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Warsaw, 19 November 2025

**Review of the Doctoral Dissertation written by
Mr José Antonio González Costa**

entitled:

The Victim of Gender-Based Violence. A Comparative Perspective of the European Union, Spain and Italy

prepared under the supervision of

Dr hab. Beata Banach-Gutierrez, Professor of the University of Warmia and Mazury,

and Dr Ivan Domingo González Barrios

1. Preliminary remarks

On the basis of the resolution of the Council of the SWPS University Institute of Law in Warsaw, I was appointed as a reviewer in the doctoral proceedings of Mr. José Antonio González Costa.

The Candidate for the degree of Doctor of Law submitted a doctoral dissertation entitled “*The victim of gender-based violence. A comparative perspective of the European Union, Spain and Italy*” in English. The purpose of this review is to assess whether the dissertation meets the requirements set out in Article 187(1) and (2) of the Act of 20 July 2018 – Law on Higher Education and Science (Journal of Laws 2024, item 1571, i.e., as amended), i.e., whether the dissertation constitutes an original solution to a research problem within the meaning of Article 187(2) of the above-mentioned Act, and furthermore, whether the candidate’s level of theoretical knowledge as well as the degree of his ability to conduct independent academic research comply with the requirements of Article 187(1) of that Act.

The doctoral dissertation consists of a 133-page typescript including an introduction, three chapters, a conclusion, and a list of legal acts and source materials. The text contains footnotes, most of which are incorrectly prepared. In places it is impossible to determine whether a passage reflects the Author’s own reasoning or whether it constitutes a discussion of views already expressed in the doctrine or in case law. There is therefore a lack of footnotes indicating

the use of the views and arguments of other authors or of judicial decisions. The bibliography does not include many available academic sources, nor does it list all the works actually used in the dissertation (including judicial decisions).

The language of the dissertation is of a satisfactory level, and numerous colloquial expressions appear (e.g., “in the end of a street,” “in such a crazy way,” etc.). The Author has not avoided orthographic, stylistic, grammatical, and—above all—punctuation errors. Throughout the entire dissertation the Doctoral Candidate did not use a single full stop. The end of a sentence can be identified only by the fact that the following word begins with a capital letter. Nonetheless, José Antonio González Costa has demonstrated that he possesses a sufficient command of the terminology appropriate to the selected academic discipline in the English language.

2. Selection of the topic of the doctoral dissertation

The Doctoral Candidate chose a current and interesting research problem. Undoubtedly, the legal solutions introduced by the Spanish legislature at the end of 2004 attracted the attention of public opinion not only in that country, but also around the world. Spain is the second country in the world, after Sweden, to decide to introduce solutions based on the thesis of the structural nature of violence against women based solely on their gender.

José Antonio González Costa correctly constructed the research questions, which led to the presentation of an original solution to the research problem. In his dissertation, José Antonio González Costa analyses the legal solutions in force in Spain aimed at preventing and combating gender-based violence against women. The provisions examined - essentially the Law on Measures for Integral Protection against Gender-Based Violence of December 28, 2004 (abbreviated as LVG) - were created after the amendment of the Spanish Penal Code in 2003. They certainly served as inspiration (along with legal regulations adopted in Sweden) for the Council of Europe Convention on preventing and combating violence against women and domestic violence (adopted in Istanbul on May 11, 2011), which was adopted several years later. The entry into force of the LVG Act was met with controversy in Spain, both in the literature on the subject and in case law. In case law the approach of representatives of the judiciary to the legal regulations establishing the system for protecting women against violence is evidenced by the number of complaints lodged with the Spanish Constitutional Court regarding their incompatibility with the Constitution (p. 56 et seq.). It was also preceded by events that stirred public opinion (the case of the murder of Ana Orantes). The Spanish LVG law is undoubtedly pioneering, being one of the first legal acts in the world to deeply conceptualize violence used by

perpetrators solely because of the female gender of the victims. The Doctoral Candidate accurately characterizes the phenomenon of gender-based violence, which is a manifestation of discrimination against women, differentiating it, for example, from so-called domestic violence. The importance of the issue raised by José Antonio González Costa stems from his reference to the fundamental principles of every democratic state of law regarding equal treatment and his emphasis on a social phenomenon whose scale is underestimated, i.e., violence against men on the basis of gender.

3. Structure of the dissertation

The doctoral dissertation consists of three substantive chapters, preceded by an introduction and followed by conclusions.

