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**Protection of victims of domestic violence in Lithuania according to international and
European Union law**

Master thesis

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Table of content	
Abbreviations.....	2
INTRODUCTION.....	3
1. PROTECTION FROM DOMESTIC VIOLENCE UNDER THE CONVENTION ON ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN	9
2. PROTECTION FROM DOMESTIC VIOLENCE UNDER THE CONVENTIONS ADOPTED BY THE COUNCIL OF EUROPE.....	12
2.1. Positive obligation of the State under the European Convention of Human Rights	12
2.2. Positive obligation under the Istanbul Convention	15
3. PROTECTION OF VICTIMS IN EUROPEAN UNION.....	18
3.1. New EU standards of victims' protection	19
3.2. Changes of victim treatment and victim protection brought by the Victims' Directive	23
3.3. Victims' protection under the European Protection Order Directive	28
3.3.1. The Objective of the European Protection Order Directive	30
3.3.2. Issues of the implementation of the European protection order	32
3.4. Protection in civil matters	35
3.5. Importance of Victims' Package	40
4. VISTIMS PROTECTION ACCORDING TO LEGISLATION OF THE REPUBLIC OF LITHUANIA.....	40
4.1 Protection of victims under civil law	40
4.2. Protection of victims under criminal and criminal procedure law	42
4.3. Issues of protection orders.....	44
4.4. Can Lithuania provide the required level of protection for foreign victims?	45
4.5. Protection of victims of domestic violence in Lithuania.....	46
4.5.1. The Law on Protection Against Domestic Violence	47
4.5.2. The compliance of the Lithuanian legislation with Victims' Directive	51
4.5.3. Lithuania and CEDAW	62
4.5.4. Conclusion.....	64
CONCLUSIONS AND RECOMMENDATIONS	66
BIBLIOGRAPHY	69
SUMMARY	78
SANTRAUKA	80

Abbreviations

CCP - Code of Criminal Procedure

CEDAW - The Convention on the Elimination of All Forms of Discrimination Against Women

CPM - coercive procedural measures

ECHR - European Convention for the Protection of Human Rights and Fundamental Freedoms

ECtHR - The European Court of Human Rights

EPO - European protection order

EU – European Union

GR 19 - General Recommendation No. 19

TFEU - Treaty on the Functioning of the European Union

INTRODUCTION

Since childhood everyone is taught that harming another living being is wrong. Harming the one who is weaker than you is not only wrong, but it is also unfair due to the inequality of powers. Man who is using violence against woman is not only a naught in front of the society, but as well, he is a criminal in front of the law. However, this has occurred not such a long time ago. For many years violence against women existed, but it was the topic, which was not worth of drawing attention, maybe even a taboo¹. The acknowledgment of the issue in Europe began in the 1970s and 80s². Moreover, this problem, as a fundamental rights concern, has appeared only in 1990s with the requirement to be recognized legally and politically on the high level, and which obliged States to safeguard victims³.

Violence against women is a specific form of discrimination and human right violation. It has to be abolished worldwide. First comprehensive and internationally binding instrument, which declares the elimination of discrimination against women, is the United Nations *Convention on the Elimination of All Forms of Discrimination Against Women*, adopted in 1979⁴. After it more legal tools came into force regarding the elimination of violence against women: *Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women* “*Convention of Belem Do Para*”⁵ applicable for South and North America; Africa has adopted *Protocol to the African Charter on Human and People`s Rights on the Rights of Women in Africa*⁶, which defends women against violence in public, and in private environment. Both conventions have acknowledged the violence against women as violation of human rights⁷. South Asian Association for Regional Cooperation has adopted the Dhaka Declaration to eliminate violence against women in South Asia⁸. Council of Europe *Convention on preventing and combating*

¹ Explanatory Memorandum of Recommendation No. R (2002) 5 of the Committee of Ministers of the Council of Europe to Member States on the protection of women against violence, adopted by the Committee of Ministers on 30 April 2002, at the 794th meeting of the Ministers’ Deputies, para 1

² *Ibid*

³ European Union Agency for Fundamental Rights “Violence against women: an EU-wide survey. Main results”, Luxembourg: Publications Office of the European Union, 2014; ISBN 978-92-9239-342-7, page 7

⁴ *Short History of CEDAW Convention*, <http://www.un.org/womenwatch/daw/cedaw/history.htm>, [accessed on 2015-12-09]

⁵ *Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women* “*Convention of Belem Do Para*” <http://www.oas.org/juridico/english/treaties/a-61.html>, [accessed on 2015-12-09]

⁶ *Protocol to the African Charter on Human and People`s Rights on the Rights of Women in Africa*, http://www.achpr.org/files/instruments/women-protocol/achpr_instr_proto_women_eng.pdf, [accessed on 2015-12-09]

⁷ Kova su smurtu prieš moteris neatskiriama nuo lyčių lygybės, <http://www.delfi.lt/news/ringas/lit/d-leinarte-kova-su-smurtu-pries-moteris-neatskiriama-nuo-lyciu-lygybes.d?id=61910769>, [accessed on 2015-12-09]

⁸ *Dhaka Declaration*, <http://www.saarc-sec.org/Summit-Declarations/67/> [accessed on 2015-12-09]

violence against women and domestic violence (Istanbul Convention) also defines violence against women as a human rights violation and as a form of discrimination against women.

Violence against women covers a lot of human rights violations, specifically right to life, safety, dignity, the right to physical and mental integrity, as well the right to sexual and reproductive choice, health⁹, it nullifies the enjoyment of those rights and fundamental freedoms, moreover, violates sexual integrity, not to mention physical and psychological entity¹⁰. Around the world, there is a persistent stereotype that violence against women prevails among certain levels of society, among people with low incomes or particular ethnics' origins, etc. The reality is very different: violence does not choose - it may touch people of all ages, all religious believes, all kinds of nationalities or education. Violence appears in various forms: it can be physical or sexual, verbal, psychological or emotional, it can be even economical. Any form of violence can be exercised within the family or within community¹¹. Violence against women has to be understood as gender-based violence as it "is predominantly perpetrated by men¹²".

Data provided by the World Health Organization shows that 35% of women around the world experience intimate partner violence during their life; globally, around 38% of women were murdered by their intimate partners¹³. According to the data of the Council of Europe, 45% women in Europe have suffered violence at least once during their lifetime¹⁴. Due to the survey accomplished by European Union Agency for Fundamental Rights, over one in five women have experienced physical and/or sexual violence from their current or former partner in Europe¹⁵. In Lithuania in 2014, 5325 women have suffered violence¹⁶. Statistics is quite shocking for times, when violence against women is recognized as severe problem, violation of human rights and there are quite a number of legal instruments to, if not eradicate, but decrease the prevalence significantly.

⁹ European Parliament resolution of 26 November 2009 on the elimination of violence against women, part E

¹⁰ Recommendation No. R (2002) 5 of the Committee of Ministers of the Council of Europe to Member States on the protection of women against violence, adopted by the Committee of Ministers on 30 April 2002, at the 794th meeting of the Ministers' Deputies

¹¹ Explanatory Memorandum of Recommendation No. R (2002) 5 of the Committee of Ministers of the Council of Europe to Member States on the protection of women against violence, adopted by the Committee of Ministers on 30 April 2002, at the 794th meeting of the Ministers' Deputies, para 10

¹² European Union Agency for Fundamental Rights (2014). *Violence against women: an EU-wide survey. Main results*", Luxembourg: Publications Office of the European Union. ISBN 978-92-9239-342-7, page 7

¹³ *Violence against women* (2014). <http://www.who.int/mediacentre/factsheets/fs239/en/>, [accessed on 2015-12-09]

¹⁴ Michalovič I. (2012). *Kai kurie smurto šeimoje problematikos aspektai*. Page 29, <http://www.zurnalai.vu.lt/teise/article/viewFile/115/83> [accessed on 2015-12-11]

¹⁵ European Union Agency for Fundamental Rights (2014). *Violence against women: an EU-wide survey. Results at a glance*. http://fra.europa.eu/sites/default/files/fra-2014-vaw-survey-at-a-glance-oct14_en.pdf, [accessed on 2015-12-09]

¹⁶ *Nuo nusikalstamų veikų nukentėjusios moterys* (2014). [http://www.bukstipri.lt/uploads/file/Nuo%20nusikalstamu%20veiku%20nukentejusios%20moterys\(2004_2014\).pdf](http://www.bukstipri.lt/uploads/file/Nuo%20nusikalstamu%20veiku%20nukentejusios%20moterys(2004_2014).pdf), [accessed on 2015-12-09]

Statement of a problem

Domestic violence or family violence is one of the types of violence. It can occur in different-sex relations, as well as in same-sex relations. Victims of domestic violence can be both men and women, however, the majority of victims of domestic violence are women and majority of perpetrators are men according to statistics. Therefore, we see it as a gender problem. As noted by the judge Pinto de Albuquerque in the European Court of Human Rights case of *Valiuliene v Lithuania*: “Domestic violence is basically violence against women. All the available data shows worldwide that domestic violence is in the vast majority of cases violence perpetrated by men against women, and violence by women against men accounts for a very small percentage of domestic violence. Ever since General Recommendation No. 19 of the Committee on the Elimination of Discrimination against Women, it has been widely acknowledged that violence between intimates affects women disproportionately, demarcating women as a group in need of proactive State protection”¹⁷. For example, 12-15% of women in Europe suffer from domestic violence and every day even seven women die in the European Union because of that¹⁸.

Like gender-based violence, domestic violence has a very long history as hidden violence, it is not a new issue. Only in modern times it was understood that family violence is a serious social problem, which as well was recognized as global health problem by the World Health Organization in 2012¹⁹. Domestic violence can bring severe impact on family members as it may worsen the quality of life and even result in death. Family violence appears in the same forms as gender-based violence, *i.e.* physical, sexual and emotional abuse, financial exploitation²⁰, in some cases it may occur as social and spiritual violence²¹. The domestic violence affects not only the family, where it occurs, itself, but it also touches the society, as the victim is not isolated individual, it is also a member of the society. Children from dysfunctional families, where brutal, long-term and consumptive violence is a constant escort, are most likely skipping the classes or do not attend school at all, are more often involved into anti-social or criminal groups, they are more likely abusing alcohol, use drugs and distribute them, sale their bodies, etc. Therefore, it is difficult to deny

¹⁷ Concurring opinion of judge Pinto de Albuquerque in European Court of Human Rights case *Valiuliene v Lithuania*, 2013, application no. 33234/07

¹⁸ Report No. A7-0075/2014 with recommendations to the Commission on combating Violence Against Women (2013/2004(INL)) Committee on Women's Rights and Gender Equality, Rapporteur: Antonyia Parvanova

¹⁹ Barnett O., Miller-Perrin C. L., Perrin R.D. (2005). “*Family Violence across the lifespan. An introduction*” – 2nd edition. Library of Congress Cataloging-in-Publication Data, page xxiii

²⁰ Kurst-Swanger K., Petcosky J.L. (2013) *Violence in the Home*. Oxford University Press, page 3

²¹ What is domestic violence? <http://au.reachout.com/what-is-domestic-violence>, [accessed on 26-09-2015]

that there is a correlation between domestic violence and the high level of crime, growth in alcohol, drug consumption, and bad indicators of population health, human trafficking and prostitution²².

Why do women allow becoming victims of gender-based violence? The Committee on the Elimination of Discrimination against Women states that there are problems in the society, which put women in the position of the subordinate and allow violence against them to spread. Even in modern times many societies still live under patriarchal attitudes, there are various cultural stereotypes, like ‘macho image of men’, or the need for men to manifest their power and control over women, or even “to enforce assigned gender roles in the society²³, which is a clear imbalance of rights and power. All these create severe obstacles for eradication of violence against women²⁴. Society often tolerates an expression of the domination of male over female²⁵, because this is “how it should be” – boys are stronger than girls, men and more powerful than women. These kinds of stereotypes are damaging many young female lives all over the World. Women and girls believe that if they receive an act of violence from their beloved once, it means they deserved that. However, not only this problem had been admitted as a major structural and societal problem²⁶, but also globally, more and more legal tools appeared in order to fight this problem. The protection of the victims of gender-based violence, including victims of domestic violence, is in the agenda of various international organs. We have a good start already for protect these kinds of victims, e.g. positive State obligation to protect victims of domestic violence, various psychological and social help, prevention trainings for law enforcement, raising awareness on this issue in the society and even rehabilitation for perpetrators.

Moreover, the European community became more aware about cross-border victims’ protection: in 2015, Member States of the European Union had to incorporate the Victims’ package into their national legislation– combination of three legal tools, which are dedicated to the victims’ protection around the European Union, including victims of domestic violence.

The Republic of Lithuania is counting fourth year since the separate law on protection of victims of domestic violence came into force. However, up until now domestic violence is prevalent

²² Jovaišas K. (2009). *Smurto šeimose prevencija: iliuzijų anatomija*. Vilnius: Eugrimas, page 49

²³ Freeman A.M., Chinkin Ch., Rudolf B. (2012). *The UN Convention on the Elimination of all forms of Discrimination Against Women: a commentary*”. Oxford University Press. Prepared by Rudolf B., page 452

²⁴ Ibid, page 463

²⁵ Explanatory Memorandum of Recommendation No. R (2002) 5 of the Committee of Ministers of the Council of Europe to Member States on the protection of women against violence, adopted by the Committee of Ministers on 30 April 2002, at the 794th meeting of the Ministers’ Deputies, para 24

²⁶ Recommendation No. R (2002) 5 of the Committee of Ministers of the Council of Europe to Member States on the protection of women against violence, adopted by the Committee of Ministers on 30 April 2002, at the 794th meeting of the Ministers’ Deputies, para II

in Lithuania. Protection of such victims is still a very important matter in international, European and national levels. However, up to now it is a difficult matter to manage and curb arising problems. Research conducted by the World Health Organization, the Council of Europe, the European Union Agency for Fundamental Rights and the Lithuanian Police show that a very high number of women globally, regionally and locally nowadays are still facing domestic violence.

This thesis will introduce the ways of protection of domestic violence victims in three levels: international, European Union and national, *i.e.* Lithuanian, and analyze if Lithuania complies with international standards, if it is able to protect not only its national, but also foreign victims.

Object of thesis

The protection of victims of domestic violence in Lithuania, from the perspective of its compliance with international standards and adequate protection all victims including situations with cross-border element.

Aim of thesis

The aim of this thesis is to evaluate the protection of victims of domestic violence in Lithuania from the perspective of its compliance with international standards and to analyze whether the legal regulation provides adequate protection for all victims including situations with cross-border element.

To reach the aim following next tasks are accomplished:

- 1) Analysis of the concept of domestic violence as gender-based violence and /or human rights violation;
- 2) Analysis of the States positive obligation to provide protection to victims as the international standard;
- 3) Analysis of the essence of the newly introduced Victims' Package of European Union: determination of its effects for domestic violence victims;
- 4) Analysis of the standards of protection of victims of crime and domestic violence in Lithuania: determination of the compliance of the national regulation with the EU and international law standards.

The defending hypothesis

Lithuanian legislation does not provide adequate protection for victims of domestic violence therefore is not fully in compliance with international and European Union standards and it is doubtful Lithuania is ready to provide adequate protection for European victims.

Methodology of thesis

To achieve the aim of the thesis, the following methods were used:

1. Analytical method invoked in analysis of relevant international, European and national legislation.
2. Description method was used in order to present the European Union legal acts, which conclude Victims' package.
3. Comparative method was applied to determine differences of European legal acts and national legislation of Lithuania.
4. Critical method was used to determine whether the national legislation meets international and European Union standards.
5. Systemic method was used throughout the thesis in order to analyze legal acts and draw conclusions.

Structure of thesis

Thesis is divided into few parts, specifically, introduction and three substantial parts, each of them is divided into smaller parts, conclusions and recommendation, bibliography, summary.

The first part of the thesis analysis the protection from domestic violence under the United Nations Convention on Elimination of All Forms of Discrimination against Women, as well, the positive State's obligation to protect victims of domestic violence according to the European and international standards.

The second part of the thesis describes the European Union tools for victims' protection, which have to be incorporated into national legislation of Member States.

The third part of the thesis focuses on victims' protection under Lithuanian legislation: both, victims of crimes and victims of domestic violence. Moreover, in this part it is analyzed whether Lithuania can provide the same level of protection as it is requires in the EU, and finally, if it can provide adequate protection to the foreign victims. The thesis ends with conclusions and recommendations.

1. PROTECTION FROM DOMESTIC VIOLENCE UNDER THE CONVENTION ON ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

The Convention on the Elimination of All Forms of Discrimination Against Women (hereinafter – the CEDAW or the Convention), the so-called international bill of women rights, was adopted in 1979²⁷. It is one of the 9 fundamental conventions of human rights of United Nations²⁸. Article 1 of the CEDAW presents the notion of discrimination against women: “distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field”²⁹. Even though the Convention does not explicitly address to violence against women, the General recommendation of the Committee on the Elimination of Discrimination against Women No. 19 on Violence against women (hereinafter – GR 19) gives the clear connection between discrimination against women and violence against women. It states that gender-based violence is included in the discrimination notion as this kind of violence affects women gravely because she is a woman. Moreover, violence against women may breach particular articles of the Convention notwithstanding if those articles mention violence³⁰. This is also confirmed with paragraph 7, which states that “gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of article 1 of the Convention”³¹. Domestic violence as well is mentioned in the GR 19 as separate form of violence against women and is covered by the Convention. The GR 19 describes family violence as treacherous and hidden violence, which occurs due to stereotypes of women and men role in the family³² and has different forms like battering, rape, sexual assault, mental violence, besides it doesn't have an age limit so women of all ages can become subject of this kind of violence. Family

²⁷ UN Women <http://www.un.org/womenwatch/daw/cedaw/> [access on 2015-09-21]

²⁸ The Core International Human Rights Instruments and their monitoring bodies. <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx>, [accessed on 2015-12-09]

²⁹ UN Convention on the Elimination of All Forms of Discrimination against Women, article 1

³⁰ General Recommendation of the Committee on the Elimination of Discrimination against Women No. 19 on Violence against women, para 6

³¹ *Ibid*, para 7

³² Freeman A.M., Chinkin Ch., Rudolf B. (2012). *The UN Convention on the Elimination of all forms of Discrimination Against Women: a commentary*. Oxford University Press. Prepared by Rudolf B., page 454

violence hampers women's ability to participate in family and public life as an equal member of the society, moreover it causes risk to women's health³³.

Article 5 of the Convention talks about the responsibility of the State to change social and cultural models where a man is held superior, where stereotyped roles for men and women prevail³⁴. Societies where women are subordinate to men are suffering from various forms of violence against women, including family violence, as gender-based violence is a result of the control over women and lowers their possibility of education, work opportunities, political participation and in general hampers equal enjoyment of rights and freedoms³⁵. The Committee on the Elimination of Discrimination against Women has recognized that violence against women is an outcome of patriarchal attitudes within the family³⁶.

The Convention also requires State parties to take all appropriate measures to exclude all forms of discrimination against women, regardless whether it was executed by a person, organization or enterprise³⁷. This means that State bears responsibility for violent private acts if it did not "act with due diligence to prevent violations of rights or to investigate and punish acts of violence"³⁸. Moreover, State is also accountable for acts of abuse made by State agents or through its institution: it must put all efforts in order to investigate, prosecute and punish responsible for the violence³⁹. The communication *Yildirim v. Austria* brought to the Committee on the Elimination of Discrimination against Women serves as an example of such misconduct by the State: the Committee concluded that State party had breached its due diligence obligation to protect Ms Yildirim⁴⁰ after she was killed by her soon to be former husband Mr Yildirim, who haven't been detained, even though Ms Yildirim have requested several times for such an interim measure, as her husband was constantly threatening to kill her and stalking her⁴¹.

Another case that deserves special attention is *González Carreño v. Spain*: Ms González was facing physical and psychological violence from her husband Mr F.R.C., whom eventually she

³³ General Recommendation of the Committee on the Elimination of Discrimination against Women No. 19 on Violence against women, para 23

³⁴ UN Convention on the Elimination of All Forms of Discrimination against Women, article 5

³⁵ General Recommendation of the Committee on the Elimination of Discrimination against Women No. 19 on Violence against women, para 11

³⁶ Freeman A.M., Chinkin Ch., Rudolf B. (2012). *The UN Convention on the Elimination of all forms of Discrimination Against Women: a commentary*". Oxford University Press. Prepared by Rudolf B., page 454

³⁷ UN Convention on the Elimination of All Forms of Discrimination against Women, article 2, 2(c)

³⁸ General Recommendation of the Committee on the Elimination of Discrimination against Women No. 19 on Violence against women, para 9

³⁹ Freeman A.M., Chinkin Ch., Rudolf B. (2012). *The UN Convention on the Elimination of all forms of Discrimination Against Women: a commentary*". Oxford University Press. Prepared by Rudolf B., page 460

⁴⁰ CEDAW case *Yildirim v. Austria*, Communication No. 6/2005, para 12.1.5

⁴¹ *Ibid*

decided to divorce. After that Ms González received threats from her husband in front of their daughter. She has reported the incidence to the police and applied for the trial separation. However, the author continued to suffer harassment, intimidation and death threats from her husband⁴². Ms González had filed more than 30 complaints and was keeping requesting protective order to keep Mr F.R.C. away from her and her daughter⁴³. Regardless of the authors constant reports to the police and seeking for protection, the State didn't act in due diligence and did not prevent the killing of Ms González daughter by Mr F.R.C. The State has violated articles 2; 5 (a) and 16, as well article 1 of the Convention and GR 19⁴⁴. Both cases are regarding to domestic violence and failure of States to protect women from this type of violence. However, victims can apply to the Committee on number of other type of violations, e.g. gender stereotyping, rape, employment, access to abortion services and essential health care, conditions of detention, maternity leave, etc.⁴⁵

Above mentioned cases illustrates that State parties are not always following the recommendations proposed by the Committee, such as: “States parties should take appropriate and effective measures to overcome all forms of gender-based violence, whether by public or private act; should ensure that laws against family violence and abuse, rape, sexual assault and other gender-based violence give adequate protection to all women, and respect their integrity and dignity; criminal penalties where necessary and civil remedies in cases of domestic violence”⁴⁶. State party may have an appropriate, relevant legislation in order to protect the victims of domestic violence; however, rules and procedures, which are established in the national legislation, may not always serve or guarantee adequate protection.

