

## INVOLVEMENT OF SCHOOLS IN THE PROCESS OF PROTECTION FROM DOMESTIC VIOLENCE

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**Abstract.** *Specific activities of the schools, functions and responsibilities delegated by national and international laws lead to an obligation to involve in some criminal proceedings for violence against children in close environment, for example reporting about domestic violence against children to competent authorities, providing them with the relevant data, etc. The aim of this work is to establish schools' obligations relating to information about the possible violence against child in the near surrounding. The tasks were achieved using the following methods: method of analysis of scientific literature, a comparative analysis, method of systemic analysis, the traditional method of the analysis of documents. Additionally, the empiric method was used and deep one-on-one interview with the experts was implemented. The aim was to identify the approach towards the need of school's participation in criminal proceedings regarding violence in the near environment of the persons who are directly familiar with the examined problem. The analysis suggests that the duty to report is often performed defectively, and the application of legal liability for failure to comply with this obligation is ineffective. Different reasons lead to this situation both legal and non-legal: incomplete special legal regulation, lack of legal knowledge, psychological, social and other factors determined by specific activities of schools. Not inadequacy of the legal regulation but its inappropriate implementation is most problematic. Enforcing detailed national as well as schools' local legal regulation, training of all staff, application of special preventive programs, including special measures in to common practices, cooperating with competent institutions are the measures which could lead to the adequate performance of the obligations. Accordingly, schools have human and legal resources to involve in some criminal proceedings for domestic violence against children more actively, especially in reporting about cases of violence.*

**Keywords:** *domestic violence, responsibility of the school, violence against children.*

### Introduction

For the last five years the Law on protection from violence in close environment (Official Gazette, 2011) is implemented in Lithuania. The provisions of the EU Directive on the rights of crime victims (EU Parliament and EU Council, 2012) were started to apply in 2016. According the data of Lithuanian Police Department (Bajorinas, 2016), the registered calls regarding violence in close environment and the number of pre-trial investigations is constantly

increasing: in 2012 – correspondingly 18268 and 7586, in 2013 – 21615 and 10015, in 2014– 29339 and 10374, in 2015 – 38510 and 10703. The criminal activities of that kind in 2015 amounted 14,8 % of the total criminal activities, and this indicator is also increasing comparing the data of the last five years: in 2012 – 9,2 %, in 2013– 10,5 %, in 2014 –12,5 %. In 2015 children most often suffered from violent criminal acts – the generation of physical pain (779 (36 %)), minor disturbances of health (91 (4,2 %)) – which is primarily attributable to the violence in the near environment (Vileikienė, 2016). Of course, these figures firstly show not the increase of violent incidents in the near surrounding, rather the growing number of cases, that become known to law enforcement authorities and criminal proceedings are initiated. However, the prevalence and nature of violence in the family, and there remains raising concern: the numbers decrease, but it should be noted, that these criminal offences are latent, as in most cases the victims do not report about the crime to the police (FRA, 2014). In recent years the most serious forms of violence against children were recorded in previously unknown for institutions, working in the field of protection of the child's rights, families, i.e. not in social risk families. One of the effective factors determining the appropriate implementation of legal mechanisms in the field of the protection from violence in close environment is a successful inter-institutional cooperation: law enforcement officers, social workers, health care institutions, the authorities of the special institutions, specialized assistance centres, non-governmental organizations, professionals in other fields. Educational and training institutions have a significant impact as well on this process. Active cooperation is especially important in protecting particularly vulnerable victims in criminal proceedings - minors: informing the competent authorities about domestic violence in the presence of minors, accompanying minors during survey in the criminal proceedings, providing of relevant data for the case, etc. Various scholars have examined different aspects of involvement of schools in prevention of violence, especially in bullying cases (Whitted & Dupper (2005); Watkins & Wagner (2000); Timm (2015); Parkes (2013); Davis & Davis (2007); Margevičiūtė (2017)), but rarely questions in respect of obligations of the school in connection with the criminal proceedings are discussed.