The introduction to the dissertation discusses the research methods used and the hypotheses adopted. The Doctoral Candidate does not indicate the reasons for undertaking the analysis of the chosen topic, but does so in the subsequent chapters of the dissertation. In Chapter I, which has not been formally separated (as well as the other chapters) when formatting the thesis (!) the Doctoral Candidate attempts to explain the basic issues, including differentiating gender-based violence from domestic violence, characterizing both approaches to combating discrimination against women, and providing a concise explanation of the types of violence. The chapter is very short, less than 12 pages long, and for this reason it should be included in the introductory remarks and should not constitute a separate editorial unit in the dissertation. It is undoubtedly a kind of subchapter, not a separate part of the dissertation.

In Chapter II, which is almost 90 pages long (out of the 133 pages that make up the dissertation) and constitutes the main part of the work, essentially covering the entire subject matter, the Doctoral Candidate presents both legal solutions concerning the concept of gender-based violence from an international perspective, including the European Union, and compares (in subsection 2.3) the legal solutions adopted in Spain and Italy. At this point, it should be emphasized that although the analysis from an international perspective and in the context of the Italian legal system is interesting and correct, it is not a comparative analysis of such a nature as to justify the introduction of a subtitle to the dissertation. In this part of the dissertation, the Doctoral Candidate analyses the content and mutual relations between the regulations of the Spanish Penal Code and the LVG Act, citing the views of doctrine and jurisprudence on criminal policy in the area of the pathological social phenomenon discussed by the Author. In the final part, the Doctoral Candidate presents proposals for amendments to the LVG Act. In Chapter III,

José Antonio González Costa emphasizes the interdisciplinary nature of the phenomenon of violence, pointing to the need to combat it not only through the system of criminal sanctions applied by the courts, but also by adopting solutions and procedures that will involve entities outside the justice system, such as psychologists, educators, and social workers. The Author proposes the creation of an alternative to the judicial path of proceedings in cases related to violence. He also recommends the use of mediation between the parties to the conflict. The Doctoral Candidate summarizes all of his considerations in the conclusions of his research.

The substantive content of each chapter is assessed below. The structure of the dissertation in terms of the division of research material between the individual chapters raises far-reaching reservations. In fact, the work consists of one excessively long chapter (from which at least one additional chapter devoted to comparative legal comments should be separated) and two editorial units that are incomparably shorter. The editorial units within the chapter have been accurately separated and form a logical whole.

4. Substantive evaluation of the dissertation

Moving on to the review of the content of individual chapters of the dissertation, it should be noted that both the content of the introductory remarks and Chapter I raise no objections; these parts are both necessary from the point of view of the work as a whole and correctly prepared.

The reviewer's attention must focus primarily on Chapter II, which constitutes the main part of the assessed discourse. In Chapter II, as already mentioned above, the Author refers to international law acts relating to gender-based violence against women, as well as to the directions of criminal policies in the field of combating this phenomenon in force in the European Union countries, with particular emphasis on the Italian legal system. In this regard, the only shortcoming is the Doctoral Candidate's reference to statistics on violence against women obtained a decade or even earlier in relation to the time of writing the dissertation (see p. 22), as well as the reference to statistical data without indicating their source.

In essence, however, the argument in this chapter is an analysis of the provisions of the LVG Act and the Spanish Penal Code (mainly Article 153) through the prism of their compliance with the constitutional principle of equality - Article 14 of the Constitution of the Kingdom of Spain. In the Reviewer's opinion, the introduction of legal regulations combating the most dangerous acts of discrimination against women on the basis of their gender, secured by criminal sanctions, was dictated by the Spanish legislator's conviction of the need to grant women, as representatives of a