There are more international instruments, which obliges States to implement legislation regarding violence against women⁴⁷. *Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime* (the Palermo Protocol), requires State parties to establish trafficking in persons as criminal offence when it is committed intentionally; implement measures in order to provide victims physical, psychological and social recovery; to prevent and combat

⁴² CEDAW case González Carreño v. Spain, Communication No. 47/2012, para 2.1, 2.2 and 2.4

⁴³ *Ibid* para 2.5

⁴⁴ *Ibid* para 10

⁴⁵ Optional Protocol to CEDAW: All Communications <https://opcedaw.wordpress.com/communications/all-communications/>

⁴⁶ General Recommendation of the Committee on the Elimination of Discrimination against Women No. 19 on Violence against women, para 24

⁴⁷ United Nations Department of Economic and Social Affairs. Division for the Advancement of Women (2010). *Handbook for Legislation on Violence against Women*. <http://www.un.org/womenwatch/daw/vaw/handbook/Handbook%20for%20legislation%20on%20violence%20against%20women.pdf>, page 6, [accessed on 2015-12-09]

trafficking, as well, to protect victims of trafficking, especially women and children, from repeated victimization⁴⁸. *Rome Statute of the International Criminal Court* states that “rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity”, which is committed as a “part of widespread or systematic attack directed against any civilian population” is considered as a crime against humanity⁴⁹ and is State parties are responsible for bringing those responsible to justice⁵⁰.

Treaties, which are not directly referring to violence against women, are touching this issue anyway among their provisions. It can be concluded what a grave impact has the violence against women to the nations around the World.

2. PROTECTION FROM DOMESTIC VIOLENCE UNDER THE CONVENTIONS ADOPTED BY THE COUNCIL OF EUROPE

2.1. Positive obligation of the State under the European Convention of Human Rights

In European community, State are still considered as key-players against violence in Europe. Because of that, governments are responsible for the establishment of the policy of no tolerance for violence by the development of system protection and prevention⁵¹. Recommendation No. R (2002) 5 of the Committee of Ministers of the Council of Europe to Member States on the protection of women against violence speaks about “an obligation to exercise due diligence to prevent, investigate and punish acts of violence, whether those acts are perpetrated by the state or private persons, and provide protection to victims”⁵². As well, it expresses the belief that it is in the interest of the States

⁴⁸ Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. Adopted and opened for signature, ratification and accession by General Assembly resolution 55/25 of 15 (2000), article 5,6,9. <http://www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolTraffickingInPersons.aspx>, [accessed on 2015-12-09]

⁴⁹ Rome Statute of the International Criminal Court (2002), article 7(1)(g)

⁵⁰ United Nations Department of Economic and Social Affairs. Division for the Advancement of Women (2010). *Handbook for Legislation on Violence against Women*. <http://www.un.org/womenwatch/daw/vaw/handbook/Handbook%20for%20legislation%20on%20violence%20against%20women.pdf>, page 7, [accessed on 2015-12-09]

⁵¹ Explanatory memorandum of Recommendation No. R (2002) 5 of the Committee of Ministers of the Council of Europe to Member States on the protection of women against violence, adopted by the Committee of Ministers on 30 April 2002, at the 794th meeting of the Ministers’ Deputies, para 33

⁵² Recommendation No. R (2002) 5 of the Committee of Ministers of the Council of Europe to Member States on the protection of women against violence, adopted by the Committee of Ministers on 30 April 2002, at the 794th meeting of the Ministers’ Deputies, para 1

to secure the right of women to be free from any kind of violence executed by any person; moreover, this should be a priority of national policies⁵³.

The European Court of Human Rights (hereinafter – the ECtHR) in its case law is tend to recognize the domestic violence as violation of right to life under article 3 (*Kontrova v. Slovakia*), violation of prohibition of torture under article 3 or violation of rights to respect for private and family life under article 8 (case *A v. Croatia*) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereafter - ECHR). Author is going to present cases of the ECtHR where domestic violence is recognized as torture and inhuman or degrading treatment. States are required to take appropriate measures to protect victims of such crimes, and if fails to do so – this situation would be the breach of article 3 (cases *Opuz v. Turkey* and *Valiuliene v. Lithuania*).

Opuz v. Turkey became a landmark case in the ECtHR: the case brought by Ms Opuz who together with her mother was suffering brutal domestic violence from her husband for years. Even though both women were constantly reporting the violence to the police and prosecuting authorities, they did not receive an adequate and effective protection, what had led to murder of Ms Opuz`s mother committed by the husband. The ECtHR recognized that Turkey has violated its obligation to protect women from domestic violence, has breached article 2 and of the ECHR and for the first time the court has decided that gender-based violence is a form of discrimination under the Convention, which brought the violation of article 14 as well⁵⁴. The judgment in *Valiuliene v. Lithuania* case talks about responsibility of the State only if the case falls under the national criminal law, only then the failure to protect effectively may be considered as the breach of article 3 of ECHR⁵⁵.

The same view has expressed judge Pinto de Albuquerque in his concurring opinion: the unlawful, wrongful behaviour must be foreseeable and avoidable, the authorities should or ought to know about direct risk due to the criminal acts to the life of individual and that there was a possibility to avoid that risk⁵⁶. The Judge reiterated the decision in *Opuz v. Turkey* case. As well, Mr Albuquerque considers the prevention of private actors from committing or repeating the violent acts as State obligation⁵⁷. Judge Albuquerque reasons his opinion with the statement made by the

⁵³ Appendix to Recommendation No. R (2002) 5 of the Committee of Ministers of the Council of Europe to Member States on the protection of women against violence

⁵⁴ The European Court of Human Rights, *Opuz v. Turkey*, Application no. 33401/02

⁵⁵ The European Court of Human Rights, *Valiuliene v. Lithuania*, Application no. 33234/07, para 77

⁵⁶ Concurring opinion of judge Pinto de Albuquerque, ECtHR case, *Valiuliene v. Lithuania*, Application no. 33234/07

⁵⁷ *Ibid*

United Nations Special Rapporteur on violence against women Yakin Ertürk, who in 2006 in her third report indicated that customary international law “obliges States to prevent and respond to acts of violence against women with due diligence”⁵⁸.

Different opinion in the case of *Valiuliene v. Lithuania* was presented by judge Jocienė, who did not uphold the court decision that there was a violation of article 3 of ECHR: her opinion was based on the fact “the position of the Chamber was not supported by the Court’s case-law, where domestic violence cases are mostly examined from the perspective of Article 8 of the Convention”⁵⁹. As well the minimum level of severity was not reached to fall within the scope of Article 3 and the injuries the applicant suffered had no lasting consequences and did not result in disability to work⁶⁰. Moreover, the ill-treatment, to which the applicant was a subject to, was not sufficient to be considered as inhuman and degrading treatment and fall under the scope of Article 3⁶¹. According to the opinion of judge Jocienė, in this case only the article 8 of the ECHR was breached. These two opinions perfectly illustrate how the same matter can be seen from different perspective, and show the essential legal debate. They concentrate legal argumentation from different sides.

The ECtHR has adopted various decisions in cases of domestic violence. However, the case of *Opuz v. Turkey* is a landmark decision: for the first time in a domestic violence case it was recognized as type of discrimination under article 14 of ECHR. It was indicated that there is a lack of commitment from the side of authorities to take appropriate measures and address domestic violence. It was a push to establish State’s obligation to prevent private actors from committing or repeating violent acts. Moreover, it provided that inaction of competent State authorities, which are obliged to provide protection and assistance to victims of domestic violence, results in state responsibility⁶².

The judgment in the case *M&M v. Croatia* has explained the scope of the positive obligation, i.e. to prevent misconduct about which State authorities knew or should have known and an obligation to perform an effective official investigation. The victims of domestic violence are specifically vulnerable and are in need of protection and active involvement of the State⁶³. The notion *effective* does not only mean the duty to conduct investigation by establishing the factual

⁵⁸ Concurring opinion of judge Pinto de Albuquerque, ECtHR case, *Valiuliene v. Lithuania*, Application no. 33234/07

⁵⁹ Dissenting opinion of judge Jocienė ECtHR case, *Valiuliene v. Lithuania*, Application no. 33234/07, para 10

⁶⁰ *Ibid*, para 14

⁶¹ *Ibid*, para 15

⁶² Michailovič I. (2014). *Kai kurie smurto artimoje aplinkoje aspektai socialinės kultūrinės lyties požiūriu*. Page 165, www.zurnalai.vu.lt/kriminologijos-studijos/article/download/5092/3349

⁶³ The European Court of Human Rights, *M&M v. Croatia*, Application no. 10161/13, para 136

circumstances and punishing those responsible for the crime, but also includes “promptness and reasonable expedition” of the investigation⁶⁴.

The same view is shared by the CEDAW Committee: it is the State’s legal obligation to safeguard women’s right to be free from violence and fear of violence, to prevent, prosecute and punish those, who execute violence against women⁶⁵. Both the international and the European community seem to be in agreement that State bears the responsibility for failure to protect women from the gender-based violence, as States have the obligation to do so.

2.2.Positive obligation under the Istanbul Convention

The latest and the most comprehensive regional document, which creates a legal framework on European level to protect women against all forms of violence, including domestic violence, is *the Council of Europe Convention on preventing and combating violence against women and domestic violence* (hereafter – the Istanbul Convention), adopted by the Council of Europe Committee of Ministers in April of 2011 and following its 10th ratification by Andorra on 22 April 2014, it entered into force on 1 August 2014⁶⁶. At the moment, 19 European States have ratified the Istanbul Convention⁶⁷. This Convention requires its Parties to criminalize various types of violence, *i.e.* physical and psychological violence, sexual violence, rape, sexual harassment and stalking⁶⁸.

The adoption of the Istanbul Convention was a result of the requirement of the same level of protection for victims all around the Europe. The Council of Europe decided that it is very important to determine full-scaled standards for prevention and combat violence against women together with domestic violence⁶⁹. So far, the Istanbul Convention is the most ambitious legal document on violence against women and its potential of preventing and combating violence against women is very high. “The Convention requires the six-P (policy, prevention, protection, prosecution, provision and partnership) demanded several times by the European Parliament and calls for the involvement

⁶⁴ *Ibid*, para 148

⁶⁵ Freeman A.M., Chinkin Ch., Rudolf B. (2012). *The UN Convention on the Elimination of all forms of Discrimination Against Women: a commentary*. Oxford University Press. Prepared by Rudolf B., page 450

⁶⁶ Council of Europe Convention on preventing and combating violence against women and domestic violence, <http://www.coe.int/t/t/web/istanbul-convention/about-the-convention>, [accessed on 28-09-2015]

⁶⁷ Chart of signatures and ratifications of Treaty, <http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210/signatures>, [accessed on 2015-12-10]

⁶⁸ European Union Agency for Fundamental Rights “Violence against women: an EU-wide survey. Main results”, Luxembourg: Publications Office of the European Union, 2014; ISBN 978-92-9239-342-7, page 11

⁶⁹ Council of Europe Convention on preventing and combating violence against women and domestic violence, <http://www.coe.int/t/t/web/istanbul-convention/about-the-convention>, [accessed on 28-09-2015]

of all relevant state agencies and services so that violence is tackled in a coordinated way”⁷⁰. Meanwhile, usually in international human rights documents there is 3-P: prosecution, prevention, protection, e.g. in the United Nations Convention Against Transnational Organized Crime⁷¹.

The scope of the Istanbul Convention is to protect victims from all forms of violence, together with domestic violence. Majority of the victims of such violence are women⁷². However, the Istanbul Convention does not concentrate only on women as victims of domestic violence: protection of men and children is also included⁷³, because domestic violence is suffered not only by women and girls. However, it is crucial to understand that, as it was mentioned before, most of the victims of domestic violence are women and this type of violence is often the result of discrimination and inequality⁷⁴.

The Istanbul Convention presents two notions – *violence against women* and *domestic violence*. In previously analysed international documents, the notion of domestic violence was not separated from the notion of violence against women or gender-based violence. It was the part of them, which proposes that victims of domestic violence are only women. The notion of violence against women in the Istanbul convention reiterates the definition set in the Council of Europe Recommendation Rec(2002) 5 of the Committee of Ministers to member states on the protection of women against violence, the CEDAW Committee General Recommendation No. 19 on violence against women (1992), and in Article 1 of the United Nations Declaration on the Elimination of All Forms of Violence against Women. However, there is one more act of violence included in the Istanbul Convention, *i.e.* “economic harm” which may be connected to the psychological violence⁷⁵.

The Convention describes domestic violence as “all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim”⁷⁶. There are two types of such violence: violence between intimate-partner, which can be

⁷⁰ Report No. A7-0075/2014 with recommendations to the Commission on combating Violence Against Women (2013/2004(INL)) Committee on Women’s Rights and Gender Equality Rapporteur: Antonyia Parvanova, page 18

⁷¹ United Nations Convention Against Transnational Organized Crime <https://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>

⁷² Council of Europe Convention on preventing and combating violence against women and domestic violence, article 2

⁷³ Explanatory report of Council of Europe Convention on preventing and combating violence against women and domestic violence, point 37

⁷⁴ Council of Europe, Istanbul Convention, <http://www.coe.int/lt/web/istanbul-convention/about-the-convention>, [accessed on 28-09-2015]

⁷⁵ Explanatory report of Council of Europe Convention on preventing and combating violence against women and domestic violence, point 40

⁷⁶ Council of Europe Convention on preventing and combating violence against women and domestic violence, article 3 (b)

and current, and former spouse or partners. As well, inter-generational violence, that appears between parents and children. As it was mentioned before, victims and perpetrators can be both sexes, as it is a gender-neutral notion⁷⁷.

The Istanbul Convention, like previously mentioned international documents, also provides State obligations and the standard of due diligence. States have negative and positive duties, in particular, authorities and their officials must not engage in the wrongful acts and must protect individuals from wrongful acts, which are executed by non-state actors. Even if the State is not guilty for an act of violence made by another individual, its failure to protect the victims breaches the article 5 of the Istanbul Convention⁷⁸. The Explanatory Report to the Istanbul Convention underlines that “[p]arties are required to organize their response to all forms of violence covered by the scope of this Convention in a way that allows relevant authorities to diligently prevent, investigate, punish and provide reparation for such acts of violence. Failure to do so incurs state responsibility for an act otherwise solely attributed to a non-state actor”⁷⁹.

The Convention establishes a very strong set for fighting against violence against women and domestic violence. Keeping in mind that this document exists only few years and that 19 European countries have ratified it, shows the realization of the Europe how clear and comprehensive the document is. Europe wants to tackle the issue of violence against women together with domestic violence. However, Russia (not a signatory of party to the Istanbul Convention⁸⁰) and Holy See (which has status of observer⁸¹) did not agree on the document as the whole: they have offered to exclude sexual orientation and gender identity from the list of prohibited grounds of discrimination what would leave women, who are lesbian, bisexual or transgender, outside the scope of protection under the Istanbul Convention⁸².

Main international and European documents are requiring the States responsibility for violence against women or violence within the family. The States have to intervene in the private matters and protect those, who suffer the violence from the closest people. This kind of violence is not the private matter anymore; it is the matter of the whole society, and thus of the State. Moreover, Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo in her

⁷⁷ Explanatory report of Council of Europe Convention on preventing and combating violence against women and domestic violence, point 41

⁷⁸ *Ibid*, point 57

⁷⁹ *Ibid*, point 49

⁸⁰ Chart of signatures and ratifications of Treaty, <http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210/signatures>, [accessed on 2015-12-11]

⁸¹ What is observer Status? <http://www.coe.int/en/web/portal/what-is-observer-status>, [accessed on 2015-12-11]

⁸² Vaigė L. Vaigė L. (2013). *The Concept of Domestic Violence in Lithuania and the Aspect of Gender from the Perspective of International Law. Social studies*, 5(1), p. 255–274.

last report has said that it is very important for States to “reflect an acknowledgement that violence against women is a human rights violation” and special commitment by States to be legally obliged to prevent and eliminate such violence is required⁸³. As well, Ms Manjoo addresses to the normativity gap. There is no global document, which concerns violence directly. CEDAW GR19 talks about violence, but not the Convention itself. Recommendations are not normative documents. Therefore, it is difficult to fight the violence and claim that there is a positive obligation, because there are no direct legal act regarding this issue. The Istanbul Convention perhaps closes this gap of normativity, but it is done regionally, *i.e.* in Europe.

3. PROTECTION OF VICTIMS IN EUROPEAN UNION

The European Union does not provide comprehensive legislation specifically on protection of women against violence at EU level. However, general acts were adopted, which concern victims of crimes⁸⁴ and gender based violence. Every year in the European Union more than 75 million people become victims affected by 30 million criminal offences and this costs more than €233 billion a year⁸⁵. Facing crime abroad brings severe physical, emotional, financial consequences for the victims together with their families. It is not enough that person has suffered violence, but he/she has suffered it in the place of different culture, language and laws, and this rises many questions to the victims, such as where to turn to help or what rights do they have.⁸⁶ It is important to treat all victims in a non-discriminatory manner, with dignity and respect, ensure the same protection for their physical, mental, sexual integrity, and ensure access to justice and compensation, regardless where they come from or where they live. In order to guarantee that victims will enjoy and benefit from the same level of protection, the EU has adopted few legal instruments, which in combination create the Victims’ Package and establishes common rules for protecting and assisting victims of crime and it mentions victims of gender based violence specifically. Victims’ package consists from:

⁸³ Manjoo R. (2015). *Special Rapporteur on violence against women, its causes and consequences*. <http://www.ohchr.org/EN/Issues/Women/SRWomen/Pages/AnnualReports.aspx>, [accessed on 2015-12-11]

⁸⁴ European Union Agency for Fundamental Rights (2014). *Violence against women: an EU-wide survey. Main results*”, Luxembourg: Publications Office of the European Union; ISBN 978-92-9239-342-7, page 11

⁸⁵ *Are EU member states committed enough to victim protection?*, <http://publications.europeintheworld.com/paramount-victims-directive-challenged-doubtful-national-implementation/>, [access on 2015-09-24]

⁸⁶ European Commission, Press release database (2011) *European Commission ensures better protection of crime victims*, http://europa.eu/rapid/press-release_IP-11-585_en.htm, [access on 2015-06-22]

- *the Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime*, which ensures that victims are recognized, treated with respect, receive adequate protection, support and access to justice⁸⁷;
- *the Directive 2011/99/EU on the European Protection Order (EPO)*, which allows victims, who are granted protection measures in criminal matters in their home country, to benefit from the same level of protection in another Member State by requesting an European Protection Order;
- *the Regulation (EU) No. 606/2013 on mutual recognition of protection measures in civil matters*, which allows a direct recognition of protection orders issued in civil matters between Member States.

3.1. New EU standards of victims' protection

The protection of the victims of crimes in the European Union used to be covered by *the Council Framework Decision 2001/220/TV on 15 March 2001 on the standing of victims in criminal proceedings* (hereinafter – the Framework Decision). This Framework Decision has provided minimum rights for crime victims' in criminal proceedings, however, the protection provided was not sufficient. The level of rights for victims across the European Union was significantly different and needs of victims in criminal proceedings were not sufficiently addressed. The decision to review and supplement the content of the Framework Decision was made⁸⁸.

In December of 2009, the European Council adopted the Stockholm Programme. Under this program, the European Commission and the Member States were asked to assess how to improve the protection, recognition and support measures for victims. In June of 2011 the European Council approved the Council's resolution on an action plan to reinforce the rights and protection of victims, especially in criminal proceedings. It is known as *the Budapest Action Plan*. *The Budapest Action Plan* stated that the Framework Decision had to be supplemented and updated, since it was already out of date, and that it was necessary to implement new legislation that can protect the rights of victims⁸⁹ as victims have a whole range of needs that should be addressed to help them recover: to

⁸⁷ European Commission, *Justice*. http://ec.europa.eu/justice/criminal/victims/index_en.htm, [access on 2015-04-13]

⁸⁸ European Institute for Gender Equality (2015). *An analysis of the Victims' Rights Directive from a gender perspective*. Page 12, <http://eige.europa.eu/sites/default/files/documents/mh0115698enn.pdf> [accessed on 2015-12-13]

⁸⁹ McDonald M., *Žinokite savo teises pagal nusikaltimų aukų teisių direktyvą*, http://www.eujusticia.net/images/uploads/pdf/Lithuanian_Know_Your_Rights_Guide_on_the_Victims_Directive.pdf [access on 2015-04-16]

be recognized and treated with respect and dignity; to be protected and supported; to have access to justice; and to obtain compensation and restoration⁹⁰. In order to strengthen the legislative protection of victims, the Commission presented a proposal for a *Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA* (hereinafter – the Victims’ Directive) in May of 2011. The Directive was adopted in November 2012. It replaced the 2001 Framework Decision, and constitutes the new framework which regulates the recognition, respectful treatment, protection and support to victims and their access to justice.⁹¹ Its main goals are to ensure that victims of crime receive appropriate information, support and protection and may participate in criminal proceedings wherever the damage occurred in the EU⁹².

Member States have to incorporate the directive into national law until the 16th of November, 2015 by bringing into force legal acts, which do comply with the Victims’ Directive⁹³. Countries have some options on how to make the successful transposition of this legal act:

- amend the actual Code of Criminal Procedure;
- create the separate legal act, which is dedicated purely to the victims, *i.e.* Victims’ Statute;
- divide the transposition between criminal, administrative laws and Victims’ Statute⁹⁴.

Member States have limited freedom to decide how to implement certain provisions of the Directive but nothing prevents them to give more rights than required by the Directive specifies the

⁹⁰European Commission, (2013), *DG Guidance document related to the transposition and implementation of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA*, page 3, http://ec.europa.eu/justice/criminal/files/victims/guidance_victims_rights_directive_en.pdf, [access on 2015-03-09]

⁹¹Centre for European Constitutional Law, *Protecting Victims’ Rights in the EU: the theory and practice of diversity of treatment during the criminal trial*, <http://www.victimprotection.eu/images/methodological-material/Research-Guidelines.pdf>, [access on 2015-05-10]

⁹²Better protection for victims in criminal proceedings, <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=URISERV:j10027&from=EN> [Access on 2015-04-20]

⁹³Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, article 27

⁹⁴European Commission (2013). *DG Guidance document related to the transposition and implementation of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA*, page 5, http://ec.europa.eu/justice/criminal/files/victims/guidance_victims_rights_directive_en.pdf, [access on 2015-03-09]

minimum standards⁹⁵. A situation may occur when certain rights, which are included in the Directive, are already established in the national law of Member State: in that situation Member States will be obliged not to change those rights.