The object of this research is the obligation of the institutions of formal education to inform the competent authorities about possible events of violence against children. The Istanbul Convention (Council of Europe, 2011), not ratified by Lithuania, – is a modern and comprehensive instrument in the field of protection against violence in the near surroundings, it requires promoting reports about suspected or probable violence against children observed. Therefore, the objective of this work is to establish schools' obligations relating to information about the possible violence against child in the near surrounding. In order to

achieve the raised objective further tasks are settled: 1. to reveal the main responsibilities of schools and their staff, relating to the report on the violence in the near environment; 2. to discover the main reasons of the failure to implement the obligations and to discuss related problems. The tasks were achieved using the following methods: method of analysis of scientific literature, a comparative analysis, method of systemic analysis, the traditional method of the analysis of documents.

In addition to the above-mentioned methods, the empiric method was used and deep one-on-one interview with the experts was implemented. The aim was to identify the approach towards the need of school's participation in criminal proceedings regarding violence in the near environment of the persons who are directly familiar with the examined problem, to identify existing practices, problems and their causes. Survey was performed in six institutions providing aid to children in different towns of Lithuania: one expert from child protection division of the municipal administration, two persons from institutions of the educational assistance, one expert – social educator from general education school, a psychologist and a specialist from a specialised aid centre, where the trainings for the staff of educational establishments in the field of violence in the near environment were held. Experts were selected randomly, considering their professional experience.

### **The obligation of schools to inform about the violence against child in the close environment**

The functions of schools are not limited to education and the provision of education services. Law also obliges schools to secure the environment, preventing from violence in any form. The purpose of the whole education system is to ensure the implementation of the rights of the individual (Official Gazette, 1991). Therefore, the protection of the rights of the child is entrusted to schools in the municipal level, through the development and implementation of violations of child's rights (Official Gazette, 1996). One of the rights of the child, enshrined in both the international and national legislation, is the right to freedom from violence, including from parents, legal guardians or any other person acting as guardian of the child (United Nations, 1989). The Convention on the rights of the child among a variety of other measures for the protection of the said law provides for the obligation to examine cases of violence against children, and to report them to the competent authorities, to investigate and, if necessary, to begin criminal proceedings. The school, in contrast to the other institutions established to protect rights of the child, have a specific form of daily communication and close contact with the child and his family. Therefore, they have a real opportunity to observe and recognize the phenomenon of violence against children, and to provide the

necessary protection and assistance, including the legal, which includes the obligation to inform the competent the authorities.

However, practice shows that the competent authorities get information on violence against children from schools extremely rarely. According the data of the expert (specialist in the department of child's rights protection) in 2015 only one report from educational institutions on child abuse has been presented to the department, other reports were received from neighbours, relatives, the biggest part of the reports were presented by the police authorities. Expert (social educator) pointed out that the school where he is employed has directly contacted police only once. The decision to apply to police institutions was based on the serious nature of the infringement (sexual violence against a child in the family) and clear indications and instructions provided in special regulation in such cases. When rights of children are violated in the near environment, when the child is being violently treated or parents or legal representatives abuse their rights, any person has the right to recourse to law enforcement or other institution, including the child. But for a variety of reasons the child appeals for assistance quite rarely: expert (social educator) pointed out that no child himself has not applied to any school employee in the case of domestic violence. Consequently, the greatest responsibility lies with the adults who are around. The duties of the school in this area can be divided into general and specific obligations.

