

SHADOW REPORT ON DOMESTIC VIOLENCE AGAINST WOMEN TO THE 4TH PERIODIC REPORT SUBMITTED TO THE UN CEDAW COMMITTEE AT THE 48TH SESSION, GENEVA

infra - Information and Contact Center for Women:

The organisation was set up in 1986 by dedicated women. Infra is a springboard for women's issues. It offers individual advice and free legal advice by lawyers. Last year infra provided legal advice in 127 cases, individual advice in 68 cases and general information in about 350 cases. It works together with other NGOs and is active in public relations concerning equality of treatment and life questions of women. Infra has 2 employees (1.3 full-time equivalents) and receives financial support from the state (60%).

Liechtenstein Women's Home:

The Women's Home was established in 1991 as a shelter for women and children abused by domestic violence. It is the only such shelter in Liechtenstein and provides space for 3 women with their children. Last year there were 21 women and 22 children in the shelter. The Women's Home offers advice and protection. The telephone is staffed 24 hours a day, 365 days a year. The Women's Home also offers follow-up care and engages in public relations concerning domestic violence against women and their children. There are 3 day-time employees (1.6 full-time equivalents incl. directory work), and the Women's Home receives financial support from the state (60%).

Executive Summary

The shadow report is limited to the topic of domestic violence. Although the concluding comments of the committee on the Elimination of Discrimination against Women (thirty-ninth session, 2007) did not give any recommendation referring to domestic violence against women, the Women's Home and infra consider the matter to be urgent. Liechtenstein prosecutes domestic violence, but ex officio prosecution exists only for a few acts of domestic violence. With respect to violence in the domestic sphere, the Women's Home and infra believe it is necessary to prosecute additional offences ex officio if they are committed in connection with domestic violence. An analogous recommendation was made by the UN Human Rights Council within the framework of the 2008 Universal Periodic Review of Liechtenstein in general.

We – i.e., infra (the Information and Contact Center for Women) and the Liechtenstein Women's Home – are pleased to take this opportunity to submit a shadow report on Liechtenstein's Fourth Periodic Report in regard to the Convention of 1979 on the Elimination of All Forms of Discrimination against Women. Our comments will be limited to the topic of domestic violence, which is treated by the periodic report in relation to article 2 and article 6 of the Convention.

Statistical data on domestic violence in Liechtenstein

The permanent population of Liechtenstein as of 30 June 2010 was 36,010. 17,817 of these inhabitants were male and 18,193 female.

In the 2003 study entitled "Violence has no home – possible areas for action" as part of the Interreg project on "Crossing borders – setting boundaries", data on domestic violence was gathered in Vorarlberg (Austria), Graubünden (Switzerland) and Liechtenstein. 26% (N=607) of those surveyed in Liechtenstein responded that they had experienced violence in their own partner relationships at least once.¹

The annual reports of the individual institutions in 2009 provide the following figures:

Summary of statistics on victims of domestic violence 2009

Liechtenstein Women's Home	67
National Police	32
Probation Service	9
Infra	8
Victims Assistance Office	6
Total	122

In 2009, the Liechtenstein Women's Home offered 21 women and 22 children protection and counselling within the Women's Home. Additionally, 24 women received intensive consultations in person and by telephone.

The National Police reported 32 interventions in cases of domestic violence, including 20 police consultations, 9 expulsions from the home, and 3 prohibitions of re-entering the home.

According to the 2009 annual report of the Liechtenstein Probation Service, 9 disputes in partner relationships were processed within the framework of out-of-court offence resolutions. This corresponds to one fifth of the cases under such out-of-court proceedings. The criminal offence of bodily injury was the most frequent offence in such cases.

¹ Geser-Engleitner, Erika: Because walls can't talk... they protect the perpetrators. Violence in partner relationships. An empirical study in Vorarlberg (Austria), the Principality of Liechtenstein and the canton of Graubünden (Switzerland) [in German]. Women's Department of the Vorarlberg Provincial Government, Gender Equality Office of the Government of the Principality of Liechtenstein, Gender Equality Office of the Canton of Graubünden 2003.