Directive recognizes that victims of crime need a comprehensive protection. It embeds the broad categories of instruments:

- a) measures which provides personal recognition of the crime victim and respectful treatment by the standards of the justice system and society;
- b) protection from intimidation, retaliation and any other damage to the victim of crime from the accused or the suspected, and from the damage during the criminal proceedings and during the trial;
- c) support measures in order provide immediate assistance to victims of crime immediately after the crime, as well as long-term physical and psychological support and practical assistance during the process to help victims understand the process, to participate and to reduce their suffering;
- d) measures to ensure access for crime victims to justice in the broad sense: provisions ensures that victims are aware of their rights and understand them both linguistically and legally, are able to provide additional information and to participate in proceedings;⁹⁶
- e) measures to compensate or restore the damage by the State or by the offender.⁹⁷

The core objective of this Directive is to deal with victims' needs in an individual manner, based on an individual assessment and a targeted and participatory approach towards the provision of information, support, protection and procedural rights. Special attention is given to special support and protection for victims of certain crimes, including victims of gender based violence, predominantly women, due to the high risk of secondary and repeated victimization, intimidation and of retaliation⁹⁸.

⁹⁵Mcdonald M., *Žinokite savo teises pagal nusikaltimų aukų teisių direktyvą*, http://www.eujusticia.net/images/uploads/pdf/Lithuanian_Know_Your_Rights_Guide_on_the_Victims_Directive.pdf [access on 2015-04-16]

⁹⁶ Centre for European Constitutional Law, *Protecting Victims' Rights in the EU: the theory and practice of diversity of treatment during the criminal trial*, <http://www.victimprotection.eu/images/methodological-material/Research-Guidelines.pdf>, [access on 2015-05-10]

⁹⁷ Centre for European Constitutional, Law *Nusikaltimų aukų direktyva*, <http://www.victimprotection.eu/images/newsletter/newsletter-lt.pdf>, [Access on 2015-04-15]

⁹⁸ European Commission (2013). *DG Guidance document related to the transposition and implementation of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA*, page 5, http://ec.europa.eu/justice/criminal/files/victims/guidance_victims_rights_directive_en.pdf, [access on 2015-03-09]

The purpose of the Directive is to ensure that victims of crime can rely on the same level of the rights irrespective of their nationality and the European Union (hereinafter – the EU) country where the crime takes place⁹⁹, victims can receive appropriate information, support and protection and are able to participate in criminal proceedings. Member States should ensure that victims are recognized and treated in a respectful, sensitive, tailored, professional and non-discriminatory manner, in all contacts with victim support or restorative justice services or competent authorities operating within the context of criminal proceedings¹⁰⁰. Member States should ensure that the national criminal justice system recognizes the victim as an individual with individual needs, with a key role in the criminal proceedings, while ensuring the fair trial principle and bearing in mind that the rights set out in the Directive are without prejudice to the rights of the offender¹⁰¹.

Recent practice in Member States with regard to the investigation and prosecution of crimes under international law has demonstrated that in principle, 3 scenarios can arise when extra-territorial crimes are being addressed through proceedings in Member States:

1. the crime was committed outside EU, but victims and criminal proceedings related to the crime take place within the Member State;
2. the crime was committed outside the EU, but victims is located in one Member State and criminal proceedings of the crime take place in another Member State;
3. the crime was committed outside the EU, victim is located outside the EU and the proceeding take part in Member State¹⁰².

It is very important that victims are recognized and treated in a non-discriminatory and professional manner, during all contacts with a competent authority there should be presented complete respect of victim`s physical, moral, mental integrity, moreover, victims should be protected from repeated victimization, retaliation, receive appropriate support during the recovery and get the adequate access to justice¹⁰³.

⁹⁹ European Commission (2013). *DG Guidance document related to the transposition and implementation of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA*, page 3, http://ec.europa.eu/justice/criminal/files/victims/guidance_victims_rights_directive_en.pdf, [access on 2015-03-09]

¹⁰⁰ *Ibid*, page 4

¹⁰¹ *Ibid*, page 7

¹⁰² European Commission (2013). *DG Guidance document related to the transposition and implementation of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA*, page 8, http://ec.europa.eu/justice/criminal/files/victims/guidance_victims_rights_directive_en.pdf, [access on 2015-03-09]

¹⁰³ Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, recital 9

The Victims' Directive pays a lot of attention to the victims of gender based violence and domestic violence. It states that victims of such types of violence together with their children require special assistance and protection as they are in a high risk of secondary and repeat victimization¹⁰⁴.

3.2. Changes of victim treatment and victim protection brought by the Victims' Directive

The Directive has brought novelties and improvements in the victims' protection. Right to understand and be understood, established in article 3, newly stresses out that all possible communication with victims has to be carried out in manner that victims fully understand it¹⁰⁵. The right was incorporated into the Framework Decision, but only in its recital¹⁰⁶. Moreover, it has established only the obligation of Member States to ensure that "victims in particular have access, as from their first contact with law enforcement agencies, by any means it deems appropriate and as far as possible in languages commonly understood, to information of relevance for the protection of their interests"¹⁰⁷. Furthermore, the right to interpretation and translation is presented in the Victims' Directive, which provides victims, who do not speak or understand the language of the proceedings, with interpretation, which is free of charge¹⁰⁸.

The right to receive information (article 4) in the Victims' Directive is much broader than in the Framework Decision, regarding which victims are simply informed of services they can receive and organizations, where they can seek help¹⁰⁹. Due to the Victims' Directive victims are directly referred to the relevant services of the support during the first phase, *i.e.* they are asked whether they want to be placed in the contact with organizations, which provide the support¹¹⁰. The rationale of this provision is an obligation for competent authorities to provide the information *ex officio*, instead

¹⁰⁴ *Ibid*, recitals 17-18

¹⁰⁵ European Union Agency for Fundamental Rights (2014). *Victims of crime in the EU: the extent and nature of support for victims*, page 33, http://fra.europa.eu/sites/default/files/fra-2015-victims-crime-eu-support_en_0.pdf, [access on 2015-11-07]

¹⁰⁶ Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings (2001/220/JHA), recital 8

¹⁰⁷ Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings (2001/220/JHA), article 4(1)

¹⁰⁸ Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, article 7(1)

¹⁰⁹ European Union Agency for Fundamental Rights (2014). *Victims of crime in the EU: the extent and nature of support for victims*, page 33, http://fra.europa.eu/sites/default/files/fra-2015-victims-crime-eu-support_en_0.pdf, [access on 2015-11-07]

¹¹⁰ *Ibid*

of placing this burden of seeking out such information on victims themselves¹¹¹. Victims are granted of such right from the first contact with the competent authorities. The Victims' Directive determines the term 'competent body' more broadly: national law determines the authorities, acting the criminal proceedings, itself, and it does not exclude various competent bodies, such as border agencies or customs, if they do have the law enforcement status under national law¹¹². Article 4 as well sets the notion of "without unnecessary delay"¹¹³, which does not provide the exact timeframe. However, it might be understood that victim has to receive the information as soon as it meets with the competent official¹¹⁴.

The right to receive information about their case, established in the article 6 of the Victims' Directive, reinforces victims' capacity to become an active part in the proceedings and exercise their rights¹¹⁵. The information about the case is following:

“(a) any decision not to proceed with or to end an investigation or not to prosecute the offender;
(b) the time and place of the trial, and the nature of the charges against the offender”¹¹⁶.

It is important for victim to be familiarized with the argumentation of the prosecutor's decision not to prosecute in order for victim to decide whether to challenge the decision¹¹⁷.

The general goal of above mentioned provision is to ensure the access to information, access to professional and free support, according to the needs and harm suffered by victims. The Victims' Directive contains manifestly stronger language comparing to the Framework Decision. Very important novelty related to the victims' support services, brought by the Victims' Directive: Member States bear an obligation to ensure that victims have an access to these kinds of services.

¹¹¹ European Commission (2013). *DG Guidance document related to the transposition and implementation of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA*, page 13, http://ec.europa.eu/justice/criminal/files/victims/guidance_victims_rights_directive_en.pdf, [access on 2015-11-08]

¹¹² *Ibid*

¹¹³ Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, article 4(1)

¹¹⁴ European Commission, (2013), *DG Guidance document related to the transposition and implementation of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA*, page 14, http://ec.europa.eu/justice/criminal/files/victims/guidance_victims_rights_directive_en.pdf, [access on 2015-11-08]

¹¹⁵ European Union Agency for Fundamental Rights, (2014). *Victims of crime in the EU: the extent and nature of support for victims*, page 33, http://fra.europa.eu/sites/default/files/fra-2015-victims-crime-eu-support_en_0.pdf, [access on 2015-11-07]

¹¹⁶ Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, article 6(1)

¹¹⁷ European Union Agency for Fundamental Rights (2014). *Victims of crime in the EU: the extent and nature of support for victims*, page 34, http://fra.europa.eu/sites/default/files/fra-2015-victims-crime-eu-support_en_0.pdf, [access on 2015-11-07]

Moreover, victims must enjoy the support despite if he/she had made or will make a formal report and press charges¹¹⁸. The findings of the European Union Agency for Fundamental Rights, shows that in all Member States either provision of victim support does not depend on the victim making a complaint, either provision of victim support may be dependent on the victim making a complaint in some cases. However, in the majority of the countries the victim does not have to make a complaint in order to receive support services¹¹⁹.

One of the developments of the Victims' Directive is the victim rights in the event of a decision not to prosecute (article 11). Member States must provide the possibility to the victims to challenge the decision not to prosecute, brought by the prosecutor and inform victims of this right, furthermore, this must be done under procedural rules of national law¹²⁰. There are particular limitations of this right: victims with a formal role will be able to use this right¹²¹. The reasons for decision not to prosecute may be various, *i.e.* legal, due to the lack of public interest, the nature and degree of seriousness of the offence, etc.¹²². It is important to note that this right does not include decisions taken by court, but only by prosecutors, investigative judges or law enforcement authorities¹²³.

An important novelty, brought by the Victims' Directive is the individual assessment of victims in order to identify specific protection needs and the right to protection of victims with specific protection needs during criminal proceeding. The timely and individual assessment will help to identify the need of specific protection to victims¹²⁴, who may suffer repeated victimization or intimidation during criminal proceedings, what is endemic to victims of gender-based violence¹²⁵. The specific protection means that interviews with the victim have to be carried out in special premises. By or through trained professionals and by the same professional. Victims of gender-

¹¹⁸ *Ibid*

¹¹⁹ Victim support not dependent on complaint, <http://fra.europa.eu/en/publications-and-resources/data-and-maps/comparative-data/victims-support-services/complaint>, [access on 2015-11-08]

¹²⁰ European Union Agency for Fundamental Rights,(2014). *Victims of crime in the EU: the extent and nature of support for victims*, page 36, http://fra.europa.eu/sites/default/files/fra-2015-victims-crime-eu-support_en_0.pdf, [access on 2015-11-07]

¹²¹ European Commission (2013). *DG Guidance document related to the transposition and implementation of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA*, page 30, http://ec.europa.eu/justice/criminal/files/victims/guidance_victims_rights_directive_en.pdf, [access on 2015-11-08]

¹²² *Ibid*

¹²³ *Ibid*

¹²⁴ Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, article 22

¹²⁵ European Union Agency for Fundamental Rights,(2014). *Victims of crime in the EU: the extent and nature of support for victims*, page 36, http://fra.europa.eu/sites/default/files/fra-2015-victims-crime-eu-support_en_0.pdf, [access on 2015-11-07]

based violence interviewed by the same sex officers as victims, etc.¹²⁶ As underlined by the Fundamental Rights Agency, “[s]imilarly, during the court proceedings special measures – such as the exclusion of the public or participation of the victim through the use of appropriate communication technologies – should be made available¹²⁷”. However, method and mechanisms of performance of this assessment are not determined. This can create an obstacle for victims to be assessed in the way, which is favorable to them, as individual assessment for victims of gender-based violence should be especially thorough¹²⁸. Even though the article 22 states, that assessment should be performed ‘timely’, the specified time is not indicated, neither if the assessment should be done during the first contact with the competent authority¹²⁹. The provision leaves discretion for Member States to decide methods and condition for performing individual assessment. The author sees this as negative aspect, because each Member State may set different rules, which not necessarily will be advantageous for victims.

Another article of the Victims’ Directive, which lacks detailed determination, is article 18 on the right to protection. It covers protection from secondary and repeat victimization, intimidation, retaliation, protects dignity of victims during questioning and testifying¹³⁰. The article states only the purpose of the measure, *i.e.* protection from before mentioned actions, however, no clear obligations and methods on how to perform the protection is provided¹³¹. This is a danger for correct implementation of the Victims’ Directive.

Article 19 established the prevention of the contact between the offender and victim, as well, their family member, in the premises of criminal proceedings, unless such contact is required in the criminal proceedings¹³². The provision does not cover situations when medical assistance is required to the victim or offender due to the offense. It means there is a risk of the victim and offender to

¹²⁶ Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, article 23

¹²⁷ European Union Agency for Fundamental Rights,(2014). *Victims of crime in the EU: the extent and nature of support for victims*, page 36, http://fra.europa.eu/sites/default/files/fra-2015-victims-crime-eu-support_en_0.pdf, [access on 2015-11-07]

¹²⁸ European Institute for Gender Equality (2015). *An analysis of the Victims’ Rights Directive from a gender perspective*. Page 44, <http://eige.europa.eu/sites/default/files/documents/mh0115698enn.pdf> [accessed on 2015-12-12]

¹²⁹ *Ibid*

¹³⁰ Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, article 18

¹³¹ European Institute for Gender Equality (2015). *An analysis of the Victims’ Rights Directive from a gender perspective*. Page 39, <http://eige.europa.eu/sites/default/files/documents/mh0115698enn.pdf> [accessed on 2015-12-12]

¹³² Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, article 19

meet in the hospital. Moreover, the phrase ‘unless such contact is required in the criminal proceedings’ is very broad and might be interpreted by Member States negatively to the victims. Article 19 does not refer to the existing premises, so Member State do not have to adjust the infrastructure of premises of criminal proceedings in order to ensure the exercise of this right to victims¹³³.

When evaluating all the above mentioned novelties and improvements, it is possible to say that the Victims’ Directive outruns the Framework Decision in a lot of aspects:

- not only it introduces new rights for victims of crime, it also converts optional provisions into obligations, which are in benefit for the victims;
- with the obligation to inform a victim about support services, the Victims’ Directive does not leave the victims alone with their sufferings and changes the victim support system;
- the document pays a lot of attention to the specifications of the victims, it makes the Member States to evaluate each victim and provide the protection and various type of help regarding to its specific needs and its specific case¹³⁴.

The Commission found it important to note that the Victims’ Directive “respects national procedural autonomy and does not harmonize the relations of subordination among authorities”¹³⁵. Furthermore, it does not “provide an instrument to harmonize the divergent approaches to the victim’s role in the various EU Member States’ criminal justice systems and, consequently, to the provision of victim support services”¹³⁶. This leaves space for Member States to decide themselves how to reach the goals set in the Victims’ Directive.

The Victims’ Directive establishes positive novelties and obligations. It has broadened the list of rights for victims, so they can feel less threatened and more determined to participate in the judicial proceedings, as they know that they are being protected. However, this is the legal act, which has to be followed by 28 States and it is difficult to achieve the enjoyment of the rights equally in all of them. Moreover, some articles are too broad and require specifications; otherwise, the correct implementation of the Victims’ Directive might be at risk. As well, it is believed that one

¹³³ European Institute for Gender Equality (2015). *An analysis of the Victims’ Rights Directive from a gender perspective*. Page 41, <http://eige.europa.eu/sites/default/files/documents/mh0115698enn.pdf> [accessed on 2015-12-12]

¹³⁴ *Ibid*, page 38

¹³⁵ European Commission (2013). *DG Guidance document related to the transposition and implementation of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA*, page 30, http://ec.europa.eu/justice/criminal/files/victims/guidance_victims_rights_directive_en.pdf, [access on 2015-11-08]

¹³⁶ European Union Agency for Fundamental Rights,(2014). *Victims of crime in the EU: the extent and nature of support for victims*, page 38, http://fra.europa.eu/sites/default/files/fra-2015-victims-crime-eu-support_en_0.pdf, [access on 2015-11-07]

of the biggest challenges for Member States will be to the obligation to ensure that victims will get the support according to their needs¹³⁷. This obligation requires financial recourses as the support services have to be free of charge. As well, competent officials, who encounter victims in the first stage, have to be trained to refer victims to the support services, *i.e.* know what and how to tell to the victims, in order not to make a wrong impression and bring more damage, as the victim can refuse to use this help.

There are more obligations brought by the Victims' Directive, which will require Member States to provide not only financial, but as well human recourses together with new equipment and facilities. For example, separate premises for victims and offenders during pre-trial investigation and court hearings (Article 19). Member States have to obtain technologies for video communication, in particular, video-links and video recordings during evidence giving or court hearings in order to avoid contacts between victims and offenders (Article 23). Moreover, officials and court staff, who meet the victims, have to receive general and special trainings in order to "deal with victims in an impartial, respectful and professional manner" (Article 25). Findings of the European Union Agency for Fundamental Rights shows that less than half the Member States already provide for victims separate waiting rooms. Member States are required to implements this and all above mentioned measures in order to comply with the Victims' Directive¹³⁸.

3.3. Victims' protection under the European Protection Order Directive

"Victim protection in Europe has always been one of the main objectives of the European Union in the area of freedom, security and justice"¹³⁹. The proof of this statement can be found in the Treaty on the Functioning of the European Union (TFEU), specifically Article 67(1), stating that "the Union shall constitute an area of freedom, security and justice with respect for fundamental rights and the different legal systems and traditions of the Member States". Moreover, Article 67(3) stipulates that "the Union shall endeavour to ensure a high level of security through measures to prevent and combat crime, racism and xenophobia, and through measures for coordination and

¹³⁷ *Ibid*, page 103

¹³⁸ European Union Agency for Fundamental Rights,(2014). *Victims of crime in the EU: the extent and nature of support for victims*, page 38, http://fra.europa.eu/sites/default/files/fra-2015-victims-crime-eu-support_en_0.pdf, [accessed on 2015-11-07], page 103

¹³⁹ Council of the European Union. (2010). *Explanatory memorandum of the Directive of the European Parliament and of the Council on the European protection order*. <http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2017513%202009%20ADD%201%20REV%201>, page 6 [accessed on 2015-02-28]

cooperation between police and judicial authorities and other competent authorities, as well as through the mutual recognition of judgments in criminal matters and, if necessary, through the approximation of criminal laws”¹⁴⁰.

The methods of protection depend on the EU Member State: it may be protection by the police, pursued immediately; interim measures applied under the civil law; or criminal sanctions imposed by the criminal law. Moreover, an important role is played by special help centres and non-governmental organizations providing various assistance to victims.

The whole European Union is concerned about the protection of victims’ lives, mental, sexual and physical integrity and freedom. For this purpose, EU Member States apply specific protection measures. Protection order is a measure helping victims to feel more secure about their well-being and less intimidated and to start recovering from the trauma they have suffered as the order plays an important role in tackling unhealthy relationships, physical and mental health issues, and inadequate life control¹⁴¹.

National protection measures are valid only in the Member State which has issued the protection order. This means that the victims who are safe in one Member State will find themselves at risk of, for example, repeated victimization in another Member State if they move there. There should be no limits in the area of protection – it should follow victims no matter where they go in the EU¹⁴².

A victim of violence moving from one Member State to another does not know whether or is afraid that s/he might not receive the same level of protection as in the country of origin, where the protection order has been issued. People tend to move around the European Union as they are granted freedom of movement: EU citizens are free to travel, study and work in other Member States without restrictions. Victims of domestic violence are in no way different, and they want to move around. Sometimes victims of such crimes are more likely to leave the country where they have suffered violence from their partner in order to try to build a new life abroad, further from the place where they faced crime. Viviane Reding, the Vice-President of the European Commission and

¹⁴⁰ Treaty on the Functioning of the European Union, Article 67(1)(3) <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012E/TXT&from=en>

¹⁴¹ Van de Aa, S. (2011). *Protection Orders in the European Member States: Where do we stand and where do we go from here?* https://pure.uvt.nl/ws/files/1406300/5588_Van_der_Aa_Protection_orders_in_the_European_publishers_immediately.pdf, page 188

¹⁴² Council of the European Union. (2010). *Explanatory memorandum of the Directive of the European Parliament and of the Council on the European protection order.* <http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2017513%202009%20ADD%201%20REV%201>, page 3 [accessed on 2015-02-28]

the EU Justice Commissioner, has underlined: “Exercising one’s freedom of movement and residence should not result in a loss of that protection”¹⁴³.

Due to the freedom of movement of both the victims and the perpetrators, protective measures should not be restricted by the territory of the Member State that issues a particular order. In case of territorial restrictions, either the victims’ freedom or safety would be limited¹⁴⁴.

Directive 2011/99/EU of the European Parliament and the Council of 13 December 2011 on the European protection order (hereinafter referred to as the EPO Directive) is one of the victim’s package documents, designated to set rules and procedures for the victims who are the citizens of the European Union to enjoy legal protection from the perpetrator. Protection of victims is a mechanism which offers safety to a person who has suffered violence – to protect him/her from the repeated actions of the offender. “Such repeat offences against the same victims are particularly frequent in the case of gender-based violence¹⁴⁵ as perpetrators, due to their obsession with the victim, tend to repeat the act of violence for the second, fourth or tenth time”¹⁴⁶. After suffering violence, the victim usually reports to the police and gets some type of protection from the offender – a restraining, protection or barring order.

