustrate the research problem are examined in detail and in depth. Here, the greatest attention is paid to a specific case, which is attempted to be described and explained in as much detail as possible, and to answer the research questions. A case study can be defined as a sequential investigation of a phenomenon in a related context. The goal of such research is usually to provide an analysis of the context processes that would reveal the theoretical aspects of the phenomenon under study. When describing a unique or exceptional case, a new phenomenon, case studies can play an important role in generating hypotheses and constructing new theoretical models, highlighting testable theoretical aspects of the studied phenomenon.

The steps of the case study are:

- Identification of the selected case and determination of the boundaries of the case - an analysis of a specific court case is carried out
- Data collection – data related to the court case are collected about the situation, the process, the court decision.
- Data analysis. First, a detailed description of the case is presented, analysing the sequence of events and the actors of the case. The following is an analysis of the situation and its conditions. Finally, the court decision is analysed.
- Interpretation of the results - the conclusions of the conducted research are presented, new aspects of the analysed phenomenon are revealed, to demonstrate how the case study made it possible to deepen the understanding of the problem, what newly discovered facts could be further analysed and studied.

To fulfil the purpose of the research, a specific case was chosen to be analysed - a case in which even several violations committed by police officers when issuing a domestic violence order for a person and checking the person's compliance with the terms of the domestic violence order are recorded and analysed in the court decision.

Results and Discussion

The newly adopted version of the Law on Protection Against Domestic Violence (2023), which entered into force in 2023 July 1 should have brought many positive innovations, but with the implementation of this law, several problematic issues concerning the protection of human rights and freedoms arose.

Let's examine the Lithuanian Courts case of a person called Person Posing a Danger (PPD) according to the order - Z. T., who was fined for not complying with the domestic violence protection order to temporarily move

out of the place of residence located at the address, not to visit the place of residence of the person in danger (PD), not to come within 100 meters of the person in danger - A. T., not to communicate, not to seek contact with a person in danger - A. T.

Article 8, Part 4 of the Law stipulates how police officers must immediately inform persons about the appointment of a violence warrant in accordance with the procedure established by the General Commissioner of the Lithuanian Police by means of electronic communication or in writing. 2023-06-20 of the General Commissioner of the Police of the Republic of Lithuania by order no. 5-V-506 p. 9 of the approved "Description of the procedure for responding to reports of domestic violence by police officers and accepting a decision on the protection against domestic violence warrant, its execution and control". stipulates that a police officer conducts a risk assessment of the danger of domestic violence using the functions of the Register of events registered by the Police (hereinafter referred to as the Register of Police Events) in the window "Primary result of information verification". After selecting "Domestic Violence danger risk assessment" in the classifier, fill in the personal data of the PD and PPD, indicate the phone number and (or) e-mail address. If these contact data are not available, notifications related to the granting or non-granting of a protection order against violence, and other mandatory PD and PPD to provide information specified in the Law of the Republic of Lithuania on Protection against Domestic Violence, upon completion of the domestic violence risk assessment, PD and PPD are handed over in paper form. After indicating the contact details of PD and PPD, notifications specified in Law on Protection Against Domestic Violence PD and PPD are sent by electronic means of communication automatically.

Control of how individuals comply with the obligations of the protection against violence order is entrusted to police officers (Article 8, Paragraph 6 of the Law). If it is determined that a person who poses a risk of domestic violence does not comply with the obligations of the protection against violence order, the latter shall be liable in accordance with the procedure established by the Code of Administrative Offenses of the Republic of Lithuania, i.e. i.e. he is subject to Article 489 of the Code of Administrative Offenses. 2 provides for administrative responsibility.

