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Views

Communication No. 20/2008

Submitted by:	Ms. V. K. (represented by counsel, Ms. Milena Kadieva)
Alleged victim:	The author
State party:	Bulgaria
Date of communication:	15 October 2008 (initial submission)
References:	Transmitted to the State party on 16 December 2008 (not issued in document form)
Date of adoption of decision:	25 July 2011

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Annex

Views of the Committee on the Elimination of Discrimination against Women under article 7, paragraph 3, of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women

concerning

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Submitted by:	Ms. V. K. (represented by counsel, Ms. Milena Kadieva)
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The Committee on the Elimination of Discrimination against Women, established under article 17 of the Convention on the Elimination of All Forms of Discrimination against Women,

Meeting on 25 July 2011,

Adopts the following:

Views under article 7, paragraph 3, of the Optional Protocol

1. The author of the communication dated 15 October 2008 is V. K., a Bulgarian citizen. The author claims to be a victim of violations by the State party of articles 1, 2, 5 and 16 of the Convention on the Elimination of All Forms of Discrimination against Women. She is represented by counsel, Milena Kadieva. The Convention and its Optional Protocol entered into force for the State party on 10 March 1982 and 20 December 2006, respectively.

2. Facts as presented by the author

2.1 The author and F. K. married in 1995. They have a daughter D. K., born in 1997, and a son, A. K., born in 2001.

* The following members of the Committee participated in the examination of the present communication: Ms. Ayse Feride Acar, Ms. Nicole Ameline, Ms. Olinda Bareiro-Bobadilla, Ms. Magalys Arocha Dominguez, Ms. Violet Tsisiga Awori, Ms. Barbara Evelyn Bailey, Ms. Meriem Belmihoub-Zerdani, Mr. Niklas Bruun, Ms. Naela Mohamed Gabr, Ms. Ruth Halperin-Kaddari, Ms. Yoko Hayashi, Ms. Ismat Jahan, Ms. Soledad Murillo de la Vega, Ms. Violeta Neubauer, Ms. Pramila Patten, Ms. Silvia Pimentel, Ms. Maria Helena Lopes de Jesus Pires, Ms. Victoria Popescu, Ms. Zohra Rasekh, Ms. Patricia Schulz, Ms. Dubravka Šimonović and Ms. Zou Xiaoqiao.

2.2 The author claims that, for years, she has been a victim of domestic violence perpetrated by her husband. At first, she was subjected to psychological, emotional and economic abuse and, in 2006 and 2007, also to physical violence. Before and especially after the family moved to Poland in 2006 because of her husband's work, she was not allowed to work despite her education and qualification. He alone decided on the spending of the family's income and provided the author with money only for the basic needs of the family. She had no additional money for herself and was not allowed to spend money given to her for other purposes than those strictly specified; nor was she informed about how the rest of her husband's income was spent. As a result, she was economically entirely dependent on her husband.

2.3 Throughout their marriage, the author's husband treated her like a housekeeper rather than a wife and partner. He did not discuss any family-related matters with her and expected her to adjust to his exigencies without expressing her opinion. The author claims that she was not allowed to communicate freely with her friends and family. For years, she felt humiliated and depressed. Her attempts to discuss the relationship resulted in frequent conflicts, as well as physical abuse by her husband in 2006 and 2007.

2.4 In 2006, before leaving for Bulgaria for the summer, the author told her husband that she would divorce him because she could no longer lead a life without work and social contacts. Her husband replied that she could do whatever she wanted, but that she would not be able to take the children with her. As a result, she was forced to stay in the relationship and returned to Poland with her husband.