3.3.1. The Objective of the European Protection Order Directive

Grounds of the European protection order (hereinafter – the EPO) are following:

- A person is in need of protection as there is a possible risk to face repeated acts, executed by another person, which may endanger his life, physical, psychological and sexual integrity;
- Under criminal proceedings there is a need to adopt protection measure in the Member State in which the person resides;

¹⁴³ Statement by Viviane Reding, Vice-President of the European Commission, EU Justice Commissioner, on the European Protection Order [http://europa.eu/rapid/press-release MEMO-11-906_en.htm](http://europa.eu/rapid/press-release_MEMO-11-906_en.htm), [accessed on 2015-02-25]

¹⁴⁴ Council of the European Union. (2010). *Explanatory memorandum of the Directive of the European Parliament and of the Council on the European protection order*. <http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2017513%202009%20ADD%201%20REV%201>, page 4 [accessed on 2015-02-28]

¹⁴⁵ *Ibid*, page 3

¹⁴⁶ Van de Aa, S. (2011). *Protection Orders in the European Member States: Where do we stand and where do we go from here?* [https://pure.uvt.nl/ws/files/1406300/5588_Van_der_Aa_Protection_orders_in_the_European_publishers_immediately.p](https://pure.uvt.nl/ws/files/1406300/5588_Van_der_Aa_Protection_orders_in_the_European_publishers_immediately.pdf)df, page 184

- The person who is granted with protection measures wants / needs to move to another Member State;
- After moving to another Member State, the person proceeds to be in danger¹⁴⁷.

The objective of the EPO is possibility for the protection measure issued in one Member State to be valid in another Member State to which the victims decide to move¹⁴⁸, in other words, the protection measure through the EPO is ‘following’ the victim. This helps to prevent the offender from making other offences in the executing Member State and there is no discrimination between the victims, which stays in the Member State, which has issued the protection order, and the victim, who decides to move to another Member State. Both victims enjoy the equivalent protection¹⁴⁹.

The applied protection is dedicated to prevent any form of harassment, abduction, stalking, other forms of indirect coercion, as well, aim to prevent new criminal acts or to reduce the consequences of previous criminal acts. This Directive is aiming to protect all victims, taking into account the specificities of each type of crime concerned, and only victims: the EPO cannot be issued to serve for other aims, than protect of person¹⁵⁰. The Directive provides framework of crimes, which victims can receive protection.

The protection measures are:

- a) “the prohibition from entering certain localities, places or defined areas where the protected person resides or visits;
- b) the prohibition or regulation of contact, in any form or by any means, with the protected person; and
- c) the prohibition or regulation on approaching the protected person closer than a prescribed distance”¹⁵¹.

It is important to note that this legal instrument does not require executing Member State to invoke the measures, which are not adopted in its national law: the EPO Directive provides the

¹⁴⁷ Council of the European Union. (2010). *Explanatory memorandum of the Directive of the European Parliament and of the Council on the European protection order*. <http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2017513%202009%20ADD%201%20REV%201>, page 11 [accessed on 2015-02-28]

¹⁴⁸ Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order, article 1

¹⁴⁹ Council of the European Union. (2010). *Explanatory memorandum of the Directive of the European Parliament and of the Council on the European protection order*. <http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2017513%202009%20ADD%201%20REV%201>, page 12 [accessed on 2015-02-28]

¹⁵⁰ Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order, recital 9

¹⁵¹ *Ibid*, article 5

discretion to the Member States to adopt any measure, which is sufficient and appropriate under its national law in a similar case¹⁵². It is required to ensure the same level of protection through national legal order, same level as for its own residents¹⁵³. The adopted measure should be of the ‘highest degree possible’.¹⁵⁴ This wording obliges to ensure the protection measure as close as possible to the original protection measure.

The author has excluded few types of issues concerning the European protection order, *i.e.* fundamental rights and principles, problems concerning financial aspect, human resources, lack of specification of the provisions, the unforeseen situations.

3.3.2. Issues of the implementation of the European protection order

The EPO Directive has a positive intention to ensure the fundamental rights, such as right to a fair trial and presumption of innocence¹⁵⁵, to all parties, who are involved in the process of issuing the EPO, *e.g.* the defendant shall be able to use his right to be heard and to challenge the protection measure during the procedure of its adoption or before issuing the European protection order¹⁵⁶. However, the same Directive allows executing the protection measure irrespective the final decision on the criminal offence¹⁵⁷. This contradiction may be explained as the necessity to protect the integrity of the victim ‘at this moment’ and if the protection will not be granted, the State will violate its positive obligation to protect victim from the violence. This can be an example of positive discrimination.

The principle of *non bis in idem*, which is one of the fundamental principles of law and is applied in all branches of law, might be affected by the preamble of the Directive. The recital 23 states that after issuing State revoke the EPO, the executing State has to terminate the measures which it has adopted in order to enforce the European protection order. Nevertheless, the executing

¹⁵² *Ibid*, recital 20

¹⁵³ Van der Aa, S., & Ouwerkerk, J. W. (2011). *The European Protection Order: No time to waste or a waste of time?* European Journal of Crime, Criminal Law and Criminal Justice, 19(4), 267-287.

¹⁵⁴ Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order, article 9(2)

¹⁵⁵ Council of Europe (1950). *Convention for the Protection of Human Rights and Fundamental Freedoms*, article 6, *Charter of Fundamental Rights of the European Union*, article 47

¹⁵⁶ Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order, recital 17

¹⁵⁷ *Ibid*, recital 10

State may impose protection measure repeatedly under its national law¹⁵⁸. This makes the person, who is causing danger, to be found guilty second time for the same offence.

Establishment of new legal measures requires financial expenses. The EPO application and processes related to its adoption and maintenance needs funding as well. In particular any kind of notification, like notification of the person, who is causing danger, the protected person and the competent authority of the issuing state on any kind of changes, related to the EPO, in the language which is understood by all the sides, brings some costs, as the all information has to be translated into the languages, which are understood to all sides¹⁵⁹.

The execution of the EPO itself is not free of charge: in order to ensure that protection order is complied with, the EPO Directive allows the use of electronic technical devices¹⁶⁰, which are quite effective. However, not only they do cost highly, they bring more issues with technical compatibilities of the electronic surveillance systems and territorial sphere of application¹⁶¹. Criminal penalties may be imposed in case of breach of the protection order¹⁶², which as well costs additionally. Communication between Member States related to the EPO, its adoption and relevant processes needs financial resources. All above mentioned costs have to be covered by the executing state, “unless certain costs have arisen exclusively within the territory of the issuing state”¹⁶³. Member States, which are not economically stable, may not have enough financial recourse to act in compliance with the Directive. Needless to say, Member States will not be very eager to take over the financial burden of another Member State, especially when those expenses are not going to be compensated¹⁶⁴.

According to article 9 of the EPO Directive, executing Member State will recognize the order without undue delay.¹⁶⁵ However, the exact period of time is not specified during which the protection measures should be adopted under national law. This may become a problem because

¹⁵⁸ Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order, recital 23

¹⁵⁹ Van der Aa, S., & Ouwerkerk, J. W. (2011). *The European Protection Order: No time to waste or a waste of time?* European Journal of Crime, Criminal Law and Criminal Justice, 19(4), 267-287.

¹⁶⁰ Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order, article 7(g)

¹⁶¹ Freixes T., Ramon L., Oliveras N. (2015). *The European protection order. Its application to the victims of gender violence*. http://158.109.131.198/catedra/images/Publicacions/EUROPEAN_PROTECTION_ORDER.pdf, [accessed on 2015-10-04], page 39

¹⁶² Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order, article 11(2)

¹⁶³ *Ibid*, article 18

¹⁶⁴ Van der Aa, S., & Ouwerkerk, J. W. (2011). *The European Protection Order: No time to waste or a waste of time?* European Journal of Crime, Criminal Law and Criminal Justice, 19(4), 267-287.

¹⁶⁵ Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order, article 9(1)

some Member States impose strict terms, and some do not. In this case the execution of the protection order in the host country may be delayed for some period, during which the victim is being put in danger.

Before issuing the EPO the competent authority should assess the period of time victim is going to stay in another Member State, as well as the level of seriousness of the need of protection¹⁶⁶ - will the danger exist when the protected person will move to another Member State? It is important to make this kind of evaluation as a situation may occur when the victim is going to another Member State only for a short period of time, e.g. for the weekend. Without such evaluation the adoption of the EPO will be disproportionate “in relation to all the required procedural steps, even though the Directive does not establish a minimum period”¹⁶⁷.

The Directive provides that “[b]efore issuing a European protection order, the person causing danger shall be given the right to be heard and the right to challenge the protection measure”¹⁶⁸. The problem here arises when the protected person is already residing in executing Member State, or the person, who is causing danger, might be in the foreign country, *i.e.* not in the same place as where the process of protection order adoption is being held. In this situation videoconference might be used for the purposes of a hearing¹⁶⁹. This is another process, which requires additional financial and human recourses.

The EPO Directive does not foresee the situation, when the protection measure is breached by the protected person, e.g. when a person provocatively approaches or contacts by any means the person who is causing danger. In case of the breach the adopted protection measures the executing State applies penalties¹⁷⁰. The solution in this kind of cases might be as well the application of the national law of executing State, as the important fact is the breach of the measure itself, not the infringer of the breach. Some scholars are proposing the suspension of protection measure as a penalty¹⁷¹.

¹⁶⁶ *Ibid*, article 6(1)

¹⁶⁷ Freixes T., Ramon L., Oliveras N. (2015). *The European protection order. Its application to the victims of gender violence*. http://158.109.131.198/catedra/images/Publicacions/EUROPEAN_PROTECTION_ORDER.pdf, [accessed on 2015-10-05], page 41

¹⁶⁸ Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order, article 6(4)

¹⁶⁹ Freixes T., Ramon L., Oliveras N. (2015). *The European protection order. Its application to the victims of gender violence*. http://158.109.131.198/catedra/images/Publicacions/EUROPEAN_PROTECTION_ORDER.pdf, [accessed on 2015-10-04], page 41

¹⁷⁰ Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order, recital 26

¹⁷¹ Freixes T., Ramon L., Oliveras N. (2015). *The European protection order. Its application to the victims of gender violence*. http://158.109.131.198/catedra/images/Publicacions/EUROPEAN_PROTECTION_ORDER.pdf, [Access on 2015-10-04], page 43

The goal of the EPO is the enjoyment of the same level of protection around the European Union - is purposeful, noble, necessary and very important. The Directive places Member States in a various commitments in order to reach these goals and this requires Member States to search for additional financial resources, additional staff in law enforcement, judicial institutions, to urge legal scholars to evaluate and distinguish which national protection measures can be equivalent to the protection measure of issuing Member State, etc. Also, the EPO Directive need improvements in unforeseen situations, which may cause serious breaches of rights either victim or defendant. The Directive might be considered as more favourable to the victims' as it allows positive discrimination regarding victims'. This can be in breach with the principle of fairness.

3.4. Protection in civil matters

The strengthening of the rights of victims in the European Union is an important object. The EPO Directive was a solid step towards this improvement, despite its above discussed issues. However, it was not enough: in order to ensure that all persons at risk can benefit from sufficient protection in the Union of different kinds of protection orders no matter whether they are criminal, civil or administrative nature must be established¹⁷². Article 81(1) of TFEU states: "the Union shall develop judicial cooperation in civil matters having cross-border implications, based on the principle of mutual recognition of judgments and decisions in extrajudicial cases. Such cooperation may include the adoption of measures for the approximation of the laws and regulations of the Member States"¹⁷³, the European Union has presented the second legal tool, which will provide protection for victims in civil matters: *Regulation (EU) No 606/2013 of the European Parliament and of the Council of 12 June 2013 on mutual recognition of protection measures in civil matters* (hereinafter – the Regulation). The act supplements the European protection order. "As a result, there are now two different legal instruments, one of civil and another of criminal nature, seeking to protect victims by a series of similar measures"¹⁷⁴.

¹⁷² Questionnaire on the recognition and enforcement of foreign civil protection orders Reply of the European Union to specific questions, https://www.google.es/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0CCQOFjAAahUKEwi_1_GViPIAhWDVywKHdPODzs&url=http%3A%2F%2Fwww.hcch.net%2Fupload%2Fwop%2Fgenaff_pd04a_eu.doc&usq=AFQjCNHW8f3rA2C1DILJuYtkVcSm91YqPg, [accessed on 2015-10-11], page 1

¹⁷³ Treaty on the Functioning of the European Union (TFEU), article 81(1), [https://translate.google.lt/#en/lt/Treaty%20on%20the%20Functioning%20of%20the%20European%20Union%20\(TFEU\)](https://translate.google.lt/#en/lt/Treaty%20on%20the%20Functioning%20of%20the%20European%20Union%20(TFEU)), [accessed on 2015-10-11]

¹⁷⁴ Freixes T., Ramon L., Oliveras N. (2015). *The European protection order. Its application to the victims of gender violence*. http://158.109.131.198/catedra/images/Publicacions/EUROPEAN_PROTECTION_ORDER.pdf, [accessed on 2015-10-04], page 70

Article 4 of the Regulation presents the objective of the document: “A protection measure ordered in a Member State shall be recognized in the other Member States without any special procedure being required and shall be enforceable without a declaration of enforceability being required”¹⁷⁵. “A protected person who wishes to invoke in the Member State addressed a protection measure ordered in the Member State of origin shall provide the competent authority of the Member State addressed with: the certificate issued in the Member State of origin”¹⁷⁶. The Member State of origin shall issue the certificate up the request of the protected person, which can be recognized and enforced within all European Union¹⁷⁷. Enforcement is left to the discretion of the enforcing State¹⁷⁸. The certificate contains all relevant data in order for protection measure to be recognized and to be carried out without any additional procedures; only the presentation of the certificate to the relevant authority in the Member State is required¹⁷⁹. The difference between the Regulation and the EPO is evident in this regard: when a person is granted of protection measure under criminal law, he(he) is informed by a competent authority of the possibility to request the European protection order if the person decides to leave or move to another Member State. Suggests, before leaving, to submit an application for the EPO, which would be transferred to the executing State¹⁸⁰ and the executing State adopts a new national protection measure which corresponds to the highest level to the measure issued in the victim`s Member State¹⁸¹. In the case of the protection measure issued under the Regulation, it depends entirely on “the victim whether or not to present the certificate to the authority in the Member State of recognition thereby invoking the protection there”¹⁸². If the

¹⁷⁵ Regulation (EU) No 606/2013 of the European Parliament and of the Council of 12 June 2013 on mutual recognition of protection measures in civil matters, article 4(1)

¹⁷⁶ *Ibid*, 4(2)(b)

¹⁷⁷ *Ibid*, 4

¹⁷⁸ Report of the meeting of the experts’ group on the recognition and enforcement of foreign civil protection orders (12-13 February 2014). Drawn up by the Permanent Bureau. Hague conference on private international law. Preliminary Document No 4 A of March 2014 for the attention of the Council of April 2014 on General Affairs and Policy of the Conference. http://www.hcch.net/upload/wop/gap2014pd04a_en.pdf, [accessed on 2015-09-28], para 57

¹⁷⁹ Questionnaire on the recognition and enforcement of foreign civil protection orders Reply of the European Union to specific questions, https://www.google.es/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0CCQQFjAAAhUKEwi_1_GViPIAhWDVywKHdPODzs&url=http%3A%2F%2Fwww.hcch.net%2Fupload%2Fwop%2Fgenaff_pd04a_eu.doc&usq=AFQjCNHW8f3rA2C1DILiUytkVcSm91YqPg, [Access on 2015-10-11], page 4

¹⁸⁰ Freixes T., Ramon L., Oliveras N. (2015). *The European protection order. Its application to the victims of gender violence*. http://158.109.131.198/catedra/images/Publicacions/EUROPEAN_PROTECTION_ORDER.pdf, [accessed on 2015-10-03], page 40

¹⁸¹ Draft Country Profile-National and foreign protection orders: legislation, recognition and enforcement and other resources. Revised draft reply of the European Union to specific questions. Ref. Ares(2014)3347108 - 09/10/2014, http://www.hcch.net/upload/wop/genaff_pd04b_eu.pdf [accessed on 2015-10-01]

¹⁸² Questionnaire on the recognition and enforcement of foreign civil protection orders Reply of the European Union to specific questions, https://www.google.es/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0CCQQFjAAAhUKEwi_1_GViPIAhWDVywKHdPODzs&url=http%3A%2F%2Fwww.hcch.net%2Fupload%2Fwop%2Fgenaff_pd04a_eu.doc&usq=AFQjCNHW8f3rA2C1DILiUytkVcSm91YqPg

victim decides to present the certificate, the executing Member State directly recognizes and executes the foreign protection measure¹⁸³.

The protection measures in the Regulation reiterate the protection measures established in the European protection order:

- (a) “a prohibition or regulation on entering the place where the protected person resides, works, or regularly visits or stays;
- (b) a prohibition or regulation of contact, in any form, with the protected person, including by telephone, electronic or ordinary mail, fax or any other means;
- (c) a prohibition or regulation on approaching the protected person closer than a prescribed distance”¹⁸⁴.

Both documents, the EPO Directive and the Regulation, ascertain the same measures in order to alleviate the process of recognition as the three types of measures are known in all Member States¹⁸⁵.

The protection measures under this Regulation are aimed to prevent any form of gender-based or close relationship violence, harassment, sexual aggression, stalking, intimidation and other forms of indirect coercion¹⁸⁶. The acts of crime are the same as in the EPO Directive. Moreover, like in the EPO Directive the Regulation applies to all victims, not only to gender violence victims. This fact may serve as the proof of how the EPO Directive and the Regulation complements each other.

The Regulation has presented the novelty in duration of recognition of the protection measure – it is limited to the period of 12 month from the moment the certificate was issued¹⁸⁷. The reason for this novelty is the fact that there is a variety of duration of protection measures under national laws of the Member States. For example, in France the duration of civil protection orders is

[1_GViPIAhWDVywKHdPODzs&url=http%3A%2F%2Fwww.hcch.net%2Fupload%2Fwop%2Fgenaff_pd04a_eu.doc&usg=AFQjCNHW8f3rA2C1DILiUytkVcSm91YqPg](http://www.hcch.net/upload/wop/genaff_pd04a_eu.doc), [accessed on 2015-10-11], page 3

¹⁸³ Draft Country Profile-National and foreign protection orders: legislation, recognition and enforcement and other resources. Revised draft reply of the European Union to specific questions. Ref. Ares(2014)3347108 - 09/10/2014, http://www.hcch.net/upload/wop/genaff_pd04b_eu.pdf [accessed on 2015-10-01]

¹⁸⁴ Regulation (EU) No 606/2013 of the European Parliament and of the Council of 12 June 2013 on mutual recognition of protection measures in civil matters, article 3(1)

¹⁸⁵ Questionnaire on the recognition and enforcement of foreign civil protection orders Reply of the European Union to specific questions, https://www.google.es/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0CCQQFjAAAhUKEwi_1_GViPIAhWDVywKHdPODzs&url=http%3A%2F%2Fwww.hcch.net%2Fupload%2Fwop%2Fgenaff_pd04a_eu.doc&usg=AFQjCNHW8f3rA2C1DILiUytkVcSm91YqPg, [Access on 2015-10-11], page 5

¹⁸⁶ Regulation (EU) No 606/2013 of the European Parliament and of the Council of 12 June 2013 on mutual recognition of protection measures in civil matters, recital 6

¹⁸⁷ Draft Country Profile-National and foreign protection orders: legislation, recognition and enforcement and other resources. Revised draft reply of the European Union to specific questions. Ref. Ares(2014)3347108 - 09/10/2014, http://www.hcch.net/upload/wop/genaff_pd04b_eu.pdf [accessed on 2015-10-01]

from 4 to 6 months¹⁸⁸. In Romania maximum duration is 6 months¹⁸⁹, in Estonia protection order in civil matters cannot be imposed for more than 3 years¹⁹⁰ and in Spain – 30 days¹⁹¹.

One more difference between the EPO and the Regulation is the way of their applicability: the EPO has to be transferred into national law by 11 of January 2015 by bringing into force the laws, regulations and administrative provisions which will comply with the EPO Directive¹⁹². Meanwhile, the Regulation from 11 of January 2015 applies directly in all Member States and does not require transposition into their national legislation¹⁹³.

No appeal is allowed against the issuing of a certificate¹⁹⁴. Moreover, a review of the substance of the protection measure in the Member State of recognition is not allowed either¹⁹⁵. This provision stands as one more difference from the EPO, which allows the person, who is causing danger, to challenge the protection measure before issuing the EPO¹⁹⁶. This might be explained by the fact that the Regulation does not regulate the implementation or enforcement of the measure, neither it establish sanctions for any kind of breach of the protection measure in the Member State—it is the discretion of the executing Member State. The Regulation is responsible only for the recognition of the imposed protection measure¹⁹⁷.

¹⁸⁸ Blaya C. *National report. Mapping the legislation and assessing the impact of protection orders in the European Member States (POEMS)* <http://poems-project.com/wp-content/uploads/2015/02/France.pdf> [accessed on 2015-12-15]

¹⁸⁹ Ionescu I. *National report. Mapping the legislation and assessing the impact of protection orders in the European Member States (POEMS)* <http://poems-project.com/wp-content/uploads/2015/02/Romania.pdf> [accessed on 2015-12-15]

¹⁹⁰ Poleshchuk V. *National report. Mapping the legislation and assessing the impact of protection orders in the European Member States (POEMS)* <http://poems-project.com/wp-content/uploads/2015/02/Estonia.pdf> [accessed on 2015-12-15]

¹⁹¹ Freixes T. *National report. Mapping the legislation and assessing the impact of protection orders in the European Member States (POEMS)* <http://poems-project.com/wp-content/uploads/2015/02/Spain.pdf> [accessed on 2015-12-15]

¹⁹² Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order, article 21(1)

¹⁹³ Draft Country Profile-National and foreign protection orders: legislation, recognition and enforcement and other resources. Revised draft reply of the European Union to specific questions. Ref. Ares(2014)3347108 - 09/10/2014, http://www.hcch.net/upload/wop/genaff_pd04b_eu.pdf [accessed on 2015-10-01]

¹⁹⁴ Regulation (EU) No 606/2013 of the European Parliament and of the Council of 12 June 2013 on mutual recognition of protection measures in civil matters, recital 28; article 5(2)

¹⁹⁵ Questionnaire on the recognition and enforcement of foreign civil protection orders Reply of the European Union to specific questions, https://www.google.es/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0CCQOFjAAAhUKEwi_1_GViPIAhWDVywKHdPODzs&url=http%3A%2F%2Fwww.hcch.net%2Fupload%2Fwop%2Fgenaff_pd04a_eu.doc&usq=AFQjCNHW8f3rA2C1DILiUytkVcSm91YqPg, [Access on 2015-10-11], page 5

¹⁹⁶ Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order, article 6(4)

¹⁹⁷ Questionnaire on the recognition and enforcement of foreign civil protection orders Reply of the European Union to specific questions, https://www.google.es/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0CCQOFjAAAhUKEwi_1_GViPIAhWDVywKHdPODzs&url=http%3A%2F%2Fwww.hcch.net%2Fupload%2Fwop%2Fgenaff_pd04a_eu.doc&usq=AFQjCNHW8f3rA2C1DILiUytkVcSm91YqPg, [Access on 2015-10-11], page 4

However, the protection measure, established in the certificate, issued under the Regulation, can be refused by the application of the person causing the risk if the recognition of such measure is “(a) manifestly contrary to public policy in the Member State addressed; or (b) irreconcilable with a judgment given or recognized in the Member State addressed”¹⁹⁸. One more difference from the EPO Directive, which allows much more grounds of non-recognition, established in the article 10. On the author’s opinion, this is due to the hierarchy of legal acts in the European Union: “a directive is a legislative act that sets out a goal that all EU countries must achieve. However, it is up to the individual countries to decide how¹⁹⁹”, while “a regulation is a binding legislative act. It must be applied in its entirety across the EU”²⁰⁰. So in the case of the Regulation, which has entirely binding and directly applicable in Member States, there should be as less obstacles for Member States to apply it in its national legislation as possible. Moreover, the nature of civil protection measure is different – in order to get this type of protection victim has to provide less proofs, it is easier applicable than protection measure under criminal law.