historically discriminated gender, increased legal protection compared to male representatives who are victims of violent behaviour. Thus, the intention of the legislator was to equalize women's chances of protection against violence as an act of social and historical justice (positive discrimination). The *ratio legis* of the law is explained by the Spanish legislator in the Preamble to the LVG, stating, among other things: *"Gender-based violence is not a problem that belongs exclusively to the private sphere. On the contrary, it is the most brutal symbol of the inequality that exists in our society (...). The authorities [public authorities - Author's note] are obliged by Article 9.2 of the Constitution to take "positive action" to ensure the effective protection of these rights [i.e. women's rights - Author's note]."* However, the Doctoral Candidate does not refer to this, although he should have done so when analyzing the LVG, to the content of the Preamble, which is based on the belief in a structural attitude of hostility towards women deeply rooted in Spanish society. We cannot lose sight of the fact that traditional Spanish society is affected by the problem of "machismo." The Spanish legislator is aware of this and ruthlessly breaks gender stereotypes. Furthermore, in the introduction to the LVG, it explicitly explains that it has made an axiological assessment and given primacy to the protection of women's rights against violence, guided by the content of the Constitution of the Kingdom of Spain. Therefore, the Author of the dissertation cannot raise the objection that the legal solutions on which the LVG is based were introduced in clear violation of the principle of equality, which could be interpreted as if the Spanish legislator had deliberately decided to act contrary to the principle of equality before the law. This is not true, as the above quotation from the Preamble to the LVG clearly shows. In his dissertation, the Doctoral Candidate consistently questions the basic assumption on which the LVG regulation is based. Therefore, he should explain the reasons underlying his position. This is all the more important given that the legislator openly expressed the motives for taking certain legislative measures. Meanwhile, in virtually every section of Chapter II, the Author of the dissertation expresses his conviction that the above protective norms violate the principle of equality before the law, but does not refer to the thesis put forward by the legislator in the Preamble to the LVG Act when discussing this issue. Firstly, this approach distorts the reception of this part of the dissertation. For readers outside the Spanish legal system, it is essential to familiarize themselves with the content of the legal regulations analysed in the dissertation, and only then with the possible controversies related to their potential unconstitutionality and the practical implications of their application. The intertwining of arguments relating to the content of the regulations under examination with arguments about their unconstitutionality requires the reader of the dissertation to have considerable patience and determination in seeking answers to questions about the content of the provisions discussed by the Doctoral Candidate. It seems that

José Antonio González has attempted in places to present a systematic overview of the regulations concerning the protection of women against violence, but this attempt has not been successful, partly because of the insistence on the incompatibility of the provisions in question with the principle of equality.

Admittedly, the author provides only a fragmentary argument in this regard (pp. 59–61), pointing to possible deviations from this rule due to rational and justified reasons implying the need for different treatment of selected groups or individuals, but he does not contrast this observation with the Spanish legislator's assumption regarding the need for equal opportunities and grant increased protection to women against violence. If the Doctoral Candidate had made such a reflection, it would have led him to consider whether historical and social conditions (articulated in the Preamble to the LVG) could constitute a justified premise for differentiating between the situations of women and men in the context of behaviour related to the use of violence. Taking as a starting point for consideration the desire, characteristic of Spanish society until recently, to restrict women's rights and relegate them to the traditional female roles of wife and mother, and the contemporary need for a significant change in these attitudes, one may wonder whether the position of the Spanish legislator justifies granting women stronger protection against violence and, consequently, does not constitute a violation of equality before the law. The use of legal instruments that serve to create equal opportunities and prevent discrimination is not contrary to the principle of a democratic state. In this context, it is impossible to agree with the categorical thesis put forward by the Author *a priori* in his work, according to which the provisions of the LVG and the Penal Code penalising violent behaviour towards women¹ violate the constitutional principle of equality before the law (pp. 56–57). José Antonio González Costa avoids deeper reflection on the historical and social perception of the role of women in Spain and the multifaceted nature of violence against women, in particular the fact of social acceptance and tolerance of such violence. He merely states that social beliefs and attitudes in Spain have changed dramatically and that it is no longer reasonable maintaining enhanced protection of women against violence as an expression of their discrimination. José Antonio González Costa, as indicated above, denies the need for positive state measures aimed at equalizing women's opportunities, but does not indicate in principle the reasons on the basis of which he adopts such a position. Thus it is not clear what considerations guided him when questioning the *ratio legis* of the LVG Act, expressed in the Preamble of the Act and recommending its thorough amendment (pp. 98, 101–102). It should be emphasized here that the Author, paradoxically, perceives a clear

¹ For instance, stipulating, at the lower statutory threshold of criminal liability, more severe penalties for a male perpetrator than for a female perpetrator

statistical difference in the scale of violence against women in comparison to violence against men.

It seems that it is not so much the shape of the specific regulations and their potential unconstitutionality² that constitute the subject of the Author's most serious controversies in Spain, but above all the reliance on the legal regulations adopted by the Spanish legislator based on the thesis of the historical and structural nature of violence against women, as well as the recognition by public authorities that such pathological phenomena occur and must be combated, also through criminal law regulations.

Serious reservations are raised by the Author's forced thesis that the number of female homicides in Spain increased as a result of the entry into force of the LVG Act and the amendment of the Penal Code. This conviction, however, was not supported by any statistical data (and these were — as the Doctor emphasizes — available for analysis at the time of writing), but based solely on media reports. Such an approach does not align with the methodology of conducting scientific research.