2.5 On 31 December 2006, during their holidays in Sofia, the author and her husband had an argument because she decided not to follow his instructions concerning a particular amount of money he had given her. When she refused to return the money, he became violent and aggressive, shouting at her, insulting, threatening and hitting her. At that time, the author's parents called her and understood that she was being abused. Immediately after the call, they called the police and went to Sofia to help the author and her children. The police came and questioned the author and her husband about the events. Her husband then left the apartment for the night. On 1 January 2007, the author went to the Aleksandrovska University General Hospital for Active Treatment in Sofia. A medical certificate was issued confirming bruises on her forehead and on both hands and stating: "These injuries are [the] result of solid dull objects and they conform to and may have been received in the way and [at the] time reported by the examined person. These injuries have caused her pain and suffering."

2.6 On an unspecified date, her husband allegedly pushed her against a wall in order to silence her. He told their daughter to give him a rope to tie the author, stating that she was crazy. Following frequent arguments and realizing that the author would insist on being recognized as a person and on returning to work, her husband stopped the author's and their children's financial maintenance in an attempt to make her "behave" and "obey". As it was impossible for the author to take care of two children without any income, she started working in March 2007.

2.7 On 12 April and 22 May 2007, the author filed an application with the Warsaw District Court, asking for protective measures as well as for an order for financial maintenance from her husband to ensure the basic family needs. On 22 May 2007, she sent an urgent reminder to the Court. The proceedings before the Court were still pending at the time of the initial submission of the communication.

2.8 On 30 April 2007, when the author asked her husband to provide for the basic family needs, he locked the children in a room and warned her that she would not have an opportunity to take care of the children any more unless she obeyed him. He yelled at her and told her that she was no longer needed, as the children had grown up, and that a governess could easily replace her. The children were frightened. In his anger, he started hitting her and tried to strangle her with a pillow. She was fighting for her life and in order to be able to breathe.

2.9 On 7 June 2007, the author's husband initiated divorce proceedings in Sofia without informing the author, claiming custody of both children.

2.10 On 26 June 2007, the author was beaten by her husband, who kicked her in the legs. As a result, she fell and hurt her thigh and buttocks. On 2 July 2007, she was examined by a doctor who confirmed that she had "1. A large bruise on the skin of the right thigh; 2. Two large bruises on the skin of her buttocks; 3. A bruise on the top of the right foot." The medical certificate concludes that "[t]he aforementioned injuries could have occurred at the time and under the circumstances set forth by the patient".

2.11 The author decided to leave her husband, take the children and seek refuge in a shelter for battered women with support and legal assistance from the Foundation "Centre for Women's Rights" (the Foundation) in Warsaw. On 27 July 2007, she went to the family's apartment together with a representative of the Foundation to collect her and her children's belongings. Her husband came home early from work and started a dispute. He locked the children in the apartment. The author and the Foundation representative called the police. When the police arrived, the author managed to take her daughter. However, her son remained locked in the apartment. She and her daughter were sheltered by the Foundation in Warsaw until 23 September 2007. For two months, the author's husband denied her any contact with her son, who was in a state of shock following the events of 27 July 2007 and needed to be hospitalized. Her husband did not inform her about the hospitalization. On 31 July 2007, her son was removed from public kindergarten and placed in a private kindergarten. Her husband instructed the director not to allow the author to see her son and to call him in case she came to the kindergarten. On two occasions, her husband went to the Foundation to ask where his daughter was. On 14 August 2007, on his second visit, he was violent and aggressive and the staff had to call the police to expel him from the premises.

2.12 On 20 August 2007, the Foundation, filed a criminal complaint with the public prosecutor's office in Warsaw on behalf of the author.

2.13 On 21 September 2007, the author managed to find out where her son was and went to see him at the kindergarten together with a representative of the Foundation. When the director refused to let her see the child, she called the police in order to at least arrange for a meeting with her son. Her husband, called by the director, came to the kindergarten and yelled at her, threatened and behaved violently towards her and the representative of the Foundation, and hit both of them. The police had to restrain him in a police car.