It can be seen from the data of the case (ruling of the Kaunas district court dated 01/09/2024 in the administrative offense case No. II-33-48/2024) that on 08/29/2023 9:15 p.m. Z. T. was issued a violence warrant no. 00000000000X, with which the latter had to temporarily move out of his place of residence for 15 days, not to visit the place of residence of a person at risk of domestic violence, not to approach a person at risk of domestic violence for 100 years. at a distance

Violence warrant Z. T. was served as stipulated by the above-mentioned legal regulation, by electronic means, which was indicated by Z. T. Vol. i.e. 2023-08-09 21:20 sent SMS to phone No. +370XXXXXXX, and an e-mail via e-mail zigote@gmail.com. Therefore, the obligation to submit a paper form did not arise.

The chief investigator of the Department of Administrative Misdemeanours of the Kaunas County Chief Police Commissariat in the presence of a person brought to administrative responsibility is Z. T., after examining the administrative offense case, in 2023 September 7 adopted a resolution by which, without determining Z. T. mitigating circumstances and after establishing one aggravating circumstance - the administrative offense was committed by a person who was drunk or under the influence of narcotic, psychotropic or other psychoactive substances and these circumstances had an influence on the commission of the administrative offense, found him guilty of committing the administrative offense provided for in Article 489, Part 2 of the Civil Code. By resolution Z. T. an administrative penalty was imposed on - a fine of 200 euros.

Z. T. of a person punished administratively and forwarded by the Institution to the Kaunas Chamber of the Kaunas District Court. Z. T.'s complaint regarding the annulment of the Authority's decision. The applicant Z. T. In the complaint submitted to the court, indicates that he does not agree with the violation specified in the resolution, since he learned about the Protection against domestic violence order in 2023. on August 10, when the officer who arrived at the house at the address explained that he had a 2023 August 9 9:15 p.m. a domestic violence protection order was issued. in 2023 August 9 9:15 p.m. when the police officers arrived, they did not submit a Domestic Violence Protection warrant and did not notify by electronic means. The Order was not handed over in paper form, was not introduced to it, and was not signed anywhere. No e-mail notification was received. Asked the court to cancel the appealed decision of the Authority, or after the court found that he was correctly and properly informed about the delivery of the Order, or to impose a minimal administrative penalty for an administrative offense.

The institution submitted a response to the applicant's Z. T.'s complaint requesting that the applicant's complaint be dismissed. Indicates that Z. T.'s violence warrant was served by electronic means, which was indicated by Z. T. Vol. i.e. 2023-08-09 21:20 sent SMS to phone No. 86XXXXXX, and a letter to e-mail by e-mail: xxxx1@gmail.com. Therefore, the obligation to submit a paper form did not arise. It should be noted that the person's contact details were carefully checked, even repeating several times and showing the person himself how the officer wrote them down, this was also recorded in the record in the file. In this case, such contact data was dictated by the person himself, therefore he himself is responsible for their correctness, and besides, the person was informed about the violence warrant not only by e-mail, but also by phone number via SMS message, and as you can see, the phone number matches the person's actual phone number contact number, which is also indicated when submitting a complaint. The SMS message, which is automated, also contained information about the issued violence warrant and the consequences of its non-execution, as well as the possibility to find out more information about it at the police station. Regarding the issue of individualization of the administrative

penalty raised in the complaint, the Authority notes that after examining the administrative offense case, the amount of the administrative penalty was selected taking into account the nature of the committed administrative offense, the form and type of the offender's guilt, mitigating and aggravating circumstances, in accordance with Article 34, Part 2 of the Criminal Code, therefore there is no way to mitigate it. The institution requests the Applicant Z. T. to reject the complaint and leave the appealed resolution unchanged.

From the submitted response of the Institution to the complaint, the response is templated (templated), does not delve into the situation, does not individualize either the situation or the personality of the Order appointed by PPD, neither when assigning the Order nor when checking how the conditions of the appointed Order are being followed.

The witness M. D. indicates that he works in the 1st department of the Kaunas County Chief Police Station Response Board. Arriving at the call on August 9. issued a domestic violence warrant. He does not remember the exact circumstances, but he remembers that both persons were drunk, it was difficult to talk to them. When issuing the Order, the person is informed by e-mail. by mail and phone, he had to indicate contacts and was informed by them, and he was informed and verbally. It cannot be said whether the person understood the warrant issued to him.