Introduction of the Regulation brought victims more possibilities to seek for the protection all around the EU. The differences between the EPO and the Regulation do not interfere with the complementation of each other and ensure the protection, no matter if the executing Member State provides protection under criminal or civil law. However, a few words on couple of issues regarding the Regulation might be said: it is complicated to monitor whether the protection in civil matters is effective, as the Regulation does not provide any provisions related to the monitoring and each Member State has different system of monitoring or it does not exist at all. For example, victims themselves have to monitor civil protection order, they are not even registered in the police station and police is not aware of the existence of civil protection order (Netherlands, Estonia, and Lithuania)²⁰¹. There is no agreement among the Member States on sharing the relevant statistics on protection measures and cases where they were issued, the breaches of the measures, as this kind of material would serve for improvement of effectiveness of national protection orders and for the future cross-border protection orders.

¹⁹⁸ Regulation (EU) No 606/2013 of the European Parliament and of the Council of 12 June 2013 on mutual recognition of protection measures in civil matters, article 13

¹⁹⁹ *Regulations, Directives and other acts*, http://europa.eu/eu-law/decision-making/legal-acts/index_en.htm [accessed on 2015-11-05]

²⁰⁰ *Ibid*

²⁰¹ Mapping the legislation and assessing the impact of Protection Orders in the European Member States, <http://poems-project.com/>, [accessed on 2015-11-09]

3.5. Importance of Victims' Package

It is very important for victims of domestic violence the decision of Victims' Package to grant a person with victim status regardless of if the offender was identified, prosecuted, convicted. The familial relationship between victim and offender is not important either²⁰². Regardless if the victim status is already granted in the criminal proceedings or not.

Other positive aspects of these EU legal instruments are the establishment of individual assessment of the victims, which allows more sensitive victims, including victims of gender-based violence or domestic violence, receive the appropriate communication from competent authorities together with adequate support according to their needs. As well, legal acts on protection order are constrained in the manner that the protection order starts to be effective as soon as the victim requires the protection measure in another Member State to which she moves, *i.e.* the protection follows the victim. So this package is especially beneficial for victims' of domestic violence.

All documents, which conclude the Victims' Package, are or will be incorporated into the national legislation of 28 countries. The issues of implementation and effectiveness are going to arise during the practical application of provisions of Victims' Package. Also, it will take quite a lot of time to see the practical benefits of the protection to victims of domestic violence provided by these acts. Each Member State has the right to provide protection on its own discretion. However, it may not be able to reach goals of the Victims' Package due to various obstacles, as absence of particular provisions in national legislation, lack of financial funding and monitoring, insufficient protection for its own citizens.

4. VISTIMS PROTECTION ACCORDING TO LEGISLATION OF THE REPUBLIC OF LITHUANIA

4.1 Protection of victims under civil law

The Constitution of the Republic of Lithuania does not provide any specific provision related to the victims of the crime.²⁰³ The Code of Criminal Procedure of Republic of Lithuania (hereinafter

²⁰² Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, recital 19

²⁰³L. Jakulevičienė, V. Siniovas *Protecting Victims' Rights in the EU: the theory and practice of diversity of treatment during the criminal trial. National Report: Lithuania*, p. 6

– the CCP) provides a notion of the *injured*, however, it recognizes the *victim* only a person, who has suffered direct physical, financial or moral damaged.²⁰⁴ The Civil Code of Republic of Lithuania does not provide notion of victim at all. Neither does the Code of Civil Procedure of Republic of Lithuania.

In Lithuania victims can get protection under civil or criminal law. The same or similar protection measures as are established in the Regulation can be granted only in the divorce procedure to the one of the spouses. The court takes into consideration the interests of the children as well the interests of one of the spouses and may apply protection measures, which is valid until the final decision of the court²⁰⁵. The protection measures can be the following:

- 1) to order one of the spouses to live separately;
- 2) to determine the residence of the minor children with one of the parents;
- 3) to demand for one of the spouses not to interfere with the use of certain property by the other spouse;
- 4) to issue a maintenance order in favour of the minor children or the other spouse;
- 5) seize property until its ownership by one of the spouses is determined or in order to enforce maintenance payments;
- 6) seize the property of one of the spouses the value of which could be used to compensate for the litigation costs to the other spouse;
- 7) prohibit one of the spouses from having contact with his or her minor children or appearing in certain places²⁰⁶.²⁰⁷

The protection can be granted if there is a request of the claimant, who initiates the interlocutory proceedings in order to obtain civil protection order. The victim has to provide evidence of the unlawful behaviour of the defendant. The defendant has the right to contest the claim. Usually after the oral hearing judge decides whether to impose the civil protection order. The civil protection order can be issued on an *ex parte* basis, however, the summons have to be served to the defendant due to all requirements, so the defendant at least could have a possibility to be present during the issuing the protection order²⁰⁸.

²⁰⁴ Lithuania Code of Criminal Procedure, article 28

²⁰⁵ Civil Code of the Republic of Lithuania, 18 July 2000, No VIII-1864, article 3.65(1)

²⁰⁶ *Ibid*, article 3.65(2)

²⁰⁷ Civil Code of the Republic of Lithuania, 18 July 2000, No VIII-1864, , article 3.65(2)

²⁰⁸ Zukauskienė R., *National report. Mapping the legislation and assessing the impact of protection orders in the European Member States (POEMS)*, <http://poems-project.com/wp-content/uploads/2015/02/Lithuania.pdf>, [accessed on 2015-09-15] page 8

Civil protection orders might be issued against an individual who is a perpetrator or who is a potential perpetrator and it has immediate effect after the decision of the judge²⁰⁹. If there are enough evidences for judge to consider that the defendant acted unlawfully against the claimant, the judge can issue the protection order. Moreover, the judge can impose a protection order as well if there is a real threat of unlawful behaviour in the futures, so that future unlawful behaviour would be prevented²¹⁰. Before the judge brings final decision on the protection order, the defendant may refer to the judge and present the negative consequences of the requested protection order, *i.e.* no possibility to visit family or the absence of another place of residence. The judges try to find the right balance between the claimant protection and limitation of negative consequences for the offender²¹¹. However, this is not possible in the cases of short term barring orders, which are imposed under the Law on Protection Against Domestic Violence.

In case of violation of protection order, claimant itself is responsible for reporting the violation to the police. No GPS tracking or another type of technology is not used for assessment of compliance with protection order. The claimant, who faces the violation of civil protection order, reports the violation to the police²¹².

The author questions the effectiveness of the civil protection orders. Inefficiency of the protection orders under civil law is caused by the lack of monitoring of their implementation, the application of orders only in the certain types of cases, *i.e.* divorce cases, as well, the imposition of the protection order depends only on evidence the claimant could present - her/his emotional status or sense of fear is not taken into consideration. Because of such considerations, the Law on Protection against Domestic Violence was introduced and it will be discussed further.

4.2. Protection of victims under criminal and criminal procedure law

In Lithuania the Code of Criminal Procedure (hereinafter-CCP) provides the coercive procedural measures (hereinafter - CPM) which can be imposed in order to ensure the participation in the process of the suspect, accused or convicted person, unhindered pre-trial investigation, the

²⁰⁹ Lietuvos Respublikos Civilinio proceso kodeksas, 2002 m. vasario 28 d. Nr. IX-743, article 384(5)

²¹⁰ Zukauskiene R., *National report. Mapping the legislation and assessing the impact of protection orders in the European Member States (POEMS)*, <http://poems-project.com/wp-content/uploads/2015/02/Lithuania.pdf>, [accessed on 2015-09-15] page 10

²¹¹ *Ibid*, page 13

²¹² *Ibid*

trial and execution of the judgment as well as the prevention of further offenses²¹³. These measures are not considered as protection for victims. However, they can serve as their protection, because one of the functions of CPM is to prevent further offences, which might also be an offense against the same victim. These measures can be issued during all stages of criminal procedure – in pre-trial and post-trial. One of the type of CPM is the obligation to live separately from the victim²¹⁴, which is very common in cases of gender violence and “can be issued during the pre-trial investigation period, either as part of measures for supervising house arrest or as part of a written obligation to remain in a specific place”²¹⁵.

Moreover, the Criminal Code has also been amended. Currently the Lithuanian criminal law provides protection measures following a conviction, *i.e.* the obligation to live separately from the victim and (or) do not approach the victim closer than a prescribed distance if this is necessary to protect the victim's legitimate interests²¹⁶. The court prohibits perpetrators not only not to approach the victim closer than prescribed, but also prohibits any form of communication, search for any contact and visit certain places where victim can be found²¹⁷. Another novelty of the Criminal Code is the participation in violent behavioural therapy programs for offenders who have committed offences to close relative or family member and this obligation must be fulfilled within the time specified by court²¹⁸.

Unlike in civil matters, victims do not need apply for a criminal protection order, like an obligation to live separately from the victim. This kind of protection is appointed by the judge of pre-trial investigation on the basis of the prosecutor's request²¹⁹. Before issuing the criminal protection order suspect/offender has to be heard so this type of protection order cannot be issued on an *ex parte* basis²²⁰.

In the Lithuanian criminal legislation protects victims through coercive procedural measures. It might be considered that smoothness of criminal proceedings is prioritized and victims' protection is put on the second place. The Criminal Code provide victims' protection, however, it does not

²¹³ Lietuvos Respublikos Baudžiamojo proceso kodeksas, 2002 m. kovo 14 d. įstatymu Nr. IX-785, article 119

²¹⁴ *Ibid*, article 120(1)

²¹⁵ Zukauskienė R., *National report. Mapping the legislation and assessing the impact of protection orders in the European Member States (POEMS)*, <http://poems-project.com/wp-content/uploads/2015/02/Lithuania.pdf>, [accessed on 2015-09-15] page 11

²¹⁶ Lietuvos Respublikos Baudžiamasis kodeksas, 2000 m. rugsėjo 26 d. Nr. VIII-1968, article 72¹

²¹⁷ *Ibid*

²¹⁸ *Ibid*, article 72²

²¹⁹ Lietuvos Respublikos Baudžiamojo proceso kodeksas, 2002 m. kovo 14 d. įstatymu Nr. IX-785, article 132⁽¹⁾

²²⁰ Zukauskienė R., *National report. Mapping the legislation and assessing the impact of protection orders in the European Member States (POEMS)*, <http://poems-project.com/wp-content/uploads/2015/02/Lithuania.pdf>, [accessed on 2015-09-15] page 7

allow victims themselves to apply for it, but makes them dependent on the prosecutor's ability to justify the need of protection and on the judge of pre-trial investigation considerations whether there is a ground for protection. None of them can properly evaluate the emotional status of the victim or possible risk of danger.

4.3. Issues of protection orders

Lithuanian legislation provides protection measures in civil and criminal matters. However, there are number of issues regarding to their imposition and implementation. The problems with the protection orders might be divided following:

1. Imposition and issuing of the protection orders

Even though victims are the direct beneficiaries of the protection order – or civil, or criminal – they are not involved in the designing of the protection order, the wishes of the victims are not asked. As well, the scope of protection orders is not clearly defined, e.g. it is not clear whether in *no contact order* contacting the perpetrator by the victim itself or contacting through third parties falls under the realm of protection order²²¹.

2. Monitoring of protection order

Civil protection orders have to be monitored only by the victims, moreover, those types of protection orders are not registered in the police stations, which means that police is not even aware of the existence of such protection orders. The situation with criminal protection orders are a little bit different: the protection orders are registered, but not always properly, furthermore, they are not properly communicated to the victims or monitoring authorities. In general possibilities to monitor are quite limited, as there is no possibility for police to make a regular home check-ups or use the technical surveillance device, which are expensive and it is impossible to provide it to all offenders. The lack of monitoring of compliance with criminal protection orders bring crucial consequences²²²:

²²¹ Zukauskienė R., *National report. Mapping the legislation and assessing the impact of protection orders in the European Member States (POEMS)*, <http://poems-project.com/wp-content/uploads/2015/02/Lithuania.pdf>, [accessed on 2015-09-15] page 25

²²² Žmogaus Teisių Stebėjimo Institutas (2015). *Žmogaus teisių apžvalga: 2013-2014. Kankinimo, nežmoniško ir žeminančio elgesio draudimas*. <http://pasidomek.lt/lt/i-smurtas-artimoje-aplinkoje-ir-smurtas-pries-moteris> [accessed on 2015-11-15]

in some cases perpetrators are overriding the protection orders, in particular, not to approach victims, and in the end they murder their victims²²³.

3. Enforcement of protection order

The indispose interference of the police to the matters of what they see as a private matter or the matter of civil law brings a long difficulties for effective implementation of protection orders. Also the serious questions arise about the validity of evidence in the cases of violations of protection measures: “often it is a matter of ‘his word against hers’”²²⁴.

4. Effectiveness

The effectiveness of protection orders can lean on lack of possibilities of monitoring of protection orders; issues with registration and communication of protection orders and their violations; reluctance of the police to act; shortage in human and financial recourses; not sufficient victims’ input²²⁵.

4.4. Can Lithuania provide the required level of protection for foreign victims?

It was already mentioned that the EPO and the Regulation provides the same protection measures, *i.e.* “the prohibition from entering certain localities, places or defined areas where the protected person resides or visits; the prohibition or regulation of contact, in any form or by any means, with the protected person; and the prohibition or regulation on approaching the protected person closer than a prescribed distance”²²⁶. Neither civil, nor criminal law talks about the prohibition of entering certain localities where protected person resides or visits, only the obligation to live separately from the victim. Thus, the civil code provides this measure only in cases of divorce. It can be concluded that Lithuanian legislation will not be able to provide the protection on the ‘highest degree possible’ as national legislation does not provide all protection measures, required by the EPO Directive and the Regulation.

²²³ <http://www.delfi.lt/news/daily/crime/prokuratura-keturiu-vaiku-motina-nuzudyta-del-pareigunu-neveiksnumo.d?id=62115711> [accessed on 2015-12-16]

²²⁴ Zukauskienė R., *National report. Mapping the legislation and assessing the impact of protection orders in the European Member States (POEMS)*, <http://poems-project.com/wp-content/uploads/2015/02/Lithuania.pdf>, [accessed on 2015-09-15] page 26

²²⁵ *Ibid*, page 27

²²⁶ Zukauskienė R., *National report. Mapping the legislation and assessing the impact of protection orders in the European Member States (POEMS)*, <http://poems-project.com/wp-content/uploads/2015/02/Lithuania.pdf>, [accessed on 2015-09-15] page 25-27, article 5

There serious doubts about the effectiveness of the protection of victims, like ensuring that offenders will comply with the certain prohibition established by protection measures, is difficult without constant and attentive monitoring and careful registration of all kinds of protection measures granted to the victims in the police stations. The CCP should be amended and provisions specifically and only about protection orders should be included. Special registration system should be developed, to which all institutions involved in criminal or civil proceedings could access. This would facilitate the monitoring of the issued protection orders and ensuring the effective protection.

4.5. Protection of victims of domestic violence in Lithuania

In Lithuania exists the model of greater protection from domestic violence: the heavier sentences are applied for murdering or severely impairing health for member of the family²²⁷. The Constitutional Court of Lithuania has specified that: *Thus, it needs to be held that the situations of the persons who murdered their close relative or family member or severely impaired his health and the persons who have committed the same deeds, however, who are not bound by family relations of close relation by kin with the victim, are not the same, as the persons who are related by the said relations attempted not only on such constitutional values as the life of the human being, inviolability of its person, but also on such constitutional values as close relation by kin, family, motherhood, fatherhood, childhood*”²²⁸.

Before the year 2011, domestic violence in Lithuania was considered as domestic conflict, which was supposed to be solved by the conflicting parties. The police was interfering only in cases of serious injuries. The situation has changed when *the Law on Protection against Domestic Violence* (hereinafter referred to as the Law) came into force on December 15, 2011. The Law has established the definition of domestic violence – “an intentional physical, mental, sexual, and economic or another influence exerted on a person by an act or omission as a result whereof the person suffers physical, property or non-pecuniary damage”²²⁹. In the Law, domestic violence is seen as the violation of human rights and freedoms, and because of the damage to the society is

²²⁷ Vaigė L. (2013). *Apsauga nuo smurto artimoje aplinkoje: psichinės prievartos problematika*. Page 10, http://manoteises.lt/wpcontent/uploads/2014/05/Analize_Psichines_prievartos_problematika_Laima_Vaige.pdf, [accessed on 2015-12-13]

²²⁸ The Constitutional Court of the Republic of Lithuania. Ruling on case No. 36/2009-20/2010-4/2011-9/2011

²²⁹ Law on Protection against Domestic Violence of the Republic of Lithuania, 26 May 2011, No XI-1425, Article 2(5)

attributed to the offences of public importance²³⁰. Such a treatment of domestic violence allowed changing the previously applicable private prosecution to accusation held by the prosecutor. According to the Law, “upon recording an incidence of domestic violence, a police officer shall immediately take measures to protect the victim of violence and, taking account of the circumstances, initiate a pre-trial investigation and notify the prosecutor if the prosecutor’s order is necessary to initiate the pre-trial investigation”²³¹; an individual complainant is not required. This way, responsibility for fighting domestic violence is transferred to law enforcement authorities, and is not left to the victim. The Law also obliges to quickly react to a threat, take precautionary measures, apply safeguard measures, and provide appropriate assistance. Even though the majority of victims of domestic violence are women, the Law is gender-neutral as men, children and the elderly can equally suffer such violence. Thus, it is aimed to protect from this kind of violence all the people who are or were “linked in marriage, partnership, affinity or other close relations, also persons having a common domicile and a common household”²³². The Law is applicable to those who are linked with a specific relation – it does not regulate other types of cases. Here, a similarity with the Istanbul Convention may be noticed: Lithuania has chosen to consider domestic violence not as a result of gender-based violence as it is established in international legal documents.

4.5.1. The Law on Protection Against Domestic Violence

The law establishes protection measures such as “the obligation for the perpetrator of violence to temporarily move out of the place of residence, if he resides together with the victim of violence”²³³ and “the obligation for the perpetrator of violence not to approach the victim of violence, not to communicate and not to seek contact therewith”²³⁴. The CCP as well provides measures of protection for the domestic violence victims: the police have the right to temporal detain of the perpetrator and put him into custody up to 48 hours²³⁵. If the pre-trial investigation is

²³⁰ Žmogaus teisių stebėjimo institutas (2013). *Žmogaus teisių įgyvendinimas Lietuvoje 2011-2012. Apžvalga*, page 20 https://www.hrmi.lt/uploaded/Apzvalgos/Zmogaus%20teisiu%20igyvendinimas%20Lietuvoje%202011-2012_Apzvalga_ZTSI.pdf, [accessed on 2015-03-24]

²³¹ Law on Protection against Domestic Violence of the Republic of Lithuania, 26 May 2011, No XI-1425, Article 6(1)

²³² *Ibid*, Article 2(1)1

²³³ *Ibid*, article 5(1)(1)

²³⁴ *Ibid*, article 5(1)(2)

²³⁵ Lietuvos Respublikos Baudžiamojo proceso kodeksas, (2002) Nr. IX-785, article 140(4)

started due to the acts of the perpetrator, the victim can be protected from the moment of perpetrator's detention²³⁶.

In order to protect the victim from repeated victimization, firstly, the measures under criminal process are applied, in particular, an obligation to live separately from the victim²³⁷ or arrest²³⁸. If the court does not impose any of those CPM, there is a possibility to seek the protection under article 5 part. 1 point 2 of the Law: "the obligation for the perpetrator of violence not to approach the victim of violence, not to communicate and not to seek contact therewith". However, the more effective are the measures of the CCP as it allows imposing stricter CPM, if the offender does not obey the initial one. The Law does not foresee this possibility. That is why perpetrator may not respect the protection measures under the Law, and behave contrary to it, e.g. not to move out from the common with the victim premises. Or approaches the victim, or comes back home, from which he was obliged to move out. For example, when the obligation not to approach the victim is applicable, the perpetrator have a possibility to come back home to pick his things without the escort of the police and without notifying the victim. This increases the threat to health and life of the victim²³⁹. Practical case on how perpetrators do not obey the prohibition not to approach the victims: one night of February 2013, a woman called the police and informed that her husband, who by the earlier court decision was forbidden to approach and/or enter their common home due to the domestic violence he had committed earlier, came home again. She said she is very scared, informed them about the court decision, drunk and aggressive behavior of her husband, and presence of small children. She called twice, pleading for police to arrive. The police never came that night and the woman was tortured and killed that night.²⁴⁰ This case illustrates not only unlawful behavior of perpetrator, but also the failure of police to fulfill its obligation.