2.14 Thereafter, the author took her son and, together with both children, left Poland for Bulgaria to hide from her husband and to seek protection and emotional support from her family as well as legal help. The Foundation in Warsaw and the Bulgarian Gender Research Foundation (BGRF) in Sofia jointly supported her and

her children by providing legal assistance and directing her to non-governmental organizations (NGOs) in Bulgaria providing support to battered women. The first week or so following her return to Bulgaria, the author and her children were staying with friends, as the DIVA Foundation, which operates the only shelter for battered women in southern Bulgaria, was not in a position to shelter them immediately due to overcrowding.

2.15 On 27 September 2007, the author filed an application with the Plovdiv District Court in Bulgaria pursuant to article 18 (1) of the Law on Protection against Domestic Violence, registered as civil case No. 3273/2007, asking for an immediate protection order to be issued against her husband. She claimed that for many years, she had suffered from economic, psychological and physical violence. She invoked an incident of 30 April 2007 when her husband had beaten and abused her and had locked the children in a room, and that she and her daughter had moved out of the family apartment on 27 July 2007, while her husband kept her son and denied her access to him for more than two months. She also invoked the incident that took place in Warsaw on 21 September 2007 as follows: "On Friday, 21 September 2007, after many troubles and a terrible row, in which my husband struck me and at a person-employee of the Foundation supporting women victims of domestic violence, in the presence of the police, I managed to take my son with me and to leave for Plovdiv with acquaintances of mine." The author requested protection from fear and violence, invoking the Convention and other human rights treaties covering domestic violence, including the European Convention for the Protection of Human Rights and Fundamental Freedoms and the International Covenant on Civil and Political Rights. She also requested the Court to impose measures under article 5, paragraph 1, items 1, 3 and 4, of the Law on Protection against Domestic Violence for a period of one year, i.e., to order her husband not to perpetrate domestic violence against her and the children (item 1) and to remain at a distance of at least 500 metres from the house where they were living or any place where they were staying, including her parents' house, the school and kindergarten of the children, her future workplace and any place where she would engage in social contacts (item 3). Under article 5, item 4, of the Law, she also applied for temporary custody of the children.

2.16 On 27 September 2007, the Plovdiv District Court issued an order for immediate protection based on article 18 of the Law on Protection against Domestic Violence. With immediate effect, the Court ordered the author's husband to restrain himself from exercising domestic violence against the author and from approaching the dwelling of the author and her children, as well as places of social contact and recreation, until the end of the proceedings. The Court also decided that the children's temporary residence would be with the author.

2.17 On 26 October 2007, at the first hearing before the Plovdiv District Court, the author's husband objected to all allegations presented by the author in her application for an immediate protection order. At the second hearing on 15 November 2007, the author's father and a friend of hers were heard as witnesses, and at the third hearing on 21 November 2007, the author's mother-in-law was heard as witness.

2.18 By its decision of 18 December 2007, the Plovdiv District Court rejected the author's application for a permanent protection order under article 5, paragraph 1, items 1, 3 and 4 of the Law on Protection against Domestic Violence. It applied

article 10, paragraph 1 of the Law, which provides that a request for a protection order must be submitted within one month from the date on which the act of domestic violence occurred, and found that no domestic violence had been perpetrated against the author by her husband on 21 September 2007, nor at any other time during the relevant one-month period prior to her application for a protection order (27 August to 27 September 2007). It also found no immediate danger to the life and health of the author and her children.

2.19 On 7 January 2008, the author lodged an appeal with the Plovdiv Regional Court, arguing that the Plovdiv District Court had ignored relevant evidence such as a declaration made by her under article 9 (3) of the Law on Protection against Domestic Violence and a written statement issued by the Warsaw Centre for Women's Rights concerning the incident on 21 September 2007, merely basing its decision on a written statement dated 25 October 2007 issued by the director of the kindergarten in Warsaw and submitted by her husband. She also argued that her husband's threats and violence against her were not a single isolated incident but rather a systematic pattern of aggression. The fact that such incidents took place in the presence of the children amounted to domestic violence against them.

2.20 On 7 April 2008, the Plovdiv Regional Court dismissed the author's appeal, upholding the decision by which the District Court had refused to issue a permanent protection order.