The Information and Contact Center for Women – *infra* – again carried out 5 conversations by telephone and 3 conversations in person on the topics of violence and stalking. In 2009, the Liechtenstein Victims Assistance Office counselled 6 victims of domestic violence in 2009.

These figures show that domestic violence in Liechtenstein is a problem that must be taken seriously. It must also be assumed that the number of unreported cases of domestic violence is substantially higher. In our view, the State should make full use of all options for combating domestic violence. For this reason, we call for all criminal offences relating to domestic violence to be prosecuted as *ex officio* offences.

Current legal situation and its impact in the assessment of the Women's Home and *infra*

Under current law, violent acts such as trespassing, bodily injury and suppression of documents are only prosecuted on complaint. I.e., these offences are only prosecuted if the victim presses charges. Since victims are often afraid or reluctant to press charges themselves, however, many of these crimes remain unpunished. Especially in a small country such as Liechtenstein, this aspect is even more important, since social control and mutual dependencies are especially great, which raises the threshold for a victim to press charges.

Physical and sexual violence against spouses or domestic partners should not be tolerated as petty or private matters.

The protection of partnership and family should not entail that such relationships are beyond the law just because victims – due to moral scruples, resignation, dependency, or fear of their partner – do not press criminal charges. Victims who refrain from initiating criminal proceedings for such reasons and who are unable to otherwise free themselves from the influence of their tormentors are trapped in their violent relationships. *Ex officio* prosecution takes account of the special need of these victims for protection. Qualifying an offence as *ex officio* also clarifies the criminal degree of wrongdoing of domestic violence and leads to a de-privatization of such conflicts.

We are conscious of the fact that criminal law alone cannot solve the problem of domestic violence. For this reason, flanking measures continue to be needed, such as prevention campaigns, intervention projects, ongoing networking and training of all actors involved in the field of domestic violence (police, prosecution authorities, courts, victim and perpetrator counselling offices, etc.). Making these offences subject to *ex officio* prosecution would, however, make a major contribution to the fight against domestic violence.

Recommendations of CEDAW and of UN Human Rights Council for Liechtenstein

The concluding comments of the Committee on the Elimination of Discrimination against Women from 10th August 2007 focused on issues such as limitation of equal treatment of men and women in the labour market and the underrepresentation of women in elected and appointed bodies or the stereotypical attitudes and behaviours that discriminate against women. There are no specific

recommendations about domestic violence against women. But another UN organization, the Human Rights Council, refers to domestic violence within the framework of the 2008 Universal Periodic Review of Liechtenstein. In particular, we endorse recommendation 12/P65, which recommends introducing "ex-officio prosecution for all acts of domestic violence." Unfortunately, however, Liechtenstein has not accepted this recommendation. Their responses are as follows:

**“Response of Liechtenstein to the recommendation No 12 (contained in paragraph 65 of the report of the Working Group on the Universal Periodic Review)
(A/HRC/10/77)**

Introduce ex-officio prosecution for all acts of domestic violence (Switzerland);

In 2007 the introduction of a new explicit criminal provision on stalking (§ 107a of the Criminal Code “Beharrliche Verfolgung”, “persistent pursuit”) was approved by Parliament, thus making an explicit statement that this form of psychological pressure is not tolerated. By way of this new criminal offence such persistent harassment likely to infringe upon the private life of the victim is penalized. Accordingly, it will be a criminal offence to harass a person persistently and for a prolonged period in a way that is likely to seriously disrupt her/his way of life. This new provision makes an important contribution to the prevention of violence against women since it enables the police to intervene already at a very early stage and to prevent the threatening behaviour from resulting in an act of violence. This criminal offence requires a complaint to be made by the victim for the prosecution to be initiated. The same is true for rape in marriage and partnership as well as other forms of domestic violence penalized under the Criminal Code. Since a procedural distinction between stalking and comparable forms of domestic violence would undermine the effectiveness of this new provision of the Criminal Code, the Liechtenstein authorities do not intend to establish ex-officio prosecution for all acts of domestic violence. Liechtenstein can therefore not support this recommendation.”