The obligation of a general nature, set on any natural and legal person, is to protect the child from negative influence of social environment, as well as to provide the necessary assistance (health, social, legal, etc.), support and protection. Legislation establishes the obligation to report to the police and (or) the institutions of national or municipal level protecting rights of the child of the known potential child - victim of crime, and in the case of criminal offences of a sexual nature to do so without delay, and in spite of the rules of confidentiality. Special and more detailed responsibilities of schools and their staff are laid down in special provisions. Any member of the community of an educational institution has an obligation to report about observed violence against children to the head of the school, and consequently the head immediately, not later than the next day, must inform the corresponding state and municipal institutions according their competence, as well as parents (guardians). It should be noted that this provision (in the case of violence against a pupil to notify his/her parents) is not appropriate in the case of violence in the near surroundings. Such an obligation is a surplus (perpetrator knows that there was violence), and in some cases, it may be the opposite of the child's interests (can lead to repeated violent outbreak, the perpetrator can impede the authorities during investigation process). On the other hand, the message to the other parent (not possible perpetrator) in some cases

(especially when the parents live separately) may be logical and appropriate for the child's protection.

Failure to comply with the obligation to report may also be viewed as a violation of the law. Special provisions lay down the administrative responsibility for administrative bodies of teaching institutions for non-communicating the institutions acting in the field of protection of the rights of the child in the municipality level or law enforcement institutions on violations of the rights of the child. And in the case of the most serious offences the criminal liability may be applied. Thus, the non-application of special rules does not necessarily mean that they do not work, however, only the consolidation of legislation does not guarantee neither the proper fulfilment of duties, neither the victims' protection. It is closely related to the reasons why schools do not notify the competent authorities about the cases of domestic violence. According the information provided by the research experts, the reasons why the schools do not inform the competent authorities of the potential child abuse cases in the near surroundings can be distinguished further: the causes of legal nature, of the psychological and social nature, and the reasons and factors determined by the specifics of the operation of the school activities. Further in this research the groups of the reasons indicated above will be analysed, the emerging problems discussed, possible solutions provided.

### **Legal reasons for violations of the obligation to report about violence**

One of the main factors that determines very reserved cooperation of schools with law enforcement agencies reporting on domestic violence cases is the lack of domestic violence regulatory knowledge. The expert of specialized assistance centre, where trainings for teachers in domestic violence were held, pointed out that persons, working directly with children (teachers, kindergarten teachers, social workers), highlighted the need for legal knowledge, required for solving conflict situations. With regard to domestic violence, a number of training participants said they do not know anything about the applicable legislation in such cases. So first of all, the insufficient amount of knowledge of personnel must be stressed: they need to be education on what is domestic violence, to whom it should be reported about the known cases, what legal procedures are obligatory investigating cases of violence and providing assistance to the affected children, what is the scope of responsibilities and legal liability of schools in this process.

Other identified by the experts cause of restraining schools to notify authorities about violence against children in the family, is the question of certainty and adequacy of information. This raises doubts and fears to be accused of defamation. In this case, attention should be drawn to basis of the pre-trial investigation, prescribed by law - probably correct information, "reason to

believe”, “sufficient data on the criminal offense” (Official Gazette, 2000). The legislation does not impose disproportionate requirements on reports gathered from schools on known child abuse cases in the family. In accordance with a reasonable, prudent person standard, the main criteria, under which there is an obligation to submit a report, it is likely correct, sufficient data that provide the basis for the conclusion of possible violence against children.

Another problematic issue that raises doubts about the active intervention and providing information about violence – the scope of protection of private life of the students and their families. This question is relevant also applying various forms of preventive measures (the content of lessons, projects, programs, expert advice and so on.). The right of parents to educate children according to their beliefs is enshrined in national and international legislation. However, it is not absolute: the protection of children from domestic violence is relevant exemption and it is provided directly in the text of the Convention on Human Rights (Art. 8 Par. 2) (Council of Europe, 1950). This right may be restricted in accordance with the law and if it is necessary in a democratic society for the prevention of disorder or crimes, as well as to human health or other rights and freedoms. And although the test allowing restrictions is checked on a case-by-case law of European Court of Human Rights, taking a child from a violent home environment can be regarded as a legitimate aim to intervene in family life in order to protect the health of individuals or other rights and freedoms. Thus, the protected common right to privacy is in competition with other values: the right to disseminate information, the public interest and the protection of others. In this case, there is no rule of automatic supremacy and the test of the optimal balance applies. Of course, the fact of violence against a child in the near environment and all circumstances are not information of a public nature, but communication to the competent authorities of violence against children in the family does not constitute illegal interference in the private life of a person.