2.21 After the end of the court proceedings, the author and her children were left without any support and protection from the State party, while the divorce proceedings initiated by the author's husband were still pending before the Plovdiv District Court. Her husband continued to see the children. In the summer of 2008, he filed a complaint with the Sofia public prosecutor's office for not being allowed to enter the author's apartment, the only safe place where she and her children could lead a normal life. He also filed a civil claim for the family property to be divided before the end of the divorce proceedings. He claimed that no Bulgarian court would grant the author custody of the children because of her low income, warning her that she could not afford lengthy judicial proceedings.

2.22 On 8 May 2009, more than one year after the rejection of her appeal by the Regional Court, the Plovdiv Regional Court dissolved the marriage between the author and her husband.

3. The complaint

3.1 The author claims that she is a victim of violations of articles 1, 2 (a)-(c) and (e)-(g), article 5 (a) and article 16 (1) (c), (g) and (h) of the Convention, read in the light of the Committee's general recommendation No. 19 (1992) on violence against women, because of the failure of the State party to provide her with effective protection against domestic violence.

3.2 The author claims that the State party neglected its "positive" obligations under the Convention and supported the continuation of a situation of domestic violence against her contrary to its obligations under the Convention.

3.3 The author claims that she is a victim of violations of articles 1 and 2 (a)-(c) and (e)-(g). She argues that women in Bulgaria are far more affected than men by the failure of the courts to take domestic violence seriously as a threat to their life and health. By reference to several NGO reports, she argues that violence against

women hampers the realization of women's human rights in Bulgaria and that until very recently, it was not perceived as a serious public problem deserving specific legal regulation. She submits that despite the adoption in 2005 of the Law on Protection against Domestic Violence, the courts continue to neglect their obligation to punish perpetrators of domestic violence. She considers that lack and inadequacy of legal training are among the reasons for the failure of the judicial system of the State party to provide her with effective protection against domestic violence. Under the Law on Protection against Domestic Violence, a court may issue restraining orders removing the perpetrator from the common home and banning him or her from approaching the victim, temporarily withdraw child custody from the perpetrator, and order him or her to undergo compulsory education programmes. However, while providing a special urgent civil court procedure in cases of domestic violence, the Law fails to recognize domestic violence as a criminal offence or to criminalize non-compliance with protection orders. Domestic violence can only be prosecuted under general provisions on assault and battery or bodily harm (article 161 of the Penal Code). In addition, certain types of assault are exempted from ex officio prosecution if committed by a family member, although the State party prosecutes similar acts if committed by a non-family member. In practice, domestic violence is only prosecuted when the victim has been killed or at least permanently injured, but even then it sometimes goes unpunished. It was for precisely those reasons that the author did not file a criminal complaint with the State party authorities concerning her husband's attempts to strangle her. The author claims that in the present case, the Plovdiv courts neglected the long-lasting emotional, psychological, economic and physical violence suffered by her and falsely concluded that both parties were equally responsible for their conflicts. The courts also underestimated the negative effects of the violence perpetrated by her husband on the development of the children, as well as their emotional trauma.

3.4 The author also claims that the State party has violated her rights under article 2 (a) and (b) of the Convention. She submits that the lack of a special law on equality between women and men, the lack of recognition of violence against women as a form of discrimination, as well as the lack of positive measures in favour of women victims of domestic violence, results in inequality in practice and in the denial of the enjoyment of her human rights. She recalls that in its 1998 concluding observations on Bulgaria (A/53/38, paragraphs 208-261), the Committee identified the problem of violence against women, including domestic violence, and urged the Government "to develop an array of medical, psychological and other measures to assist women victims of violence and to change prevailing attitudes to domestic violence, which view it as a private problem ...". The author also recalls general recommendation No. 19 (1992) on violence against women, in which the Committee stated that gender-based violence which lessens or nullifies women's enjoyment of human rights constitutes discrimination against women within the meaning of article 1 of the Convention. The Committee also observed that States parties can be held responsible for private acts if they fail to act with due diligence to prevent violations of women's rights or to investigate and punish acts of violence against women. In its general recommendation No. 21 (1994) on equality in marriage and family relations, the Committee observed that custom, tradition and failure to enforce laws ensuring equality and protection against violence contravene the Convention. She further argues that in order for the individual woman victim of domestic violence to enjoy the practical realization of the principle of equality of men and women, the political will that is expressed in a State party's system must be