The court satisfied the complaint and indicated that Article 641 of the Civil Code of the Republic of Lithuania establishes that the court, when considering a case regarding a complaint regarding a decision made outside court in an administrative offense case, verifies the legality and validity of the decision made by the institution. Pursuant to the provisions of Articles 563 and 567 of the Civil Code, the procedural decision adopted in the case shall be considered legal and reasonable only when all circumstances relevant to the correct resolution of the case are fully, thoroughly and objectively explained and evaluated.

Article 569 of the Code of Administrative Offenses of the Republic of Lithuania establishes that the body (official) evaluates the evidence according to its internal conviction, based on a comprehensive and objective examination of all the circumstances of the case, guided by the law and legal consciousness. From this legal norm, it can be concluded that the presence or absence of a certain fact can only be established based on the totality of the evidence collected in the case, and not on individual evidence. When determining legally significant circumstances, the totality of the evidence collected in the case, their sufficiency, consistency, their possible contradictions, logic, the circumstances of specifying the relevant data, and the reliability of the evidence sources must be evaluated.

From the material presented to the court, the applicant Z. T. was held administratively liable according to Article 489 of the Civil Code of the Republic of Lithuania. 2 d. due to the fact that in 2023 on August 10, at 12:30 p.m., failed to comply with a domestic violence protection order valid until 2023. August 25 08.42 a.m. to temporarily move out of the place of residence located at the address, not to visit the place of residence of the

person at risk, at the address, not to come within 100 meters of the person at risk - PD, not to communicate with, not to seek connections with PD.

In the complaint submitted to the court, the applicant Z. T. with the Institution's 2023 September 7 does not agree with the decision, because the Police officers did not properly inform him about the domestic violence protection order adopted against him, either in writing or by means of electronic communication. Also, the police officers did not inform him about the obligations imposed on him and his rights, which he learned about only when a protocol was drawn up for him.

Part 2 of Article 489 of the Criminal Procedure Code stipulates that non-compliance with the obligations of the domestic violence protection warrant entails a fine of eighty to three hundred and twenty euros.

It should be noted that from 2023 July 1 The wording of the Law of the Republic of Lithuania on protection against domestic violence (hereinafter - the Law) that came into force provides that in order to protect persons at risk of domestic violence from domestic violence, if there is a sufficient risk that domestic violence may be used, persons at risk of domestic violence a protection against violence order may be issued (Purvainis, 2024). Paragraph 12 of Article 9 of the Law states that the complaints referred to in this Article, filed with the district or district court, to the extent not specified in this Law, are examined in accordance with the Code of Criminal Procedure of the Republic of Lithuania (hereinafter referred to as the Criminal Procedure Code) order It should be noted that Article 18 of the Law provides for administrative liability in accordance with the procedure established by the Code of Administrative Offenses for persons who falsely reported domestic violence, abused the rights of persons at risk of domestic violence, abused the rights of persons who experienced violence, and did not comply with the obligations of a protection against violence order. Paragraph 2 of Article 8 of the Law stipulates that a protection order against domestic violence is issued by a police officer for a period of 15 days, when he receives a report of possible domestic violence, and after conducting a risk assessment, the risk of domestic violence is determined.

Article 8, Part 3 of the aforementioned Law specifies that after the issuance of a protection against violence warrant, a person posing a risk of domestic violence is obliged for a period of 15 days from the moment of the issuance of a protection against violence warrant: 1) to temporarily move out of the place of residence, if he lives with a person at risk of domestic violence person, regardless of who owns the property; 2) not to visit the place of residence of a person at risk of domestic violence, regardless of whether the person at risk of domestic violence lives there or not together with the person at risk of domestic violence; 3) not to approach the person at risk of domestic violence and adult persons living with him and/or children living in an environment where the risk of domestic violence has been caused, within the distance specified in the protection against violence order; 4) not to communicate, not to seek connections with a person at risk of domestic violence and adult persons and/or children living with him. Part 4 of this article specifies that the police officer must

