

CASE OF VALIULIEN v. LITHUANIA - Application no. 33234/07 (2013)

In the Chamber's judgment in the **CASE OF VALIULIEN v. LITHUANIA** the European Court of Human Rights held, unanimously, that there had been:

- a violation of Article 3 (prohibition of torture and of inhuman or degrading treatment) of the European Convention on Human Rights.

I. Principal Facts

The applicant, Loreta Valiulien , is a Lithuanian national. On 14 February 2001, Ms Valiulien applied to the city district court to bring a private prosecution, stating that she had been beaten by her partner J.H.L. on several occasions. In January 2002, a judge of that court forwarded her complaint to the public prosecutor, ordering him to start his own pre-trial criminal investigation. J.H.L. was charged with having injured her. The investigation was subsequently suspended several times, due to J.H.L.'s failure to appear in court and insufficient evidence, and reopened on appeal by a higher prosecutor on the ground that the investigation had not been sufficiently thorough.

The prosecutor discontinued the investigation in June 2005, holding that under the new code of criminal procedure, following a legislative reform in May 2003, a prosecution in respect of minor bodily harm should have been brought by the victim in private capacity. The city district court upheld that decision in September 2005, noting that a prosecutor had a right, but not an obligation, to open an investigation. There was no information in the case file to indicate that the case was of public interest or that the victim could not protect her rights by means of a private prosecution.

Ms Valiulien subsequently lodged another request to bring a private prosecution, which was eventually refused without examination on 8 February 2007, as the prosecution had become time-barred.

II. Complaints and procedure

Relying on Article 3 (prohibition of torture and of inhuman or degrading treatment) and Article 8 (right to respect for private and family life), Ms Valiulien complained that the authorities had failed to investigate her allegations of repeated domestic violence and to bring her partner to account, and that the length of the criminal proceedings had been excessive.

III. Decision of the Court

The Court noted that Ms Valiulien had addressed the city district court as early as February 2001 to bring a private prosecution against her partner. She had provided specific descriptions of each incident of ill-treatment and had indicated the names of several witnesses. The Court found that the Lithuanian authorities had received sufficient information from her to raise a suspicion that a crime had been committed. As

of that moment, they had therefore been under an obligation to act upon her criminal complaint.

While the authorities had initially acted without undue delay, the investigation had been suspended repeatedly following the transfer of the case to the public prosecutor. The fact that the prosecutor's decisions had been quashed by the higher prosecutor as not being thorough enough indicated a serious flaw on the part of the State.

Furthermore, even though the Lithuanian Code of Criminal Procedure had changed in May 2003, the prosecutor had decided to return the case to Ms Valiulienė for private prosecution only two years after the legislative reform. The decision had been upheld despite Ms Valiulienė's plea that it would entail the risk of her partner enjoying impunity, given that the time-limit for prosecution was approaching. The Court underlined that even after the legislative reform it would have been possible for a public prosecutor to investigate acts causing minor bodily harm, provided that this was in the public interest.

As a result of the prosecutor's decision, the circumstances of the case had never been established by a competent court of law. Therefore, one of the purposes of criminal prosecution, namely the effective protection against acts of ill-treatment, had not been achieved in Ms Valiulienė's case. The Court concluded that there had been a violation of Article 3 on that account.

The Court finds that it is not necessary to examine the complaint separately under Article 8 of the Convention.

IV. Just satisfaction

The Court held that Lithuania was to pay Ms Valiulienė 5,000 Euros (EUR) in respect of non-pecuniary damage.

V. Dissenting Opinion (of judge Danutė Joškaitė)

In the dissent's opinion, the Court had incorrectly relied on Article 3 in the circumstances of the present case. The position of the Chamber is not supported by the Court's case-law, where domestic violence cases are mostly examined from the perspective of Article 8 of the Convention. The applicant's complaint in connection with the physical attacks on her should have been examined under Article 8 of the Convention as the Court has previously held in various contexts.

The dissent argued that the attacks against the applicant did not attain the minimum level of severity to fall within the scope of Article 3. Although the applicant was beaten by her live-in partner on five occasions, each time she sustained only minor health impairment, which did not cause any short-term health problems.

Accordingly in the particular circumstances of the present case (very minor injuries), it cannot accept that the applicant was subjected to ill-treatment which was sufficiently serious to be considered inhuman and degrading and thus to fall within the scope of Article 3 of the Convention. Taking into account its specific circumstances, the case should have been examined exclusively under Article 8 of the Convention.