The issues raised by the Author in Chapter II concerning the controversies related to the application of the LVG Act and the relevant provisions of the Spanish Criminal Code are not entirely unfounded. The Doctoral Candidate is correct in observing that the LVG Act omitted violence that may occur in homosexual partnerships and pathological phenomena associated with gender-based violence applied by persons other than male partners (former or current partners of women, e.g. in the workplace). José Antonio González Costa also raises numerous concerns regarding the application of criminal measures requiring the offender to leave the shared residence, prohibiting contact with the victim, and imposing restraining orders (Art. 64 LVG, pp. 78–95). These severe and repressive measures are frequently applied in cases that concern only women or children, but in cases that are of minor importance and cause little distress to the victims (pp. 78–96). The application of such measures then affects the social functioning of the given family or couple. The Author of the dissertation rightly notes that undertaking contact with the victimized woman by a man against whom a restraining order has been issued constitutes a criminally punishable act under Article 468 of the Spanish Penal Code, even if the victim expressed consent to such contact, wished to continue her relationship with the man, and

² The Spanish Constitutional Court, in judgment STC 59/2008, did not find Article 153 of the Criminal Code unconstitutional, thereby holding that differentiation in criminal law based on the situation of women and men in the context of domestic violence is justified as an exception to the principle of equality before the law (Art. 14 of the Constitution of the Kingdom of Spain).

considered their relationship ongoing. A woman who remains in contact contrary to the restraining order faces criminal liability (co-perpetration or aiding under Article 468 of the Penal Code).

The Author also correctly identifies the problem related to potential false reports or offences motivated, for example, by the desire to easily remove a man from family life and the possibility of engaging in a new relationship, the custody of children, housing, and obtaining social assistance from the state (pp. 70–78). In this last case, the Doctoral Candidate attempted to illustrate this issue solely with vague media reports. From the dissertation, however, one cannot learn whether, in Spain, public authorities or academic researchers have undertaken studies regarding the phenomenon of false reports by women concerning violence committed against them by their partners — which raises doubts as to whether the concerns expressed by the Author of the dissertation in this regard are well-founded.

In Chapter III, the Doctoral Candidate points to the need for out-of-court mechanisms to resolve conflicts arising from the use of violence. It is not possible to share José Antonio González Costa's view that a punitive criminal policy will not eliminate pathological phenomena associated with violence, including those conditioned by the gender of the victim. Such an approach may even intensify negative events. Therefore, there is a contemporary need to combat violence by means other than purely repressive legal norms. One also cannot disregard the need to recognize the multidimensional nature of violence between persons who remain in an emotional relationship.

In the conclusion of the dissertation, the Doctoral Candidate undertakes to formulate proposals *de lege ferenda*. He moves, however, from the scientific content of his dissertation to postulates which — as *de lege ferenda* proposals — should be evaluated as having normative value. It is difficult to agree with them, as they are based on a negation of the need to combat violence against women as a historical and structural phenomenon.

To summarize, it should be stated that the content of the dissertation reflects the thesis defended by the Doctoral Candidate. The division of issues among the individual chapters is confusing; in this regard, it is necessary to distinguish at least one chapter devoted to remarks of a comparative-law nature. The Doctoral Candidate identified an important research problem and discussed or outlined many significant issues connected with the chosen topic. The Author gathered sufficient and diverse literature on the subject. However, the dissertation contains extensive fragments not accompanied by any footnotes, whereas their content clearly indicates

that the Doctoral Candidate is not the Author of the presented views and not a researcher who obtained relevant results. The content of the dissertation demonstrates that José Antonio González Costa has mastered the necessary legal terminology in the English language, is capable of correctly applying methods of statutory interpretation and drawing conclusions on that basis. The dissertation possesses scholarly value, and its Author has demonstrated research competence.

5. Conclusion

The reviewed doctoral dissertation, despite all the shortcomings and obvious errors indicated above, meets the statutory criteria for doctoral dissertations set out in Article 187(1)–(2) of the Act of 20 July 2018 – Law on Higher Education and Science (Journal of Laws 2024, item 1571, as amended). Nevertheless, it should be emphasized that the requirements were fulfilled only to a sufficient degree.

In view of the positive conclusion of my review, I hereby request that Mr. José Antonio González Costa be admitted to the subsequent stages of the doctoral proceedings.

Małgorzata Szwejkowska-Lenart