immediately inform about the decision on the issuance of a protection against violence warrant (if it is decided to issue a protection against violence warrant, the date and time of the issuance of the protection against violence warrant) in accordance with the procedure established by the General Commissioner of the Lithuanian Police via electronic means of communication or in writing: 1) a person who poses a risk of violence in the intimate environment - about the issuance of a protection against violence order, the obligations applicable to him, the duration of their application, responsibility for non-compliance with the applicable obligations, the procedure for appealing the decision to issue a protection against violence order, established in paragraph 1 of Article 9 of this law, the nearest institutions where accommodation services are provided, as well as about opportunities to attend a violent behaviour change program (training) (names of legal entities, addresses of places of activity, telephone numbers, e-mail addresses are indicated); 2) a person at risk of domestic violence, when a protection against violence order is issued - about the granting of a protection against violence order, obligations applicable to a person posing a risk of domestic violence, the duration of their application, responsibility for non-compliance with applicable obligations, the right of a person posing a risk of domestic violence appeal the decision to issue a protection against violence order; when a protection against violence warrant is not issued, - about the decision not to issue a protection against violence warrant, the procedure for appealing a decision not to issue a protection against violence warrant, established in Article 9 of this law. 1, as well as on responsibility for abuse of the rights of persons at risk of domestic violence; 3) The State Child Rights Protection and Adoption Service or its authorized territorial departments - about the fact of issuing a protection against violence order, the obligations applied to a person who poses a risk of violence in the close environment, and the duration of their application (specify the child's name, surname, date of birth, address of the child's location, the circumstances of issuing a protection against violence order If they are known at the time) If a child lives with a person at risk of domestic violence, the person at risk of domestic violence is a child, the child has witnessed domestic violence or lives in an environment where violence has occurred; 4) the center of specialized comprehensive assistance and transfer to it the results of the risk assessment of the danger of domestic violence, carried out in accordance with part 2 of this article. The center of specialized comprehensive assistance must contact the person at risk of domestic violence and offer him specialized comprehensive assistance, if he agrees to receive it. Paragraph 5 of the same article states that when a person who poses a risk of domestic violence is subject to the obligation to temporarily move out of the place of residence where he lives together with a person who is at risk of domestic violence, police officers immediately ensure the removal of the person posing a risk of domestic violence.

2023 of the General Commissioner of the Lithuanian Police June 20 by order no. 5-V-506 was approved "Description of the procedure for the response of police officers to reports of domestic violence and the adoption

of a decision on the adoption of a protection warrant against domestic violence, its execution and control (hereinafter - the Description)". Part 9 of Chapter III of the description indicates that the police officer performs the risk assessment of the danger of domestic violence by using the functions of the Register of Events Recorded by the Police in the window "Primary information verification result". After choosing "Domestic Violence risk assessment of danger" in the classifier, fill in the data of the potentially violent or dangerous person and the dangerous person, indicate the phone number and/or e-mail address. If these contact details are not available, notifications related to the granting or non-granting of a protection against violence order and other mandatory PD (person who has experienced or is at risk of domestic violence) and PPD (person who is violent or poses a risk) to submit the information specified in the Law on Protection Against Domestic Violence, after the risk assessment of the risk of domestic violence is completed, the PD and PPD are delivered in paper form. After indicating the contact data of PD and PPD, the messages specified in Law on Protection Against Domestic Violence, PD and PPD are sent by electronic means of communication automatically. After the issued protection order against violence has been handed over to the PPD in paper form and signed by the PPD, the police officer must take a photo or scan it and upload it to the PRJR. When the PPD is not present at the scene of the incident, the police officer who responded to the incident delivers the warrant of protection against violence to him, and if this cannot be done for objective reasons, the delivery is organized by the Operational Management subsection. After the notification of the issued or not issued protection order against violence has been delivered to the PD in paper form, it does not need to be signed and uploaded to the PRJR.