As well, because the protection measures in cases of domestic violence are poorly monitored, sometimes victims call police themselves and tells about their fear due to the appearance

²³⁶ Gulbickaja J. (2013) *Smurto artimoje aplinkoje įstatymo LT komentaras*, <http://www.infolex.lt/portal/start.asp?act=news&Tema=1&str=52416>, [Access on 2015-04-16]

²³⁷ Lietuvos Respublikos Baudžiamojo proceso kodeksas, (2002) Nr. IX-785, article 132 ⁽¹⁾

²³⁸ *Ibid*, article 122

²³⁹ Zaksaitė S. (2013). *Apsauga nuo smurto artimoje aplinkoje*. Page 65, <http://www.teise.org/data/zmogaus-teises.-galutinis-2014-10-08.pdf> [Accessed on 2015-12-11]

²⁴⁰ <http://www.lrytas.lt/lietuvos-diena/kriminalai/keturiu-vaiku-motina-nuzudes-vyras-pripazintas-recidyvistu.htm>

of the perpetrator at home, however, police not always responds efficiently enough²⁴¹. Above-mentioned case serves as an example of such a bad practice in Lithuania.

However, the Law has solved one of the major problems in Lithuania: formerly the majority reports were withdrawn by the victims: it was mentioned before that as the Law has entered into force, the matter of domestic violence became a public matter, not the matter of two individuals and there is no possibility to withdraw the report, moreover, there is provided liability for a false report in article 13²⁴².

In some cases the criminal proceedings are terminated due to the reconciliation of the victim and perpetrator, as well, sometimes victims themselves are tend to change their testimonies in the favour of perpetrators or even are asking not to impose any sentence, they forgive the offenders²⁴³. This can be explained by the fact that victims are afraid to stay alone – psychological discomfort, to lose the breadwinner of the family – economic burden, to be responsible for the household alone, etc.

The loophole of the Law is the absence of the possibility to appeal the obligation for perpetrator to move out from the residence if it is shared together with the victim. This is the failure to ensure the rights of all participants of the criminal process, and this is required for the principle of fair trial²⁴⁴.

First years of the implementation of the Law has shown that State executes its obligations for victims of domestic violence superficially. Police is complaining that the implementation of the Law requires additional funding, which insufficiency can interfere with the effectiveness of victims protection²⁴⁵. As well the problems arises due to the inadequate interpretation of the provisions of the Law, e.g. upon arrival to the location of domestic violence, police has to inform victim about the possibilities to receive help and with the consent of the victim, notifies the centres of special help on the situation. However, police officers consider this provision as the mandatory obligation to get the written victim`s consent for the transmission of information. Without this kind of consent officers avoid to notify Special Assistance Centers on the executed violent crimes. In cases when

²⁴¹ Zukauskienė R., *National report. Mapping the legislation and assessing the impact of protection orders in the European Member States (POEMS)*, <http://poems-project.com/wp-content/uploads/2015/02/Lithuania.pdf>, [Access on 2015-09-15] page 19

²⁴² Gulbickaja J. (2013) *Smurto artimoje aplinkoje įstatymo LT komentaras*, <http://www.infolex.lt/portal/start.asp?act=news&Tema=1&str=52416>, [Access on 2015-04-16]

²⁴³ *Ibid*

²⁴⁴ *Ibid*

²⁴⁵ Žmogaus teisių stebėjimo institutas (2013). *Žmogaus teisių įgyvendinimas Lietuvoje 2011-2012. Apžvalga*, page 21 https://www.hrmi.lt/uploaded/Apzvalgos/Zmogaus%20teisiu%20igyvendinimas%20Lietuvoje%202011-2012_Apzvalga_ZTSI.pdf, [accessed on 2015-03-24]

information is presented, most of the time, it is incomplete. There are even situations when victims request the information on Special Assistance Centers themselves, but the police do not provide it²⁴⁶. The lack of constructive cooperation between the police and the Special Assistance Centers prevents victims to receive timely and effective help.

In cases of domestic violence, not only direct victim suffers violence, but as well witnesses of such actions, who very often are children. The Law does not foresee any special provisions for protection of children, except one, in article 9 part 3, which states that: “Police officers shall forthwith, <...>, give a notice to a children’s rights protection division where a minor is exposed to domestic violence, becomes a witness thereof...”²⁴⁷. Special Assistance Centers is a lighthouse in this situation as they provide special assistance not only to direct victims of the violence, but also to children. It is very important to establish fluent and operative cooperation between police and these kinds of centres.

The Law on Protection Against Domestic Violence is the “fresh” legal tool to regulate very specific relations between perpetrators and victims, the relations, which are very specific and have to be regulated in a subtle way. Even though the violence arising in domestic environment is a private matter, the Law has moved it to the higher level of social importance and made it an act of public importance. At the same time it established the obligation to start the pre-trial investigation for the acts, which previously would require the victim’s statement. So the Law has expanded the capabilities to deal with family relationship, conflicts with legal measures. Notwithstanding, there still are provisions, which have to be amended or included in the Law, *i.e.* assurance of the rights to all parts of the criminal process; avoid the change of testimonies during the trial. Constructive cooperation between law enforcement and the Special Assistance Centers is required. Moreover, *Committee on the Elimination of Discrimination against Women* (hereinafter – the Committee) in its recommendations to Lithuania has recommended establishing walk-in centers, where all women who are victims of violence would receive protection and assistance²⁴⁸. Additional funding to the police and financial support to the Special Assistance Centers is needed as specialists of these centers say that the current funding is not appropriate to provide assistance to all victims - often a

²⁴⁶ *Ibid*

²⁴⁷ Zaksaitė S. (2013). *Apsauga nuo smurto artimoje aplinkoje*. Page 65, <http://www.teise.org/data/zmogaus-teises.-galutinis-2014-10-08.pdf> [accessed on 2015-12-11]

²⁴⁸ Committee on the Elimination of Discrimination against Women (2014). *Concluding observations on the fifth periodic report of Lithuania*. CEDAW/C/LTU/CO/5, para 23(d) http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fLTU%2f5&Lang=en [accessed on 2015-12-08]

lawyer and psychological support services are working part-time or voluntary²⁴⁹. establishment of stricter CPM in the Law, otherwise the State cannot ensure its positive obligation to protect victims of domestic violence, the obligation which is established in international level. The absence of stricter CPM in the Law does not prevent perpetrators to stay away from the victim and does not prevent them to execute the violence repeatedly. The extra surveillance should be carried out, such as house visits, by the police in a more comprehensive, but not selective way. This would keep perpetrators away from trying to approach victims in their place of residence. The Committee's concluding observations are talking about effective enforcement and monitoring of the compliance with protection orders imposed on perpetrators²⁵⁰. Moreover, police officers, prosecutors and judges have noted there is still a lack of clear regulation of protection measures. As well, there is not enough support for victims during criminal proceedings - legal representation of their interests, professional assistance and moral support. While impunity for acts of domestic violence has decreased, criminal law, according to officials, is not able to overcome all reasons and consequences of this crime – it can only react to consequences of domestic violence²⁵¹. Stable change can be expected only if there is a cooperation among many fields, including education, social policy, culture, which can influence people's behavior changes²⁵².

4.5.2. The compliance of the Lithuanian legislation with Victims' Directive

In 2014, two years after the Law came into force, crimes of domestic violence accounted for 12,5 percent of overall crime statistics²⁵³. The number is high. However, the Law has brought progress into the system of protection of domestic violence victims: they got much better chance to defend their rights since the investigation, prosecution and burden of proof is transposed to the law enforcement authorities. Though, up until now, victims of domestic violence feel the lack of necessary information and legal aid, their often do not know or do not understand their rights and how to use them properly, in the result they cannot fully participate in criminal proceedings. Victims

²⁴⁹ <http://www.policija.lt/index.php?print=1&id=31201> [Accessed on 2015-12-13]

²⁵⁰ Committee on the Elimination of Discrimination against Women (2014). *Concluding observations on the fifth periodic report of Lithuania*. CEDAW/C/LTU/CO/5, para 25(b) http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fLTU%2f5&Lang=en [accessed on 2015-12-08]

²⁵¹ <http://www.policija.lt/index.php?print=1&id=31201> [Accessed on 2015-12-13]

²⁵² Michailovič I. (2014). *Kai kurie smurto artimoje aplinkoje aspektai socialinės kultūrinės lyties požiūriu*. Page 169, www.zurnalai.vu.lt/kriminologijos-studijos/article/download/5092/3349 [accessed on 2015-12-12]

²⁵³ Lietuvos policija (2014), *Statistika ir tendencijos. Registruoti iškvietimai dėl smurto artimoje aplinkoje (2012/01/01-2014/12/31)*, <http://www.bukstipri.lt/lt/statistika> [accessed on 2015-11-21]

do not always receive physical protection for themselves and their family members; they often fear for their children's safety and worry about retaliation and intimidation.

Due to the amendments of the Criminal Code and the Code of Criminal Process the requirement for the victim to provide the statement was abolished in the cases of psychological and sexual violence in domestic environment, as well in cases of infliction of physical pain or insignificant bodily injury to a close relative or a family member²⁵⁴. Representatives of law enforcement welcome the withdrawal of the procedure of private prosecution together with the requirement to present a statement. This may help victims to “go until the end” as before the most difficult thing for them was to make a statement²⁵⁵. Changes in legal regulation have significantly strengthened rights of victims of domestic violence. Although, the practice still faces challenges. For example, the lack of effective response to the violations of protection measures, which are imposed by the court, like the perpetrator coming back to the place of residence of the victim, searches for the ways to contact the victim or influences the victim through third parties, such as children. Even though the forms of violence are established in the Law (article 2(5)), they are not defined how the violence may occur. Especially, it is not clear how economical violence or psychological violence can manifest. There might be cases where the police would be called due to psychological violence and officers upon the arrival may see no signs of such violence, so they can even consider starting an investigation on false reporting of a criminal offense²⁵⁶. This creates prerequisite for pre-trial investigation officers, prosecutors and courts to consider violent behaviour and actions differently²⁵⁷. The obstacle of a comprehensive assessment of the current situation of domestic violence and protection of victims of domestic violence is the deficiency of proper collection of statistics, such as a number of the protection measures granted per year, their execution time; number of analysed domestic violence-related cases and their sentences; number of penalties imposed by courts, etc.

The transposition of the Victims' Directive into the national system will solve at least some of the above-mentioned problems and strengthen rights of victims of domestic violence. The

²⁵⁴ Baudžiamojo proceso kodekso 167, 409 straipsių pakeitimo ir papildymo įstatymas, 2013 . liepos 2 d., Nr. XII-502, http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=453257&p_tr2=2 [accessed on 2015-11-21]

Baudžiamojo kodekso 140, 145, 148, 149, 150, 151, 165 straipsnių pakeitimo ir papildymo įstatymas, 2013 m. liepos 2 d. Nr. XII-501, http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=453256&p_tr2=2 [accessed on 2015-11-21]

²⁵⁵ Žmogaus teisių stebėjimo institutas (2014), Vilnius. *Nusikaltimų aukų teisių direktyva: naujas požiūris į artimųjų smurto aukas*, page 6. https://www.hrmi.lt/uploaded/Apzvalgos/Tyrimas_auku-teisiu-direkt_1.pdf, [accessed on 2015-03-11]

²⁵⁶ Zaksaitė S. (2013). *Apsauga nuo smurto artimoje aplinkoje*. Page 61, <http://www.teise.org/data/zmogaus-teises.-galutinis-2014-10-08.pdf> [accessed on 2015-12-11]

²⁵⁷ *Ibid*, page 7

Victims' Directive aims to make the judicial process friendlier to the victims and to facilitate the burden of judicial process. Although the directive does not cover all issues related to the domestic violence, it provides useful guidance on victims' rights protection system, in particular, to ensure adequate protection and assistance in criminal proceedings. As well, it distinguishes the category of vulnerable victims. Proper implementation of the provisions of the Victims' Directive could have a direct impact on the situation of the victims of domestic violence in Lithuania as it covers victims of domestic violence. Further the author will introduce few rights, established in the Victims' Directive, in particular from Chapter 4 on protection and recognition of victims with specific protection needs, and how these rights are regulated in the Lithuanian legislation, which amendments will be done or should be done, in order to be in compliance with the Directive.

The concept of victims

Firstly, it is important to study the definition of the *victim*, as victims are the ones who will enjoy the rights. How it was mentioned before, in the Lithuanian legislation there is no notion of "victim", but there are related definitions: the CCP provides the notion of "injured" - the natural person to whom the committed offense caused physical, material and moral damage²⁵⁸. The Law provides the notion of victim of domestic violence, which is gender-neutral and includes children²⁵⁹. The Victims' Directive does not foresee a child as a direct victim, but child belongs to the notion of close relative and can enjoy the same protection as victim or its close relative²⁶⁰.

In October, Lithuanian Government has adopted a resolution on amendments and supplements of Lithuanian CCP²⁶¹. Due to this resolution, the Parliament of Lithuania has prepared a draft law for these amendments and supplements²⁶². One of the articles, which foreseen to be amended, is article 28, establishing the notion of victim/injured. The provision will be broader and include family member or close relative, who suffered physical, material or moral damage due to the

²⁵⁸ Lietuvos Respublikos Baudžiamojo proceso kodeksas, 2002 m. kovo 14 d. įstatymu Nr. IX-785, article 28

²⁵⁹ Republic of Lithuania Law on Protection Against Domestic Violence, 26 May 2011, No XI-1425, article 2(4)

²⁶⁰ Žmogaus teisių stebėjimo institutas (2014), Vilnius. *Nusikaltimų aukų teisių direktyva: naujas požiūris į į artimųjų smurto aukas*, page 10. https://www.hrmi.lt/uploaded/Apzvalgos/Tyrimas_auku-teisiu-direkt_1.pdf, [accessed on 2015-03-11]

²⁶¹ Lietuvos Respublikos Vyriausybė. Nutarimas Nr. 1128, 2015 m. spalio 26 d. <https://www.e-tar.lt/portal/lt/legalAct/b7b01710816c11e5b7eba10a9b5a9c5f> [accessed on 2015-12-10]

²⁶² Lietuvos Respublikos baudžiamojo proceso kodekso <...> pakeitimo ir papildymo įstatymo projektas http://www3.lrs.lt/pls/inter2/dokpaieska.showdoc_l?p_id=1100650 [accessed on 2015-12-10]

death of the direct victim. The amendment reiterates the definition of victim in Victims' Directive²⁶³.

Right to protection

Article 18 states that Member States shall ensure available measures to protect victims and their family members from secondary and repeat victimization, intimidation, retaliation, the risk of emotional or psychological harm, and to protect the dignity of victims during questioning and when testifying.²⁶⁴ The Directive widens the range of people who can enjoy the protection under this law: the direct victim, family members, who are a child/children, the spouse, the person who is living with the victim in a committed intimate relationship, in a joint household and on a stable and continuous basis, the relatives in direct line, the siblings and the dependents of the victim²⁶⁵. It also requires Member States to protect victims and their family members from physical, emotional and psychological harm. These measures (such as interim injunctions or protection/restraining orders) have to be issued with a view to protecting a person when there are serious grounds for considering that that person's life, physical or psychological integrity, personal liberty, security or sexual integrity is at risk²⁶⁶.

Authorities have an obligation to protect victims from secondary victimization during criminal proceedings. Results of the research made by the *Human Rights Monitoring Institute* in 2014 on the protection and system of support for victims' of domestic violence has shown that victims of domestic violence, after taking actions against their perpetrators, tend to suffer retaliation: threats, humiliation, persecution, sometimes the attempt to influence children, sometimes even murder²⁶⁷. "In Lithuania many domestic conflicts often arise during the divorce²⁶⁸" – in 2014 the Minister of Internal Affairs of Lithuania Saulius Skvernelis has stated after a tragedy of repeated

²⁶³ *Ibid*

²⁶⁴ Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, article 18

²⁶⁵ *Ibid* article 2(1)(b)

²⁶⁶ European Commission, (2013). *DG Guidance document related to the transposition and implementation of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA*, p. 39 http://ec.europa.eu/justice/criminal/files/victims/guidance_victims_rights_directive_en.pdf, [accessed on 2015-03-09]

²⁶⁷ Žmogaus teisių stebėjimo institutas (2014), Vilnius. *Nusikaltimų aukų teisių direktyva: naujas požiūris į į artimųjų smurto aukas*, page 10. https://www.hrmi.lt/uploaded/Apzvalgos/Tyrimas_auku-teisiu-direkt_1.pdf, [accessed on 2015-03-11]

²⁶⁸ <http://manoteises.lt/straipsnis/neismoktu-pamoku-kaina-zmoniu-gyvybes> [accessed on 2015-03-11]

victimization: victim B.S. has spent 7 years with A.B., during which she has suffered various types of domestic violence. Eventually, she had decided to break off the relationship. After her decision B.S. started to receive threats and intimidations from A.B. The woman has informed the police about the actions of her former partner. After couple of days woman was bombed in the car together with the perpetrator²⁶⁹. Perpetrators have a tendency to use the violence against their victims not once and not twice: numerous episodes of domestic violence sometimes appear during years.

Additionally to the CCP and Law on Protection Against Domestic Violence, in Lithuania the document which protects a broad range of victims is the *Programme on Protection of Witnesses and Victims from Criminal Influence, which was approved by Lithuanian Government in 1994*. ‘This program covers not only victims, but also their family members and relatives’.²⁷⁰ Witnesses and victims are granted of protection only when there are enough evidences that there is a realistic intention of murder, to use of violence against them, to destroy or damage their property, take any kind of criminal activities against them. The decision whether the witness or victim has to be protected is adopted by the quota performing person, investigator or the court.²⁷¹ It is impossible to find out how many people are protected under aforementioned program, neither how much does it cost or where and how it is executed, as this is the State secret.²⁷²

Another law, which protects victims of various crimes, is the *Law on the Protection from Criminal Influence of the Participants in Criminal Proceedings and Clandestine Activities, Law Enforcement Officers and Members of the Judiciary*. It says that persons participating in criminal proceedings, i.e. witnesses, victims, experts, specialists and defenders (representatives) can seek for protection under this law²⁷³. The protection might be granted if there is danger for health or life; the constitutional rights and freedoms are at stake; property of individuals can be destroyed or damaged²⁷⁴. Protection measures are different. It can be physical protection of person and his property; temporary relocation of a person to a safe place; setting the special regime on data about the person in the state and departmental records and information systems; change of location of

²⁶⁹ <http://www.15min.lt/naujiena/aktualu/nusikaltimaiimelaimes/per-sprogima-zuvusios-birutes-s-drauge-policija-zinojo-apie-aurelijaus-buinicko-planus-sproginti-59-472721#ixzz3NGugSXJP> [accessed on 2015-03-11]

²⁷⁰ L. Jakulevičienė, V. Siniovas *Protecting Victims’ Rights in the EU: the theory and practice of diversity of treatment during the criminal trial. National Report: Lithuania*, p. 25

²⁷¹ Liudytojų ir nukentėjusiųjų apsaugos nuo nusikalstamo poveikio programa, Lietuvos Respublikos Vyriausybė, 1994 m. vasario 7. nutarimas Nr. 86

²⁷² <http://www.alfa.lt/straipsnis/10399013/lietuvoje-liudytoju-apsauga-slaptesne-uz-jav-marsalu>; prisijungimo laikas: 2015-09-02

²⁷³ Lietuvos Respublikos baudžiamojo proceso ir kriminalinės žvalgybos dalyvių, teisingumo ir teisėsaugos institucijų pareigūnų apsaugos nuo nusikalstamo poveikio įstatymas, 1996 m. vasario 13 d. Nr. I-1202, <https://www.e-tar.lt/portal/lt/legalAct/TAR.717DD0E6FE37>, [accessed on 2015-09-23]

²⁷⁴ *Ibid*, article 4(1)

residence, work or study; change of person's identity and biographical data; performance of plastic surgery in order to change the person's appearance²⁷⁵, etc.

'The Lithuanian legislation generally complies with article 18 of the Victims' Directive regarding physical and psychological protection of victims and their relatives during the criminal proceedings'²⁷⁶. Even though, program and issued laws have a good goal – to protect people from oncoming danger or protect from the repeated violence, it is not always effective in practice. Lithuania is a small country, it is complicated to hide a person. If the person is hidden, his social life and working life suffers, as neither he/she can work, nor communicate with the external world. Not to mention the issues with social services as the identification code remains the same, so protected person has no guarantees he/she will be able to get to see a doctor if needed. In general, if the person is under protection of earlier mentioned laws or program, victim may feel as an outcast in the society as basically he/she can't enjoy all the things he/she is used to as a part of the society. This reason may discourage person so seek for the protection.²⁷⁷

Victims of domestic violence not always receive appropriate protection and/or behavior from the officers, who conduct investigation of the domestic violence. Some victims have expressed their disappointment in investigators, as they were acting disrespectfully and did not seem trustworthy. However, not all victims have faced this kind of behavior – a big part of respondents of the research of the *Human Rights Monitoring Institute* were happy about the professional and respectful demeanor of the officers²⁷⁸.

Another problem is that authorities are failing to provide protection to victims from repeated victimization. From mentioned examples it is seen that there is a risk for victims of domestic violence to suffer repeated victimization from the perpetrators after they initiate the process of separation or announces the violence to the police.

There is a requirement of improvement of national legislation of Lithuania in order to comply with article 18 of the Directive fully.

Right to avoid contact between victim and offender

²⁷⁵ *Ibid*, article 5

²⁷⁶ L. Jakulevičienė, V. Siniovas *Protecting Victims' Rights in the EU: the theory and practice of diversity of treatment during the criminal trial. National Report: Lithuania*, p. 28

²⁷⁷ *Ibid* p. 28

²⁷⁸ Žmogaus teisių stebėjimo institutas (2014), Vilnius. *Nusikaltimų aukų teisių direktyva: naujas požiūris į artimųjų smurto aukas*, page 13. https://www.hrmi.lt/uploaded/Apzvalgos/Tyrimas_auku-teisiu-direkt_1.pdf, [Accessed on 2015-03-11]

The Directive obliges Member States to create necessary conditions for victims and their family members to avoid contact with the perpetrator in the premises, where criminal process is held unless such contact is required for the investigation and other criminal proceedings²⁷⁹. The Directive talks about the “no contact” policy in all kind of premises, which are used in criminal proceedings, *i.e.* police stations, prosecutors’ offices and courts. However, crimes scenes or other kind of places, where investigation is brought, which are outside the premises, are not included²⁸⁰. Every contact between victim and the accused after the crime is very unpleasant for the victim as victim is already suffering post-traumatic syndrome, is scared about personal well-being or well-being family members, victim is not sure about the future, etc. To protect the victim from all possible distress, there should be as less as possible direct contact with the offender and limited times of interactions with the authorities, which are conducting investigation or court proceedings.