These arguments have become obsolete in light of the current revision of the sexual criminal law, because the nearly completed revision of sexual criminal law in 2010 brings important improvements in combating violence against women and children. With respect to the offences of dangerous threats against close relatives (§ 107 para. 4 StGB²), stalking (§ 107a StGB), rape or sexual assault in marital or domestic partnerships (§ 202 StGB) and forced marriage (§193 StGB), the victim's consent is no longer required to prosecute the perpetrator. Upon entry into force of the undisputed revision, criminal prosecution will be ex officio once the offence has been reported.

Continuing need for legislative action with respect to the prosecution of domestic violence

With respect to violence in the domestic sphere, however, we believe it is necessary to prosecute additional offences ex officio, if they are committed in connection with

² Liechtenstein Criminal Code (StGB), LGBl 1988 No. 37

domestic violence; firstly, in order to take account of the specific power and dependency dynamics in violent relationships, and secondly, in order to intervene preventively and break the spiral of violence.

For these reasons, we believe introducing ex officio prosecution in connection with domestic violence is necessary for the following articles of the Criminal Code:

- trespassing – §109 StGB
- bodily injury – §83 StGB
- suppression of documents – in §229 StGB

To illustrate the suppression of documents, we offer two examples from our practical experience: A perpetrator suppressed all identity documents of the victim (residence permit, passport, half-price railway pass, etc.), so that the woman had to obtain new documents at high cost and with substantial effort. By the time the woman filed charges and the police were able to conduct a house search, a very long time had passed. If the suppression of documents had been an ex officio offence, obtaining new documents would have been considerably quicker and less expensive.

Another example was when a perpetrator destroyed important documents and records (not all of which had been processed by the tax authorities), so that the woman experienced financial losses upon divorce. The lack of documents also made registration with the Office of Social Affairs more difficult. This in turn meant that financial support by the Office was delayed.

Furthermore, we believe it is important that, analogously to the Swiss law enacted in 2004, violent acts between spouses as well as between heterosexual, lesbian or homosexual domestic partners living in the same household can be prosecuted indefinitely or up to a year after their separation. Violent acts committed between spouses should be subject to ex officio prosecution, even if the spouses have separate legal residences or households, or up to a year after divorce.

We also see a need for action regarding the following offences and advocate their general classification as ex officio offences, since they likewise constitute forms of violence and abuse of power:

- breach of obligation to pay maintenance §197 StGB
- removal of a minor from the power of the guardian – §194 StGB
- circumvention of officially ordered education measures – §195 StGB

In our experience, breach of the obligation to pay maintenance is a frequent problem. While the collection of maintenance payments is governed by law, the person entitled to such

payments must become active. In light of the existing dependencies, this is additionally difficult for women affected by violence. If breach of the obligation to pay maintenance were subject to ex officio prosecution instead of prosecution on complaint, this would substantially improve the situation of the affected women.

In the context of domestic violence, the assertion of parental custody is often associated with conflicts, violence, or the threat of violence. Often, the children are instrumentalized in order to maintain the spiral of violence. When determining parental custody arrangements, the well-being of the child must be the highest guiding principle. Any interests of the parents must be subjugated to that principle.

To ensure the well-being of the child, §§ 194 and 195 StGB should become subject to the principle of ex officio prosecution. This principle ensures that investigations can be carried out when parental duties are breached, even where no complaint is lodged by the victim.

Thank you for your careful consideration of our comments. Reviewing implementation of the Convention on the Elimination of All Forms of Discrimination against Women is an important contribution to the violence-free life of women and children in the Principality of Liechtenstein.

Yours faithfully

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