The court, after checking the evidence in the case and hearing the testimonies of the witnesses, has no reason to agree with the assessment of the evidence presented in the Authority's decision and concluded that the case contains reliable data that would allow an indisputable conclusion about Z. T. is guilty of committing the administrative offense he was charged with, provided for in Article 489 of the Civil Code. 2 d. The Authority did not base such a procedural decision on a comprehensive and objective examination of all the circumstances of the case, did not remove the doubts existing in the case regarding the guilt of the person being held administratively responsible, therefore the appealed decision cannot be recognized as reasonable and legal.

From the domestic violence protection warrant in the case, it can be seen that PPD, the time of issuing the warrant is 2023. August 9 9:15 p.m., the warrant is valid until 2023. August 25 8:42 a.m. PPD has the following obligations: 1) to temporarily move out of the place of residence located at the address 2) not to visit the place of residence of the person experiencing danger located at the address; 3) do not approach within 100 meters of the PD; 4) not to communicate or seek connections with PD. Witness A. T. confirmed during the court hearing that she also did not know anything about the issued warrant and cannot confirm that her brother was informed about the

issued warrant. After writing the Order, the witness M. D. confirmed during the court hearing that the persons were drunk, but he did not confirm whether the person understood the Order issued to him. Witness E. B. explained during the court hearing that when he came to check whether the person complied with the issuance of the warrant, he found Z. T. at home. Z. T. and immediately explained to him why he had come. The witness also did not confirm that Z. T. knew about the Order issued to him.

After evaluating the data in the case, the court heard the witnesses A. T, E. B. and M. D.'s testimony given in court, decides that in the case under consideration it cannot be established that the applicant Z. T. was properly informed about the domestic violence warrant issued against him. It should be noted that the Institution is responsible for ensuring that the person is properly informed about the domestic violence protection order issued against him, the obligations imposed on the person, the duration of their application, responsibility for non-compliance with the applicable obligations, the procedure for appealing the decision to issue a protection against violence order, the nearest institutions, which provide accommodation services, as well as about opportunities to attend a violent behaviour change program (training). The response of the Institution in the case indicates that the applicant was informed by e-mail and phone number via short message. However, the file contains the response of UAB "Bitė Lietuva", which indicates that in the period from 08/09/2023. 8:00 p.m. until 10/08/2023 12:00 p.m. there are no fixed incoming SMS messages to the subscriber. It can be seen from the case file that on August 9, 2023, at 9:16 p.m. email a domestic violence protection order was sent by mail (xxxx1@gmail.com). However, there is no data that such an e-mail address is listed in the state information systems register. As can be seen from the correspondence presented in the case, Z. T.'s e-mail address is xxxx0@gmail.com. In the case, there is no other written evidence and/or other data confirming that the applicant Z. T.'s domestic violence protection warrant would be sent via electronic means of communication in accordance with the procedure established by the Lithuanian Police General Commissioner, and there is no data to confirm that the warrant was delivered to him with a signature. It should be noted that the previously discussed and stated legal regulation specifies and explains the procedure and grounds for issuing a domestic violence warrant, therefore both the newly enacted legal regulation and the application of a domestic violence warrant to a person who has experienced or is at risk of domestic violence and to a person who may have committed violence or is in danger the person causing domestic violence must be served with a warrant in accordance with the procedure and grounds established by law, i.e. i.e. the person must be properly informed about the obligations applied to him, the duration of their application, responsibility for non-compliance with the applicable obligations, the procedure for appealing the decision to issue a protection against violence order, etc. In this case, there is no objective data in the case that the applicant Z. T. would be informed in accordance with the

procedure established by law about the protection against violence warrant applied to him, the obligations imposed by it and the impending responsibility for non-compliance with the obligations imposed and deny the applicant's claims that the warrant was not served on him, and he was not informed about the obligations applied to him and the responsibility for non-compliance with the obligations of course.