The CCP does not provide an obligation for authorities to ensure that unnecessary contact between victims and perpetrators will be avoided. How victims’ interests in this aspect are safeguarded, depends on the formed practice of officers. As well, the CCP does not establish the principle of minimum required contact, *i.e.* proceedings, which require contact between perpetrator and defendant, would be carried out only when it is necessary²⁸¹.

The second part of the article requires the separate waiting rooms in the court for the victims. However, not only the waiting room is important here: ‘The court room itself should be designed to avoid the victim/witness having to walk in front of the accused or any associated friends/family to get to the witness box, as this may increase the victim/witness’s sense of feeling threatened or intimidated.’²⁸² These measures require financial and human resources, which may be the obstacles to guarantee them in the national judicial system.

In Lithuania the rights of victims in the criminal process is set in the CCP, specifically article 198 established the right to ask for the application of anonymity, which ‘means the protection of

²⁷⁹ Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, article 19

²⁸⁰ European Commission, (2013). *DG Guidance document related to the transposition and implementation of* Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, p. 40-41

²⁸¹ Žmogaus teisių stebėjimo institutas (2014), Vilnius. *Nusikaltimų aukų teisių direktyva: naujas požiūris į į artimųjų smurto aukas*, page 25. https://www.hrmi.lt/uploaded/Apzvalgos/Tyrimas_auku-teisiu-direkt_1.pdf, [accessed on 2015-03-11]

²⁸² European Commission, (2013). *DG Guidance document related to the transposition and implementation of* Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, p. 41

personal identity data with a view of making it secret'.²⁸³ Due to the article 203, the victim or witness who is granted anonymity, are interviewed with artificial acoustic and visual barriers in order to prevent the determination of the identity of the person interviewed²⁸⁴. As well pre-trial judge may decide that interview should be carried out without the participation of the advocate and the suspect in the premises of the interview. In that case, pre-trial judge introduces the suspect and his/her lawyer with the obtained testimonies, after what the suspect and his/her lawyer has the right to provide questions to the victim or witness through pre-trial judge.²⁸⁵

In 2015 the amended CCP was issued with some specific additions to few articles, which guarantees more possibilities for victims to avoid contact with the offender: article 275 has broaden its part 5: Underage victims and witnesses as well victims, whom may suffer a psychological trauma or other serious consequences, questions can be asked only through the chairman of the trial hearing, if necessary - through its a representative²⁸⁶. The part 'victims, whom may suffer a psychological trauma or other serious consequences' is a new guarantee established in the Code.

Article 276 on 'Reading of the testimonies of the accused, victim or witness' part 2 as well is broader now as it includes 'a witness or victim, who may suffer a psychological trauma or other serious consequences'. Now the testimonies can be read by the pre-trial investigation judge during the hearing of those who are underage victims and witnesses, or if they are granted anonymity, or if they may suffer a psychological trauma or other serious consequences.²⁸⁷

Article 283 was supplemented with part 6, which allows victim not to participate in the whole trial if he/she may suffer a psychological trauma or other serious consequences. As well this kind of the victim may not be questioned in the hearing. In this case his/her testimonies must be read by the judge of pre-trial investigation, or a video, which was recorded during pre-trial investigation, must be shown. However, if the victim is asked to participate in the hearing, accused and other participants of the process may not be allowed to participate during the questioning. In this case video and audio recording must be done and participants, who are not allowed to hear the questioning directly, must be able to observe and hear the interview in another room, as well, give questions through the judge.²⁸⁸

²⁸³ L. Jakulevičienė, V. Siniovas (2013). *Protecting Victims' Rights in the EU: the theory and practice of diversity of treatment during the criminal trial. National Report: Lithuania*, p. 29

²⁸⁴ *Ibid* article 203(2)

²⁸⁵ *Ibid* article 203(3)

²⁸⁶ Lithuania Code of Criminal Procedure, article 275(5)

²⁸⁷ *Ibid* article 276(2)

²⁸⁸ *Ibid* article 283 (6)

The Lithuanian legislation ensures the avoidance of contact between the victim and the offender. When setting interviews or other investigative events, law enforcement officials try to make sure that the offender and the victim do not meet each other.²⁸⁹ However, in practice it is difficult to ensure the separate premises in police stations, prosecutors' offices. As well even though the waiting rooms in court are separate, the corridors in courts and law enforcement institution buildings are common. More problems arise when there is a mismatch between the statements of the victim and offender: then the confrontation must be appointed in order to clarify the issue. The effectiveness of this tool is very questionable in practice as the victims have the right not to agree on this.²⁹⁰ It can be concluded that in legislative level the Lithuanian laws are in compliance with article 19 of the Directive. However, practically there is a lot to improve.

Right to protection of victims during criminal investigations

This right includes the obligation to carry out interviews with victims without undue delay, carry out as little as possible interviews and only if it is really necessary for the investigation. As well, to minimize number of medical examinations²⁹¹. In addition, the Directive provides the right for victims to be accompanied by their legal representative or other selected person during the investigation.

The CCP does not establish a general principle of the minimum amount of the proceedings regarding victim. The exception would be regarding minors victims of crime and victims, who may suffer "mental trauma or other serious consequences - such victims during the investigation are interviewed generally not more than once²⁹². As well, the CCP does not provide right for victims to be accompanied by the selected person selected during the investigation. However, police officers themselves are trying to limit the number of interviews to 1 or 2 as they try

²⁸⁹ L. Jakulevičienė, V. Siniovas *Protecting Victims' Rights in the EU: the theory and practice of diversity of treatment during the criminal trial. National Report: Lithuania*, p. 29

²⁹⁰ *Ibid* p. 30

²⁹¹ Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, article 20

²⁹² Lietuvos Respublikos Baudžiamasis kodeksas, 2000 m. rugsėjo 26 d. Nr. VIII-1968, article 186(2)

to question everything what is possible about the day when the act of violence has happened, about the act of violence itself²⁹³.

In cases of domestic violence cases where legal representative does not accompany the victim, the person, accompanying the victim throughout the criminal proceedings, would significantly help the victim to participate fully in this process. Such a person may be either a close relative or a friend, as well social worker or other professional, such as Victim Support Officer. The draft law of amendments and supplements of the CPP includes a provision on the person accompanying the victim, specifically, article 56: the victim during criminal proceedings may be accompanied by a person of his choice. This person must follow established procedures during pre-trial investigation and the trial²⁹⁴.

The positive aspect regarding this right in Lithuania is that practically police officers themselves are trying to be as thorough during first or second interview with the victim, in order not to carry more interviews. So far there the principle of minimum amount of proceedings to the victims' is not established in national legislation, but practically it is more or less working due to the good will of police officers. As well, Lithuanian Parliament is planning to include a provision on the person accompanying the victim. This shows a positive move towards victims by the national authority.

Individual assessment and Right to protection of victims with specific protection needs during criminal proceedings

The Victims' Directive imposes an obligation to carry out an individual assessment for each of the victims, to determine whether the victim has specific protection needs in the criminal proceedings²⁹⁵. The aim of this assessment is to identify more vulnerable victims, who are at risk of higher secondary victimization, intimidation and retaliation. During individual assessment these aspects are taken into consideration, *i.e.* personal characteristics of the victim, type of the crime and circumstances of the crime.

²⁹³ Žmogaus teisių stebėjimo institutas (2014), Vilnius. *Nusikaltimų aukų teisių direktyva: naujas požiūris į į artimųjų smurto aukas*, page 25. https://www.hrmi.lt/uploaded/Apzvalgos/Tyrimas_auku-teisiu-direkt_1.pdf, [accessed on 2015-03-11]

²⁹⁴ *Ibid*

²⁹⁵ Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, article 22

“In the context of the individual assessment, particular attention shall be paid to victims who have suffered considerable harm due to the severity of the crime; victims who have suffered a crime committed with a bias or discriminatory motive which could, in particular, be related to their personal characteristics; victims whose relationship to and dependence on the offender make them particularly vulnerable. In this regard, victims of terrorism, organized crime, human trafficking, gender-based violence, violence in a close relationship, sexual violence, exploitation or hate crime, and victims with disabilities shall be duly considered”²⁹⁶.

Individual assessments should be carried out with the active participation of the victim, taking into account their needs, including reluctance to use specific protection measures²⁹⁷. When it is identified that victim requires specific needs, victim has a right to enjoy these measures: to be interviewed in the premises designed specifically for this activity by specially trained personnel, and has always conducted by the same persons unless this is contrary to the proper execution of justice²⁹⁸. In cases of sexual violence, gender violence or domestic violence, the interview has to be conducted upon request of the victim by the person of same sex.

For victims with specific protection needs court must provide the opportunity to give testimonies through communications technology, as well, without physically being in the court room or use other means to ensure that victims and perpetrator do not see each other. It is also necessary to ensure that unrelated to offence unnecessary questions will not be given, also questions about the victim's private life.²⁹⁹.

The CCP does not regulate which authority and by which criteria the mental trauma or other serious consequences are established. On the other hand, such wording as "mental trauma" and "other serious consequences" implies that in order for a victim to use protective measures damage should be very serious. Meanwhile, the provisions of the Victims' Directive show that the protective measures are granted on the grounds of possible consequences, that may be difficult to assess, but to personal characteristics of the victim, the nature of the crime, and the relationship between the victim and the perpetrator. In order to determine the specific protection needs and provide access to protective measures, it is enough for the victim to meet certain criteria to prove its potential

²⁹⁶ *Ibid*, article 22(3)

²⁹⁷ *Ibid*, article 22(6)

²⁹⁸ *Ibid*, article 23

²⁹⁹ Žmogaus teisių stebėjimo institutas (2014), Vilnius. *Nusikaltimų aukų teisių direktyva: naujas požiūris į į artimųjų smurto aukas*, page 27. https://www.hrmi.lt/uploaded/Apzvalgos/Tyrimas_auku-teisiu-direkt_1.pdf, [accessed on 2015-03-11]

vulnerabilities in the process. For example, trafficking victims are often young people, disadvantaged people, lured by fraud or violence, often intimidated or heavily dependent on the perpetrator. Thus, these objective circumstances should be sufficient for the victim should to use specific protection measures, even if there is no evidence that during the process victim would get a psychological trauma or other serious consequences³⁰⁰.

Lithuanian Parliament foresees incorporation of specific protection needs provision together with assessment of those needs. Article 36 will be supplemented with second part, which states that: specific protection needs are victims' needs, determined by personal characteristics, nature of the offense or its circumstances, which allows victims to use guarantees provided by this Code, in order to protect victim from mental trauma, effects of the crime or other negative consequences³⁰¹. Article 186 will be supplemented with second part and establish assessment of victims' specific protection needs. Not later than the first interview, officer of the pre-trial investigation or prosecutor performs an assessment of victims' specific protection needs. Where necessary, psychologist or other person with specific knowledge and skills may be invoked.

This is a big novelty in the criminal proceedings and it is made specifically according to the Victims' Directive. Lithuania is taking into consideration European recommendations and this will strengthen rights of the victims.

4.5.3. Lithuania and CEDAW

As the party to the Convention, Lithuania must to report to the Committee on the advancements that were made in implementing the Convention within the State³⁰². After reviewing the report, the Committee formulates concluding comments/observations on difficulties, which affects the implementation of the Convention. As well, the Committee indicates positive aspects, concerns and provides suggestions together with recommendations to strengthen the implementation of the Convention³⁰³.

The newest concluding observations on the report of Lithuania were issued in 2014. The Committee has welcomed the Law on Protection Against Domestic Violence, amendments to the

³⁰⁰*Ibid*, page 28

³⁰¹ Lietuvos Respublikos Vyriausybė. Nutarimas Nr. 1128, 2015 m. spalio 26 d. <https://www.e-tar.lt/portal/lt/legalAct/b7b01710816c11e5b7eba10a9b5a9c5f> [accessed on 2015-12-10]

³⁰² Convention on the Elimination of All Forms of Discrimination against Women, article 18

³⁰³ UN Women. Convention on the Elimination of All Forms of Discrimination against Women. Reporting <http://www.un.org/womenwatch/daw/cedaw/reporting.htm> [accessed on 2015-12-19]

CCP and the Criminal Code on more effective investigation of and sanctions against perpetrators of sexual abuse of children and violence against women, adoption of National Programme for the Prevention of Domestic Violence and Provision of Assistance to Victims for 2014-2020³⁰⁴. However, the Committee also has presented numbers of concerns regarding violence against women, including domestic violence. Firstly, the patriarchal attitudes and gender stereotypes of women and men roles in family and society still prevails and are reflected in the media, education, labour market. As it was mentioned before in the thesis, patriarchal attitudes affect the imbalance of rights and power between men and women, put women in the position of the subordinate and let the violence against women to spread. Recommendations of the Committee are following: the elimination of discriminatory gender stereotypes should be a key priority in the national programme for the equality of women and men³⁰⁵. In the above-mentioned National Programme for the Prevention of Domestic Violence and Provision of Assistance to Victims for 2014-2020 there are no activities on the elimination of such gender stereotypes. Moreover, textbooks and all educational material should be reviewed in order to eliminate gender stereotypes, encourage the media to provide positive images of women and show women and men as equal in public and private life³⁰⁶.

Another concern brought by the Committee is the prevalence of violence against women and lack of comprehensive strategy for elimination of gender-based violence against women in all forms in public and private life³⁰⁷. The Committee recommends complementing the National Programme for the Prevention of Domestic Violence and Provision of Assistance to Victims for 2014-2020 with the comprehensive strategy on elimination of gender-based violence against women in all forms in public and private life, together establish coordinating and monitoring mechanism to prevent and eliminate all forms of violence effectively.³⁰⁸ Crisis and walk-in centres for protection and assistance to women, who are victims of violence, should be established and distributed in a geographically adequate manner³⁰⁹. Next year Lithuania will have to provide written information on the step taken to implement such recommendation on crisis and walk-in centres³¹⁰.

³⁰⁴ Committee on the Elimination of Discrimination Against Women (2014). *Concluding observations on the fifth periodic report of Lithuania*. CEDAW/C/LTU/CO/5, para 5

³⁰⁵ *Ibid*, para 21

³⁰⁶ *Ibid*

³⁰⁷ Committee on the Elimination of Discrimination Against Women (2014). *Concluding observations on the fifth periodic report of Lithuania*. CEDAW/C/LTU/CO/5, para 22

³⁰⁸ *Ibid*, para 23(b)

³⁰⁹ *Ibid*, para 23(d)(e)

³¹⁰ *Ibid*, para 46

The Committee is concerned that there is the insufficient provision of services, the protection orders imposed for perpetrators are monitored and enforced poorly, the number of prosecutions and sentences in cases of domestic violence is low³¹¹, even though the amendments to the CCP and Criminal code regarding more effective investigation of and sanctions against perpetrators of violence against women were made. It is recommended to change the situation by enforcing the protection orders effectively and monitoring compliance with protection orders, as well, prosecute and punish perpetrators of domestic violence effectively³¹².

Concerns brought by the Committee emphasize the lack of compliance with the Convention. However, Lithuania is on a good way: the adoption of special law on protection against domestic violence, amendments to criminal laws and national programme on prevention of domestic violence shows the willingness of the State to fight prevalence of such violence. Firstly, perverse stereotypes should be withdrawn. Then improvements of enforcement of protection orders, prosecution and punishment of guilty once and adoption of comprehensive strategy on elimination of gender-based violence should be done.

4.5.4. Conclusion

Like many other countries, Lithuania is combating violence against women, including domestic violence. The battle is long and very difficult. However, small victories can be already seen: 4 years ago Lithuania adopted special law on protection against domestic violence. The law has brought a number of advantages to the victims of such violence. Amendments of the Code of Criminal Proceedings as well have brought positive aspects regarding protection of victims of domestic violence. Moreover, authorities are planning to establish more changes in the CCP in order to provide better conditions for victims of domestic violence. For example, law enforcement is considering the possibility to investigate and hand over to the court cases of domestic violence within 48 hours³¹³. This possibility will let victims to recover faster from the suffered violence.

Recommendations set by CEDAW illustrates that Lithuania is not fully in compliance with international standards established in the Convention. There must be elimination of patriarchal

³¹¹ *Ibid*, para 24

³¹² Committee on the Elimination of Discrimination Against Women (2014). *Concluding observations on the fifth periodic report of Lithuania*. CEDAW/C/LTU/CO/5, para 25(b)(c)

³¹³ <http://www.policija.lt/index.php?id=36392> [accessed on 2015-12-16]

stereotypes in the country, which is one of the main reasons of inequality of power between men and women, which leads to gender-based violence.

In author's opinion, the analysis of different types of protection orders, the law on protection against domestic violence and the CCP, it is seen that there still are issues regarding victims' protection, which do not allow victims to be completely protected and which do not help to decrease the prevalence of domestic violence. Inability to be fully in compliance with standards set in the Convention allows violence against women to prevail in Lithuania.

CONCLUSIONS AND RECOMMENDATIONS

1. Under the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), domestic violence is a gender-based violence, which for many years was a hidden type of violence. It was acknowledged that this type of violence has a severe impact not only for members of the family, where it occurs, but also to the whole society. One of the reasons why this violence is still prevalent is the stereotypical patriarchal model in the society, which has to be changed by States. CEDAW among other issues in Lithuania, has prioritized violence against women. In 2016 Lithuania already has to submit written explanations on how certain recommendations regarding violence against women were implemented. Lost case on domestic violence in the European Court of Human Rights illustrates that this issue is very grave and important.
2. States have the positive obligation to safeguard right of women to be free from violence and fear, to investigate, punish and prosecute for acts of violence, to prevent private actors from committing or repeating violent acts, to change social and cultural models where men are superior than women. All these obligations are established in the international treaties to which Lithuania is a Party. The exception would be the Istanbul Convention, which Lithuania has signed, and that shows the intention to become a Party to the Convention. So far Lithuania faces difficulties with these obligations. The legal rules on protection of domestic violence victims exist and work. However, they do not work that well to provide the adequate level of protection. Until now, women are experiencing family violence and number of these kind of cases have not decreased significantly yet. Although, very positive step was made in 2011 when the Law on Protection against Domestic Violence was issued.
3. The European Union does not have a specific law to protect victims of domestic violence. However, it has introduced the set of three legal tools, so-called Victims' Package, which are dedicated to protect victims of domestic violence around the European Union and to facilitate the criminal process to victims by giving them more rights and establishing the system of individual assessment for every victim. During the year of 2015 Member States have to incorporate the Victims' Package into national legislations and it is too early to evaluate the practical use of protection at this moment.

4. Lithuania still has a high rate of victims of domestic violence. Even though 4 years ago the special law for protecting victims of domestic violence was introduced, the country faces number of issues in this area: inadequate interpretation of the provisions of the Law; lack of constructive cooperation between police and Special Assistance Centres, which is provided by the Law; insufficient monitoring of interim measures and absence of penalties for this kind of violations encourages perpetrators to violate them. It is recommended to review the Law and incorporate amendments, which would eliminate those issues.
5. Lithuania provides protection both under criminal and civil law. The protection under criminal law is provided through coercive procedural measures, which are aimed to ensure that suspect will not run away or hinder pre-trial investigation. The protection provided with civil protection order is applicable only in one type of cases, *i.e.* divorce cases. The effectiveness of protection of victims is quite doubtful due to the lack of monitoring and registration of orders in the law enforcement institutions. It seems that Lithuania faces problems with protection of victims, so it is difficult to measure whether the State will be able to provide effective protection to the foreign victims who will present the EPO or the certificate. It is recommended to widen the types of protection in civil matters and include the protection of victims into the Code of Criminal Process. As well, establish their monitoring and registration of both types – criminal and civil – protection orders in law enforcement institutions, preferably, in the police stations.
6. Victims' Directive is one of the documents, which is included in Victims' Package. It is dedicated to facilitate victims' burden during the criminal proceedings, to make it more victim-friendly. Lithuanian laws are partly in compliance with this Directive, as some of the rights are provided in the national legislation, some – not fully, some – not at all. The recommendations would be to supplement the Code of Criminal Procedure together with the Law on Protection Against Domestic Violence on rights such as *right to protection, right to avoid contact between victim and offender, rights to protection of victims during criminal investigations*. Here are proposed recommendations for the proper implementation of the Victims' Directive:
 - to establish methods on how State will provide protection from repeated victimization, retaliation, intimidation and emotional harm during questioning and when testifying;

- it is appropriate to consolidate the right for victims and their family members to avoid unnecessary contact with perpetrators together with the principle of minimum contact between victim and perpetrator during proceedings. Moreover, the practical guidance on the implementation of such principle should be created;
 - it is appropriate to establish in the CCP a general principle of the minimum amount of the proceedings for victims. As well, to ensure the opportunity for victims to be accompanied by a social worker or other specialist throughout the criminal proceedings, providing such a function for Special Assistance Centers or other services of assistance to victims, and ensuring the proper functioning of that service funding;
 - to establish collection of the data on cases of domestic violence, so it would be possible to have statistics on whether the situation of this type of crime is improving or getting worse.
7. Today Lithuania faces some troubles in meeting the international and European standards fully. The domestic violence still prevails in the country. As well, victims of such violence do not enjoy all rights established by the European Union. Various improvements of national legislation are needed in order to provide sufficient protection to national and foreign victims.