The right to privacy includes confidentiality of private information. Legal norms of professional ethics, and various specific legislative requirements pose a confidentiality requirement on school psychologists, social educators, health care professionals. However, this requirement is not absolute. In addition, it does not exempt from the obligation to protect children and defend their rights. This conclusion is supported by the principle of the best interests of the child, implemented at national and international level. The said conclusion also is formed analysing the principle of confidentiality systematically together with already discussed general obligations of the educational institutions: child’s protection, help to the child and family, and so on. Also, this conclusion is supported by the legislation. Article 28 of the Istanbul Convention requires that professional confidentiality rules should not become an obstacle to reporting of

violence to the competent authorities.

In the light of these considerations, a clear, detailed and consistent action plan is needed in case of observed violence against child cases, the list of participating subjects (social educator, psychologist, the class teacher, the child welfare committee and other bodies), and the distribution of specific roles and responsibilities among team members in the institutional structure, including the appointment of coordinating personal, determining of deadlines, giving binding nature to decisions and recommendations. That result could be achieved using the local legislative level: the school board may approve the strategic objectives of school, the annual operating plan, the scheme of domestic violence detection, notification, the child support measures. Those documents could be to introduce to students and their parents. The activity promoting accountability, independent actions of schools would correspond to aims of national educational strategy (Official Gazette, 2013).

### **Other reasons for violations of the obligation to report about violence**

Various psychological and social causes also affect, and often even determine the response and attitude of schools towards violence against children in the close environment cases. Although it is recognized that education carries out its purpose the best if the development of education is far ahead of the general development of the society, however, at least for the present a school is a part of the society, where violence is often tolerated, where beating of children still is the popular method of education (Majauskienė & Paulauskienė, 2007). This can lead to not only an invalid child protection from violence, but it also could cause a failure to comply with other school functions: it is hardly to be expected that a teacher, whom the spouse physically and psychologically abused throughout the night, the next working day will be able to properly perform all of her obligations (the example provided by the expert – psychologist of the school).

Thus, the existing education system (for example, the procedure for appointing the heads of the office, dysfunction of educational aid) is in favor for a situation, when the activities of the education professionals are determined simply by their personal preferences and experiences: a personal initiative, aim to improve, or the experience as the perpetrator or the victim. This is especially important in the case of the leader – the chief management of the school, when some of his/her personal problems, psychological traumas, an approach to the violence in the near environment, gender stereotypes, personal preferences, improper application of management methods (e.g., autocratic management) may lead to the priorities of school activities, methods, the improper practice. The specifics of the activities of the school raises the need for a conducive, enabling leadership when the head is a strategic leader (Skarbalienė, 2015). To avoid the

dependency on the inappropriate personal characteristics of the school leader helps the shared leadership, which is very adequate for educational institutions (Urbinovič & Navickaitė, 2016). Thus, the school employees' personal characteristics have a huge impact on dealing with such a sensitive social issue as a domestic violence against children. Therefore, the personal courage, responsibility, leadership of education specialists are to be achieved and encouraged as more effective assistance for a child measures.

Another group of the reasons, having impact on the school's role in the legal proceedings in cases of domestic violence, are the issues, determined by the specifics of the activities of the school. The experts of this research pointed out that often the decisive criterion in deciding on the possibility of the intervention is the effect on school's finances and reputation. Specific means of legal protection may be related to the change of the educational institutions for the victim, this means the reduction in funding for the former school. The information in the public space can lead to negative consequences for the competitiveness of the school, its rating, the results of the evaluation, public opinion, and thus may end with the decrease of the number of pupils. The competition of schools with each other is connected with limited financial resources (because of the funding, the number of students and the level of skills, etc.). Research show that competing is not a valid method neither for the whole education system, nor for relationship between the schools or teachers, nor it is a proper educational method, and it should be substituted by equally good quality assurance (Sakadolskienė, 2015).