It is because of these circumstances that the court concludes that the person brought to administrative responsibility, Z. T. is guilty according to Article 489 of the Criminal Code of the Republic of Lithuania. 2 d. there are too many doubts, which should be evaluated in favor of the applicant, to presume signs of a confirmed administrative offense. Taking into account the rules for the distribution of the burden of proof, i.e. i.e. that the entire risk of failure to provide evidence or failure to remove doubts rests with the Institution that drew up the administrative offense protocol, it can be concluded that in this case no reliable and indisputable data has been collected, which undoubtedly confirms that Z. T. 2023 August 10 12:30 p.m. did not comply with the obligations of the protection against domestic violence order, and thus committed an administrative offense, provided for in Article 489 of the Civil Code. 2 d.

In the case law of the cassation instance, it has been repeatedly stated that the indictment cannot be based on assumptions, the court's conclusions must be based on evidence that indisputably confirms the guilt of the person and other important circumstances of the case. The principle of *in dubio pro reo* obliges, after exhausting all possibilities to eliminate doubts and failing to do so, to evaluate all doubts in favour of the person held responsible (cassation rulings No. 2K-594/2012, 2K-110/2013). A person can be found guilty of committing an administrative offense only after gathering sufficient unquestionable evidence of that person's guilt. Data based on which it can only be assumed that a violation of the law may have been committed is not sufficient to draw conclusions about the person's guilt and impose an administrative penalty. A person's guilt can be established when, after examining the evidence collected during the trial, there is no reasonable doubt that the person being prosecuted committed an act for which a penalty must be imposed.

After evaluating the material in the case and the evidence examined in court, the court states that Z. T. was unjustifiably arrested, therefore the appealed decision is annulled and the administrative offense case against him must be terminated (Code of Administrative Offenses, Article 565-1, d. 1, p. 1, Art. 642, d. 1, p. 2). The court, based on Article 642 of the Civil Code of the Republic of Lithuania. 1 d. 2 p., art. 644, art. 646, decided to satisfy the complaint: to cancel the decision of the Administrative Misconduct Division of the Kaunas County Chief Police Commissariat of 7 September 2023 in the case of administrative misconduct and to terminate the administrative misconduct proceedings against Z.T. in the absence of an administrative misconduct in his actions provided for in Article 489 of the Civil Code of the Republic of Lithuania. 2nd, composition.

The case study has shown that several violations committed by police officers when issuing a domestic violence order for a person and checking the person's compliance with the terms of the domestic violence order were recorded.

Conclusions

Domestic violence is defined as any form of physical, emotional, sexual or psychological abuse, it is a violation of human rights, therefore, it is necessary to apply a set of aid measures for persons at risk of domestic violence. The new version of the Law on Protection Against Domestic Violence, and its accompanying legislation entered into force in Lithuania on the 1st of July 2023, introducing a new concept called the Domestic Violence Protection Order - a preventive protection measure designed to protect a victim of domestic violence, and which obliges a person who makes risk of domestic violence to move temporarily from the place of residence. The police must immediately carry out a domestic violence risk assessment if there are indications of a criminal offence. Police officers play an important role in ensuring the safety of the public, however in some cases police officers decide without analysing and investigating the factual circumstances, without giving reasons and legal arguments. This creates several problems in terms of human rights protection.

The case study has shown that several violations committed by police officers when issuing a domestic violence order for a person and checking the person's compliance with the terms of the domestic violence order were recorded. Thus, police officers in some cases violate the rights of the violent person and this highlights the problems faced by police officers when issuing a Domestic Violence Protection Order and by the courts when dealing with complaints about compliance with the terms of the order issued. A special attention of Lithuanian legislators should be given to these gaps of the Domestic Violence Protection Order application as they can lead to violation of human rights.