BIBLIOGRAPHY

International Treaties

1. UN Convention on the Elimination of All Forms of Discrimination against Women, 1979
2. Council of Europe Convention on preventing and combating violence against women and domestic violence
3. The Treaty on the Functioning of the European Union
4. *Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women* “Convention of Belem Do Para”
<http://www.oas.org/juridico/english/treaties/a-61.html>
5. *Protocol to the African Charter on Human and People`s Rights on the Rights of Women in Africa*,
http://www.achpr.org/files/instruments/women-protocol/achpr_instr_proto_women_eng.pdf
6. Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. Adopted and opened for signature, ratification and accession by General Assembly resolution 55/25 of 15 (2000).
<http://www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolTraffickingInPersons.aspx>
7. Rome Statute of the International Criminal Court (2002). https://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf
8. United Nations Convention Against Transnational Organized Crime
https://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOC_ebook-e.pdf

European Legislation

1. Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings (2001/220/JHA)
2. Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order
3. Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms
4. Regulation (EU) No 606/2013 of the European Parliament and of the Council of 12 June 2013 on mutual recognition of protection measures in civil matters

5. European Parliament resolution of 26 November 2009 on the elimination of violence against women

Guidance/Recommendations

1. Centre for European Constitutional Law, *Protecting Victims' Rights in the EU: the theory and practice of diversity of treatment during the criminal trial*, <http://www.victimprotection.eu/images/methodological-material/Research-Guidelines.pdf>
2. European Commission (2013). *DG Guidance document related to the transposition and implementation of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA*
3. Council of the European Union. (2010). *Explanatory memorandum of the Directive of the European Parliament and of the Council on the European protection order*. <http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2017513%202009%20ADD%20%20REV%201>
4. General Recommendation of the Committee on the Elimination of Discrimination against Women No. 19 on Violence against women
5. Recommendation No. R (2002) 5 of the Committee of Ministers of the Council of Europe to Member States on the protection of women against violence, adopted by the Committee of Ministers on 30 April 2002, at the 794th meeting of the Ministers' Deputies (<https://wcd.coe.int/ViewDoc.jsp?id=280915>)
6. Explanatory Memorandum of Recommendation No. R (2002) 5 of the Committee of Ministers of the Council of Europe to Member States on the protection of women against violence, adopted by the Committee of Ministers on 30 April 2002, at the 794th meeting of the Ministers' Deputies ([http://www.coe.int/t/dghl/standardsetting/Equality/03themes/violence-against-women/Rec\(2002\)5_en.pdf](http://www.coe.int/t/dghl/standardsetting/Equality/03themes/violence-against-women/Rec(2002)5_en.pdf))
7. Appendix to Recommendation No. R (2002) 5 of the Committee of Ministers of the Council of Europe to Member States on the protection of women against violence
8. Committee on the Elimination of Discrimination against Women (2014). *Concluding observations on the fifth periodic report of Lithuania*. CEDAW/C/LTU/CO/5

National Legislation

1. Lietuvos Baudžiamojo Proceso Kodeksas, 2002 m. kovo 14 d. Nr. IX-785
2. Lietuvos Respublikos Civilinis kodeksas, 2000 m. liepos 18 d. Nr. VIII-1864
3. Lietuvos Respublikos Civilinio proceso kodeksas, 2002 m. vasario 28 d. Nr. IX-743
4. Lietuvos Respublikos Baudžiamasis kodeksas, 2000 m. rugsėjo 26 d. Nr. VIII-1968
5. Republic of Lithuania Law on Protection Against Domestic Violence, 26 May 2011, No XI-1425
6. Baudžiamojo proceso kodekso 167, 409 straipsių pakeitimo ir papildymo įstatymas, 2013 liepos 2 d., Nr. XII-502
7. Baudžiamojo kodekso 140, 145, 148, 149, 150, 151, 165 straipsnių pakeitimo ir papildymo įstatymas, 2013 m. liepos 2 d. Nr. XII-501
8. Lietuvos Respublikos baudžiamojo proceso ir kriminalinės žvalgybos dalyvių, teisingumo ir teisėsaugos institucijų pareigūnų apsaugos nuo nusikalstamo poveikio įstatymas, 1996 m. vasario 13 d. Nr. I-1202
9. Liudytojų ir nukentėjusiųjų apsaugos nuo nusikalstamo poveikio programa, Lietuvos Respublikos Vyriausybė, 1994 m. vasario 7. nutarimas Nr. 86
10. Lietuvos Respublikos Vyriausybė. Nutarimas Nr. 1128, 2015 m. spalio 26 d. <https://www.e-tar.lt/portal/lt/legalAct/b7b01710816c11e5b7eba10a9b5a9c5f>
11. Lietuvos Respublikos baudžiamojo proceso kodekso <...> pakeitimo ir papildymo įstatymo projektas http://www3.lrs.lt/pls/inter2/dokpaieska.showdoc_l?p_id=1100650

Cases

1. CEDAW case Yildirim v. Austria, Communication No. 6/2005
2. CEDAW case González Carreño v. Spain, Communication No. 47/2012
3. The European Court of Human Rights, *Opuz v. Turkey*, Application no. 33401/02
4. The European Court of Human Rights, *Valiuliene v. Lithuania*, Application no. 33234/07
5. Concurring opinion of judge Pinto de Albuquerque, ECtHR case, *Valiuliene v. Lithuania*, Application no. 33234/07
6. Dissenting opinion of judge Jočienė ECtHR case, *Valiuliene v. Lithuania*, Application no. 33234/07

7. The European Court of Human Rights, *M&M v. Croatia*, Application no. 10161/13
8. The Constitutional Court of the Republic of Lithuania. Ruling on case No. 36/2009-20/2010-4/2011-9/2011

Reports

1. Zukauskienė R., *National report. Mapping the legislation and assessing the impact of protection orders in the European Member States (POEMS)*, <http://poems-project.com/wp-content/uploads/2015/02/Lithuania.pdf>
2. Report No. A7-0075/2014 with recommendations to the Commission on combating Violence Against Women (2013/2004(INL)) Committee on Women's Rights and Gender Equality, Rapporteur: Antonia Parvanova (<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A7-2014-0075+0+DOC+PDF+V0//EN>)
3. Explanatory report of Council of Europe Convention on preventing and combating violence against women and domestic violence, http://www.coe.int/t/dghl/standardsetting/equality/03themes/violence-against-women/Exp_memo_Conv_VAW_en.pdf
4. Report of the meeting of the experts' group on the recognition and enforcement of foreign civil protection orders (12-13 February 2014). Drawn up by the Permanent Bureau. Hague conference on private international law. Preliminary Document No 4 A of March 2014 for the attention of the Council of April 2014 on General Affairs and Policy of the Conference
5. L. Jakulevičienė, V. Siniovas (2013). *Protecting Victims' Rights in the EU: the theory and practice of diversity of treatment during the criminal trial. National Report: Lithuania*
6. Manjoo R. (2015). *Special Rapporteur on violence against women, its causes and consequences*. <http://www.ohchr.org/EN/Issues/Women/SRWomen/Pages/AnnualReports.aspx>
7. European Institute for Gender Equality (2015). *An analysis of the Victims' Rights Directive from a gender perspective*. <http://eige.europa.eu/sites/default/files/documents/mh0115698enn.pdf>
8. Blaya C. *National report. Mapping the legislation and assessing the impact of protection orders in the European Member States (POEMS)* <http://poems-project.com/wp-content/uploads/2015/02/France.pdf>

9. Ionescu I. *National report. Mapping the legislation and assessing the impact of protection orders in the European Member States (POEMS)* <http://poems-project.com/wp-content/uploads/2015/02/Romania.pdf>
10. Poleshchuk V. *National report. Mapping the legislation and assessing the impact of protection orders in the European Member States (POEMS)* <http://poems-project.com/wp-content/uploads/2015/02/Estonia.pdf> [Accessed on 2015-12-15]
11. Freixes T. *National report. Mapping the legislation and assessing the impact of protection orders in the European Member States (POEMS)* <http://poems-project.com/wp-content/uploads/2015/02/Spain.pdf>
12. Žmogaus Teisių Stebėjimo Institutas (2015). *Žmogaus teisių apžvalga: 2013-2014. Kankinimo, nežmoniško ir žeminančio elgesio draudimas.* <http://pasidomek.lt/lt/i-smurtas-artimoje-aplinkoje-ir-smurtas-pries-moteris>

Scientific literature

1. Barnett O., Miller-Perrin C. L., Perrin R.D. “*Family Violence across the lifespan. An introduction*” – 2nd edition. ISBN 0-7619-2755-7. Library of Congress Cataloging-in-Publication Data, 2005, Sage Publications, Inc.
2. Kurst-Swanger K., Petcosky J.L. (2013) *Violence in the Home*. Oxford University Press, ISBN 0-19-516518-7
3. Jovaišas K. (2009). *Smurto šeimoje prevencija: iliuzijų anatomija*. Vilnius: Eugrimas
4. Freeman A.M., Chinkin Ch., Rudolf B. (2012). *The UN Convention on the Elimination of all forms of Discrimination Against Women: a commentary*. Oxford University Press. Prepared by Rudolf B.
5. Dr. Hess, Burkhard (2011). *Feasibility Study: The European Protection Order and the European Law of Civil Procedure*
6. Van de Aa, S. (2011). *Protection Orders in the European Member States: Where do we stand and where do we go from here?* https://pure.uvt.nl/ws/files/1406300/5588_Van_der_Aa_Protection_orders_in_the_European_publishers_immediately.pdf
7. Van der Aa, S., & Ouwerkerk, J. W. (2011). The European Protection Order: No time to waste or a waste of time?. *European Journal of Crime, Criminal Law and Criminal Justice*, 19(4), 267-287.
8. Freixes T., Ramon L., Oliveras N. (2015). *The European protection order. Its application to the victims of gender violence.*

http://158.109.131.198/catedra/images/Publicacions/EUROPEAN_PROTECTION_ORDER.pdf

9. Gulbickaja J. (2013) *Smurto artimoje aplinkoje įstatymo LT komentaras*, <http://www.infolex.lt/portal/start.asp?act=news&Tema=1&str=52416>
10. Vaigė L. (2013). *The Concept of Domestic Violence in Lithuania and the Aspect of Gender from the Perspective of International Law*. *Social studies*, 5(1), p. 255–274.
11. Vaigė L. (2013). *Apsauga nuo smurto artimoje aplinkoje: psichinės prievartos problematika*. [http://manoteises.lt/wpcontent/uploads/2014/05/Analize Psichines prievartos problematika_Laima Vaige.pdf](http://manoteises.lt/wpcontent/uploads/2014/05/Analize_Psichines_prievartos_problematika_Laima_Vaige.pdf)
12. Zaksaitė S. (2013). *Apsauga nuo smurto artimoje aplinkoje*. <http://www.teise.org/data/zmogaus-teises.-galutinis-2014-10-08.pdf>
13. Michalovič I. (2012). *Kai kurie smurto šeimoje problematikos aspektai*, <http://www.zurnalai.vu.lt/teise/article/viewFile/115/83>
14. Michailovič I. (2014). *Kai kurie smurto artimoje aplinkoje aspektai socialinės kultūrinės lyties požiūriu*. www.zurnalai.vu.lt/kriminologijos-studijos/article/download/5092/3349

Publications

1. European Union Agency for Fundamental Rights (2014). *Violence against women: an EU-wide survey. Main results*, Luxembourg: Publications Office of the European Union, 2014; ISBN 978-92-9239-342-7
2. McDonald M., *Žinokite savo teises pagal nusikaltimų aukų teisių direktyvą*, http://www.eujusticia.net/images/uploads/pdf/Lithuanian_Know_Your_Rights_Guide_on_the_Victims_Directive.pdf
3. European Union Agency for Fundamental Rights (2014). *Victims of crime in the EU: the extent and nature of support for victims*, http://fra.europa.eu/sites/default/files/fra-2015-victims-crime-eu-support_en_0.pdf
4. Victim support not dependent on complaint, <http://fra.europa.eu/en/publications-and-resources/data-and-maps/comparative-data/victims-support-services/complaint>
5. Žmogaus teisių stebėjimo institutas (2013). *Žmogaus teisių įgyvendinimas Lietuvoje 2011-2012*. Apžvalga, https://www.hrmi.lt/uploaded/Apzvalgos/Zmogaus%20teisiu%20igyvendinimas%20Lietuvoje%202011-2012_Apzvalga_ZTSI.pdf

6. Žmogaus teisių stebėjimo institutas (2014), Vilnius. *Nusikaltimų aukų teisių direktyva: naujas požiūris į artimųjų smurto aukas*, https://www.hrmi.lt/uploaded/Apzvalgos/Tyrimas_auku-teisiu-direkt_1.pdf
7. United Nations Department of Economic and Social Affairs. Division for the Advancement of Women (2010). *Handbook for Legislation on Violence against Women*. <http://www.un.org/womenwatch/daw/vaw/handbook/Handbook%20for%20legislation%20on%20violence%20against%20women.pdf>

Additional sources

1. What is domestic violence? <http://au.reachout.com/what-is-domestic-violence>
2. UN Women <http://www.un.org/womenwatch/daw/cedaw/>
3. Are EU member states committed enough to victim protection?, <http://publications.europeintheworld.com/paramount-victims-directive-challenged-doubtful-national-implementation/>
4. European Commission, Press release database (2011) *European Commission ensures better protection of crime victims*, http://europa.eu/rapid/press-release_IP-11-585_en.htm,
5. European Commission, *Justice*. http://ec.europa.eu/justice/criminal/victims/index_en.htm
6. Statement by Vice-President Viviane Reding, EU Justice Commissioner on the European Protection Order [http://europa.eu/rapid/press-release MEMO-11-906_en.htm](http://europa.eu/rapid/press-release_MEMO-11-906_en.htm)
7. Questionnaire on the recognition and enforcement of foreign civil protection orders Reply of the European Union to specific questions, https://www.google.es/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0CCQQFjAAahUKEwi_1_GViPIAhWDVywKHdPODzs&url=http%3A%2F%2Fwww.hcch.net%2Fupload%2Fwop%2Fgenaff_pd04a_eu.doc&usg=AFQjCNHW8f3rA2C1DILlUyYtkVcSm91YqPg
8. Draft Country Profile-National and foreign protection orders: legislation, recognition and enforcement and other resources. Revised draft reply of the European Union to specific questions. . Ref. Ares(2014)3347108 - 09/10/2014
9. *Regulations, Directives and other acts*, http://europa.eu/eu-law/decision-making/legal-acts/index_en.htm
10. Mapping the legislation and assessing the impact of Protection Orders in the European Member States, <http://poems-project.com/>

11. Better protection for victims in criminal proceedings, <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=URISERV:j10027&from=EN>
12. Centre for European Constitutional, Law *Nusikaltimų aukų direktyva*, <http://www.victimprotection.eu/images/newsletter/newsletter-lt.pdf>
13. Direktyvos 2012/29/ES ir nacionalinių teisės aktų atitikties lentelė, <https://e-seimas.lrs.lt/portal/documentSearch/lt>
14. <http://www.lrytas.lt/lietuvas-diena/kriminalai/keturiu-vaiku-motina-nuzudes-vyras-pripazintas-recidyvistu.htm>
15. Lietuvos policija (2014), *Statistika ir tendencijos. Registruoti iškvietai dėl smurto artimoje aplinkoje (2012/01/01-2014/12/31)*, <http://www.bukstipri.lt/lt/statistika>
16. Short History of CEDAW Convention, <http://www.un.org/womenwatch/daw/cedaw/history.htm>
17. Violence against women (2014). <http://www.who.int/mediacentre/factsheets/fs239/en/>
18. *Nuo nusikaltimų veikų nukentėjusios moterys* (2014). [http://www.bukstipri.lt/uploads/file/Nuo%20nusikaltamu%20veiku%20nukentejusios%20moterys\(2004_2014\).pdf](http://www.bukstipri.lt/uploads/file/Nuo%20nusikaltamu%20veiku%20nukentejusios%20moterys(2004_2014).pdf)
19. The Core International Human Rights Instruments and their monitoring bodies. <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx>
20. Optional Protocol to CEDAW: All Communications <https://opcedaw.wordpress.com/communications/all-communications/>
21. Chart of signatures and ratifications of Treaty, <http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210/signatures>
22. What is observer Status? <http://www.coe.int/en/web/portal/what-is-observer-status->
23. <http://www.delfi.lt/news/daily/crime/prokuratura-keturiu-vaiku-motina-nuzudyta-del-pareigunu-neveiksumo.d?id=62115711>
24. <http://www.policija.lt/index.php?print=1&id=31201>
25. <http://manoteises.lt/straipsnis/neismoktu-pamoku-kaina-zmoniu-gyvybes>
26. <http://www.15min.lt/naujiena/aktualu/nusikaltimaiirnelaimes/per-sprogima-zuvusios-birutes-s-drauge-policija-zinojo-apie-aurelijaus-buinicko-planus-sprogdinti-59-472721#ixzz3NGugSXJP>
27. <http://manoteises.lt/straipsnis/neismoktu-pamoku-kaina-zmoniu-gyvybes>

28. <http://www.15min.lt/naujiena/aktualu/nusikaltimaiirnelaimes/per-sprogima-zuvusios-birutes-s-drauge-policija-zinojo-apie-aurelijaus-buinicko-planus-sprogdinti-59-472721#ixzz3NGugSXJP>
29. <http://www.alfa.lt/straipsnis/10399013/lietuvoje-liudytoju-apsauga-slaptesne-uz-jav-marsalu>
30. <http://www.policija.lt/index.php?id=36392>

SUMMARY

Domestic violence for a long time was a hidden crime, which was a concern of two people. Few decades ago this serious problem became an important matter in the international community. Various international and European documents such as CEDAW, ECRH, Istanbul Convention have condemned domestic violence and recognized it as the public matter, which has to be solved with the interjection of the State. It was agreed internationally that State has a positive obligation to protect victims of domestic violence and punish those, who initiate it. However, Lithuania, as a party or signatory to those treaties, does not act due to international obligations: the domestic violence still is on a high prevalence level.

Up to this date European Union does not provide a legal tool, which is dedicated to protect victims of domestic violence. Nonetheless it has concluded the set of laws, named Victims' Package, which are providing protection for victims of crime, including victims of domestic violence. From now on victims' will be able to preserve its protection at the same level even if he/she decides to move to another Member State as the protection will be "following" the victim. Moreover, one of the documents, which is the part of Victims' Package, is designed to facilitate the criminal procedure to the victim by granting her/him more rights, introducing individual assessment system and making the pre-trial and criminal process more friendly. However, this is the "fresh" complex of laws, which was supposed to be incorporated into the national legislation of all Member States during the year 2015. Today it is difficult to say how it will work and will it reach the set goal. Issues, discussed in the thesis, might be serious obstacles for the smooth implementation of the victims' protection.

Lithuania has made a big step forward in the context of victims' protection of domestic violence: in 2011 it has adopted a separate law on protection against domestic violence. This law has transferred the matter of domestic violence from private to public matter. This has brought number of positive aspect in relation of protection of victims, prevention of secondary victimization or punishment of perpetrators. However, this step has not improved the situation significantly: the domestic violence is still prevalent in the State. Not only due to insufficient work of law enforcement or lack of financial support to the Special Assistance Centers for victims, but also for inability of State to modify patriarchal model in the society, which thrives until now, and which should be gradually changed by the State as it is required by the international standards.

The protection of victims of crime in Lithuania is not regulated very well. It is more important to ensure the smoothness of pre-trial investigation or criminal process than to ensure victims' protection. Insufficiency in criminal laws, lack of monitoring and registration of protection orders will not provide enough security to victims'. There is a serious doubt that it will be possible to provide as high protection as possible to the foreign victims', who will be moving to Lithuania and you will be enjoying protection under the EPO or the certificate.

SANTRAUKA

Smurtas šeimoje ilgą laiką buvo užslėpta nusikalstama veika, kuri buvo dviejų žmonių rūpestis. Prieš kelis dešimtmečius ši rimta problema tapo svarbiu klausimu tarptautinėje bendruomenėje. Įvairūs tarptautiniai ir Europos aktai, pavyzdžiui, CEDAW, ECRH, Stambulo konvencijos pasmerkė smurtą šeimoje ir pripažino jį kaip visuomeniniu reikalu, kuris turi būti išspręstas su valstybės įsikišimu. Tarptautiniu mastu buvo sutarta, kad valstybė turi pozityviai pareigą apsaugoti smurto šeimoje aukas ir nubausti tuos, kurie tą smurtą sukėlė. Tačiau Lietuva, kaip šalis, prisijungusi prie šių tarptautinių sutarčių, nevykdo tarptautinius įsipareigojimus: smurto šeimoje vis dar yra labai paplitęs.

Iki šiol Europos Sąjungoje nėra teisinio įrankio, skirto apsaugoti smurto šeimoje aukoms. Tačiau buvo išleistas įstatymų rinkinys, pavadintas Aukų paketu, kuris suteikia apsaugą nusikaltimų aukoms, įskaitant aukoms, patyrusioms smurtą šeimoje. Nuo šiol aukos galės naudotis apsauga tuo pačiu lygiu, net jei jis/ji nuspręs persikelti į kitą valstybę narę, apsauga „seks“ paskui auką. Be to, vienas iš dokumentų, kuris yra aukų paketo dalis, skirtas palengvinti baudžiamąjį procesą nukentėjusiajam, suteikdamas jai/jam daugiau teisių, įvesdamas individualaus įvertinimo sistemą ir padarydamas baudžiamąjį procesą draugiškesniu. Tačiau, tai yra naujas teisinių priemonių kompleksas, kuris turėjo būti įtrauktas į nacionalinės teisės aktus visose valstybėse narėse per metus 2015. Šiandien sunku pasakyti, kaip jis veiks ir ar bus pasiektas užsibrėžtas tikslas. Problemos, aptartos magistrinio baigiamajame darbe, gali tapti rimtomis kliūtimis sklandžiai aukų apsaugai įgyvendinti.

Lietuva padarė didelį progresyvų žingsnį nukentėjusiųjų nuo smurto artimoje aplinkoje kontekste: 2011 metais šalis priėmė atskirą įstatymą dėl apsaugos nuo smurto šeimoje. Šis įstatymas perkėlė šeiminio smurto klausimą iš asmeninio prie visuomeninio reikalo. Įstatymas atnešė daug teigiamų aspektų, susijusių su aukų apsauga, prevencija, antrine viktimizacija ar nusikaltėlio baudimu. Tačiau šis žingsnis žymiai situacijos nepagerino: smurtas šeimoje vis dar yra paplitęs valstybėje. Ne tik dėl nepakankamo teisėsaugos darbo ar specialių pagalbos centrų finansavimo stokos, bet ir valstybės nesugebėjimo pakeisti visuomenės patriarchalinio modelio, kuris klesti iki šiol ir kuris turėtų būti palaipsniui keičiamas valstybės taip, kaip reikalaujama pagal tarptautinius standartus.

Nusikaltimo aukų apsauga Lietuvoje nėra labai gerai reglamentuota. Daug svarbiau yra užtikrinti ikiteisminio tyrimo ar baudžiamojo proceso sklandumą nei užtikrinti aukų apsaugą.

Netikslumais baudžiamuosiuose įstatymuose, apsaugos priemonių stebėjimo ir registravimo trūkumas neužtikrina pakankamos pasaugos aukoms. Yra rimtų abejonių, kad bus įmanoma parūpinti kaip galima aukštesnio lygio apsaugą nukentėjusiesiems užsieniečiams, atvykstantiems į Lietuvą, ir kurie turėtų gauti tokią pat apsaugą, kaip ir savo šalyse.