The experts who participated in the study, pointed out that observed cases of violence against children within the family, neither during the internal, nor during the external assessment process were not considered as quality indicators of school performance, and even if they were noticed, they would have rather been pointed as a negative, but not a positive aspect of the school's reputation. In addition, set formal indicators of the aid for a pupil, are often such that in order to measure them complex and large research is needed (for example, the security level of the pupils, the level of school's awareness of pupils' social problems, etc.). Therefore, the identification of violence and intervention, cases of providing aid should be considered as one of the indicators of the quality of the school activities. Of course, not the quantity, but the content of the services provided should be evaluated. However, at the present moment the measures for prevention and aid for victims foreseen in the state regulation are evaluated in terms of appropriations and the number of personnel involved in the events (for example, trainings), but their quality and effect remain underestimated. This indicates that the orientation of the educational system towards the child is more declarative than real. Therefore, the offer foreseen in the good school conception not to overestimate the evaluation of schools and not to make it more important than the evaluation

of the mission of the school (Minister of Education and Science, 2015) is highly welcomed.

To sum up the nature of not legal factors, it should be stressed that the decisions and actions of the schools in violence against children within the family cases though formally may not be led by any other motives other than the safety and wellbeing of the child, and the priority of his/her interest, in reality may be influenced by different social factors. The recognition of violence against children in the family and information of the competent authorities, the initiation of a comprehensive assistance is necessary in order to ensure the protection of the rights of the child, to conduct properly the obligations assigned to schools and their employees, to implement State's international obligations.

### **Conclusions**

Due to the nature of their activities, the delegated by national and international legislation functions and responsibilities the schools have a responsibility to participate in certain actions of criminal proceedings on violence against children in the near environment: for example, to report on the alleged cases of violence to the competent authorities, to provide the relevant data in the case to law enforcement authorities, and others. The performed analysis enables to make a conclusion that often the school obligation is carried out incorrectly, and the application of legal liability for failure to comply with this obligation is not effective. This situation is resulted by the legal causes, in particular the insufficiency of knowledge of the foreseeable regulatory environment. The obligation to report about any child abuse event within the family occurs, and, properly implemented, is not in competition with other responsibilities: protection of private life, the request of the confidentiality. To remove the irregularities made by the failure to act would be possible educating all levels of staff (teachers, education sector workers, as well as the heads of the bodies of the schools, children and their parents), implementing special preventive programmes. The other reason of the legal nature of not properly reporting about the violence towards the children in the close environment – incomplete special legal regulation: there is a lack of the algorithms in response and intervention to violence, insufficient legal regulation of the activities of psychologists, therefore it is required to adopt a clear, detailed and coherent plan of actions, a list of the participating entities, the allocation of specific functions and responsibilities, activities, methods, setting the terms, complexity and specificity of the aid to the victim of violence. Lack of a comprehensive state regulation and its negative effect may be facilitated by the internal decisions of the schools' administration and the community, cooperation with the competent authorities. No less significant are other reasons of failure or improper performance of obligations:

psychological, social (tolerance of violence, unsuitable management methods), and other factors that determine the specifics of the activities of the school (poor funding, performance measurement system, the improper competitive environment of the education system). Therefore, the devoted, enabling, shared leadership should be encouraged among school community. In addition, the granting of the need for aid and providing such aid for the children suffering from violence in their families should become a measurement of the school activity, and such activity should be encouraged and appreciated. The analysis confirms the stated assumption that the problem is not the regulatory dysfunction itself, but rather improper implementation of the regulation. The schools have human and legal resources to more actively engage in the criminal proceedings, and in particular initiating the process, and thus to increase the protection of the rights of the child.

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