References

- Aragbuwa, A. (2021). A standard reading of selected online readers' comments on domestic violence against men in Nigeria. *Men and masculinities*, 24(3), 451-467.
- Bin Md Said, M. H., Grace, K. E., Cahyani, T. D., & Hidayani, P. P. (2024). Prospects And Challenges of Women's Right Against Domestic Violence Under International Law. *KnE Social Sciences*, 893-912.
- Gruev-Vintila, A., Boccabella, J., Frédérique, F., Roselyne, H., Pierre, J., & Léa, K. C. (2022). Violences conjugales-La notion de contrôle coercitif: état des lieux et perspectives. *La Semaine juridique. Édition générale*, 9(9), 476-479.
- Bučiūnas, G., & Velička, V. (2017). Information exchange and inter-institutional cooperation in the investigation of domestic violence cases. *Public Security and Public Order*, (18).
- Cichowski, R. A. (2016). The European court of human rights, amicus curiae, and violence against women. *Law & Society Review*, 50(4), 890-919.

- Côté, I., & Lapierre, S. (2021). Pour une intégration du contrôle coercitif dans les pratiques d'intervention en matière de violence conjugale au Québec. *Revue Intervention*, 153, 115-25.
- Douglas, H. (2015). Do We Need a Specific Domestic Violence Offence?. 39 (2) *Melbourne University Law Review* 434-471.
- Gruev-Vintila, A., & Toledo, F. (2021). Le contrôle coercitif. Repérer les violences au sein du couple dans les interactions et le rapport de pouvoir entre l'auteur et la victime. *L'emprise et les Violences au Sein du Couple*, 277-290.
- Gulbickaja, J. (2013). Aspects of domestic violence and the practice of law application. *Celebration of scientific thought 2013: scientific conference reports*. ISSN 1822-993X.
- Gunawan, Y., Fernando, D., Wardani, R. M., & Arumbintang, M. H. (2024). The Children Right Violation in the Conflict of Sudan: Government Negligence. *Sociological Jurisprudence Journal*, 7(1), 67-74.
- Haider, A., Ali, A., & Zeb, B. (2024). Broken Laws, Broken Lives: When Organized Crime Shreds Human Rights. *AL-NASR*, 1-18.
- Harefa, A. (2021). Faktor-faktor Penyebab Terjadinya Tindak Pidana Kekerasan Dalam Rumah Tangga. *Jurnal Panah Keadilan*, 1(1), 18-21.
- Jouanneau, S., & Matteoli, A. (2018). Les violences au sein du couple au prisme de la justice familiale. *Invention et mise en œuvre de l'ordonnance de protection*. *Droit et société*, (2), 305-321.
- Constitution of the Republic of Lithuania. *Valstybės žinios (Official Gazette)*, 1992, No. 33-1014.
- Lavédrine, M., & Gruev-Vintila, A. (2023). Redefining domestic violence in France as a violation of human rights: coercive control. *Journal of gender-based violence*, 7(3), 435-449.
- Law on the Procedure for Approval, Entry into Force and Implementation of the Administrative Offences Code of the Republic of Lithuania. *Code of Administrative Offences of the Republic of Lithuania*. (2015). (The Code of Administrative Offences shall enter into force on 01.01.2017. The entry into force of the Code was amended by Law No. XII-2275 of 25 March 2016.)
- Lithuanian Courts. Retrieved on internet from liteko.teismai.lt/viesasprendimupaieska/detalipaieska.aspx?detali=2
- Lithuanian Supreme Court cassation ruling 2K- 110/2013 <https://eteismai.lt/byla/22851948744707/2K-110/2013>.
- Description of the Procedure for the Response of Police Officers to Reports of Domestic Violence and the Adoption, Execution and Control of the Decision on the Protection Order against Domestic Violence" approved by the Order of the Commissioner General of the Police of Lithuania No. 5-V-506 of 2023-06-20.
- Law on Approval, Entry into Force and Implementation of the Criminal Procedure Code of the Republic of Lithuania. *Code of Criminal Procedure*. Entered into force on 9 April 2002 (the Law enters into force on 9 April 2002. The Code enters into force on 1 May 2003). Law published in: *Žin. 2002, No. 37-1341; Žin. 2002, No 46-0, i.c. 1021010ISTA00IX-785*.
- Law on Protection against Domestic Violence of the Republic of Lithuania. New wording as of 1.7.2023: No. XIV-934, 15.3.2022, published in the TAR on 22.3.2022, i.k. 2022-05117. [Retrieved August 16, 2023] <https://eseimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.400334/a/sr>
- McQuigg, R. J. (2014). The European Court of Human Rights and Domestic Violence. *Lithuania. The International Journal of Human Rights*, 18(7-8), 756-773.
- Muller-Lagarde, Y., & Gruev-Vintila, A. (2022). Violences au sein du couple: pour une consécration pénale du contrôle coercitif. *Actualité Juridique-Pénale*, 5, 251-54.
- Ortiz-Barreda, G., & Vives-Cases, C. (2013). Legislation on violence against women: overview of key components. *Revista panamericana de salud publica*, 33(1), 61-72.
- Purvainis (2023). Chief Justice Purvainis: I see a lot of gaps in the application of the Protection from Violence Order. <https://www.delfi.lt/news/daily/law/teismo-pirmininkas-purvainis-apsaugos-nuo-smurto-orderio-taikyme-matau-daug-spragu-94461611>
- Purvainis (2024). Kaunas court overturns fine against man who was unaware of sanctions imposed on him. <https://m.kauno.diena.lt/naujienos/kaunas/nusikaltimai-ir-nelaimes/kauno-teismas-panaikino-bauda-vyru-ijs-nezinajo-apie-jam-pritaikytas-sankcijas-1157857>
- Stake, R. (2000). Case studies in N. Denzin and Y. Lincoln (eds), *Handbook of Qualitative Research* second edition Thousand Oaks, CA: Sage.
- Stark, E., & Hester, M. (2019). Coercive control: Update and review. *Violence against women*, 25(1), 81-104.
- Stulginskienė, L. (2014). Domestic violence. Methodological recommendations for police officers dealing with domestic violence. *Trakai: UAB "Grafija"*, 2014. p. 46. ISBN 978-609-8048-17-9.
- Supreme Court of Lithuania cassation ruling No. 2K-594/2012 <https://eteismai.lt/byla/196034563924889/2K-594/2013>
- Sliaziene, R., & Nedzinskas, E. (2023). Domestic violence: the perspective of police officers. *Vadyba / Journal of Management*. No. 2 (39), pp. 85-90. <https://doi.org/10.38104/vadyba.2023.2.10>
- Winstok, Z. (2016). A new definition of partner violence. *Aggression and Violent Behavior*, 28, 95-102.
- 2024-01-09 d. Kaunas District Court's ruling in Administrative Offence Case No. II-33-48/2024.