supported by State organs by adhering to the State party's due diligence obligations. The author concludes that her case is an illustration of the fact that the State party has not complied with its obligations under article 2 (a) and (b) of the Convention.

3.5 The author claims that the State party has violated article 2 (c) and (e) of the Convention in that it had failed to protect her from long-lasting psychological and emotional domestic violence, assault, battery, coercion and threats against her life and her economic dependence on her husband. The State party, through its judicial system, had refused to recognize her status as a victim of domestic violence despite the evidence gathered and support from different NGOs. Therefore, she was in an even more vulnerable position and in greater danger than before initiating court proceedings, as the State party had failed to afford her with protection following the end of the court proceedings relating to the protection order. Free from any State intervention in his "private matters", her husband behaved even more aggressively towards her. In addition, he was constantly threatening her financial stability, pressuring her to agree to his proposal to leave the children with him and to give up most of the family property.

3.6 For the author, the following omissions by the State party further reflect her lack of protection from domestic violence: (a) the failure to criminalize domestic violence, including the failure to detain perpetrators of domestic violence and criminalize non-compliance with protection orders; (b) the lack of effective implementation of the Law on Protection against Domestic Violence and the lack of clarity in the Law as to the burden of proof in domestic violence proceedings; (c) the lack of coordination among law enforcement organs and the judiciary; (d) the lack of funding for shelters and crisis centres; (e) the lack of prevention and protection programmes for victims, as well as of resocialization programmes for perpetrators; (f) the failure to train law enforcement officials and judges on domestic violence; and (g) the failure to collect statistical data on domestic violence.

3.7 The author notes with concern that the Plovdiv courts only took into account the events of 21 September 2007 without looking at the long history of physical and psychological abuse suffered by her. By observing that both parties were equally responsible for the family conflicts, the Court ignored the fact that her husband was physically much stronger and that he was in a controlling position in their marriage. The observation of the Court that she had never claimed to have been subjected to violence on 21 September 2007 ignored her allegation that her husband had attacked her and a Foundation representative accompanying her to the kindergarten on 21 September 2007. Even in the presence of the police, his behaviour was such that he had to be restrained in a police car. The Court also ignored other elements presented by the author, including the fact that her husband had denied her any contact with her son for more than two months. Furthermore, the decision of the Court was very short and lacked motives or any analysis of the situation faced by her.

3.8 The author argues that the lack of clarity of the Law on Protection against Domestic Violence as to the burden of proof in domestic violence proceedings is incompatible with the duty of the State party to protect against domestic violence and is discriminatory, as the shortcomings of the Law disproportionately impact on women who are typically the victims of domestic violence. Although the Law provides for a shift of the burden of proof in domestic violence cases, it is not sufficiently clear on this point. Instead, it defers to the rules of evidence of the Civil

Procedure Code. As a result of inadequate legal training, many judges continued to apply a "beyond reasonable doubt" standard in cases involving requests for protection orders. The author claims that, accordingly, the courts required her to prove beyond reasonable doubt that she was physically attacked and injured on 21 September 2007 and to provide written evidence for that purpose. She asserts that by interpreting and applying the Law on Protection against Domestic Violence in a way that disregards any evidence of domestic violence suffered by her prior to 27 August 2007, i.e., the beginning of the one-month period, the courts failed to shift the burden of proof in her favour, thereby depriving her of effective judicial protection. The author explains that the aim of the Law is to ensure the effective protection of victims of domestic violence by taking into account the entire history of violence, while the 30-day time limit in article 10 of the Law is a purely procedural time frame for filing complaints.