RECEIVED: 10 October 2023

ACCEPTED: 30 May 2024

PUBLISHED: 29 October 2024

Egidijus Nedzinskas, PhD of Social Sciences, Associate Professor in the Department of Law, Lithuania Business College. Scientific research areas in Law (01S) and Education (07S). He published more than 40 scientific articles. The scientific research has been carried out in the fields of legal liability and social responsibility, international compatibility of legislation, domestic violence, legal regulation of migration processes, study process optimisation, student educational traineeships, methods of applied studies, factors of selection of study programmes. Tel. +37068666880. Email egidijus.nedzinskas@ltvk.lt, ORCID ID: <https://orcid.org/0009-0000-7495-450X>.

Renata Sliaziene, Associate Professor of Law, Head of Department of Law, Lithuania Business College. Scientific research areas in Law (01S). Published more than 10 scientific articles. The scientific research has been carried out in the fields of legal liability and social responsibility, international compatibility of legislation, domestic violence, legal regulation of migration processes, study process optimisation, student educational traineeships, methods of applied studies, factors of selection of study programmes. Has been attending and presenting at various international conferences for more than 10 years, as well as participating in and evaluating student research conferences on legal topics. Prepared more than 20 research papers with students for international conferences. Tel. +37065653964. email renata.sliaziene@ltvk.lt, ORCID ID: <https://orcid.org/0000-0002-1630-0863>.