3.9 The author argues that States parties must ensure that victims of domestic violence have access to immediate protection, including a sufficient number of appropriate shelters offering safe accommodation for women and their children. The author submits that in its replies to a 2007 Council of Europe study, the State party reported that there were three shelters for victims of domestic violence, which were geographically evenly distributed in the country, with a total of 15 places, offering around-the-clock and free-of-charge assistance and geographically evenly distributed. However, she claims that most of the shelters and crisis centres are run and financed by NGOs, without State support, and are unevenly distributed geographically. They are free of charge only because of NGO funding rather than State involvement. Not all shelters operate 24 hours per day and seven days per week. She submits that, due to the lack of state-run and state-funded shelters and crisis centres, the author and her children were forced to stay with friends for approximately one week following their return from Poland, as the crisis centre of the DIVA Foundation in Plovdiv was overcrowded and was therefore not able to shelter them immediately.

3.10 The author further claims that the State party had violated articles 2 (f) and (g) of the Convention in that article 161 of the Penal Code still exempts certain types of assault from ex officio prosecution, if committed by a family member. She submits that even when a woman has been permanently injured, domestic violence is not always prosecuted. She claims that any intentional conduct amounting to violence against women must be specifically criminalized, irrespective of the nature of the relationship between the victim and the perpetrator. However, article 161 of the Penal Code has still not been repealed, despite the fact that it constitutes discrimination against women who are victims of gender-based violence within the family. With respect to the lack of a specific law on gender equality, the author explains that the draft equal opportunities act was rejected by Parliament in 2002 and that a Law on Protection against Discrimination was adopted in 2003 which also prohibits discrimination based on sex. Moreover, the lack of State-funded research on the prevalence, causes and consequences of domestic violence indirectly perpetuates the negative phenomenon of such violence because of the lack of information on the number of such cases, its prevalence and pervasiveness. As a result, neither public organs nor society perceive it as a serious human rights violation affecting a wide group of people, mainly women and children, such as the author and her children.

3.11 Furthermore, the author claims that the State party has breached article 1, read together with article 5 (a) and article 16 (1) (c), (g) and (h), of the Convention. She submits that the failure of the State party to adopt a comprehensive approach to overcoming traditional stereotypes regarding the roles of women in family and society, including political, legal and awareness-raising measures involving State officials, civil society, and the media, contributed to her subordinate role during her marriage, where she was treated like a housekeeper without having a say on any family-related matters, as well as to the domestic violence against her.

3.12 The author requests the State party to (a) take immediate and effective measures to protect her physical and mental integrity and that of her children; (b) ensure the safety of their home and that she receives adequate child maintenance and legal assistance; and (c) provide her with adequate compensation for the physical and mental harm suffered, proportionate to the gravity of the violations of her rights under the Convention.

3.13 The author also claims that the State party should adopt general measures in favour of women victims of domestic violence, including by amending the Law on Protection against Domestic Violence in order to criminalize acts of domestic violence and breaches of protection orders, and to provide for the issuance of protection orders for acts of violence committed prior to the one-month period referred to in article 10 of the Law; detaining perpetrators according to the gravity of the offence; amending criminal laws to allow ex officio prosecution in cases of low- and medium-level assaults when the victim and the perpetrator are relatives; clarifying the burden of proof in domestic violence proceedings by explicitly stating that the Law on Protection against Domestic Violence requires shifting the burden of proof in favour of the victim; continuously training public officials responsible for the application of the Law; providing adequate support to NGOs working to combat domestic violence; and raising public awareness of the negative impact of domestic violence on women and children, as well as of its financial consequences for society.

3.14 The author submits that she has exhausted all available domestic remedies and that the same matter has not been examined under another procedure of international investigation or settlement.

4. The State party's observations on admissibility and merits

4.1 On 12 June 2009, the State party submitted its observations on the admissibility and merits of the communication. While explicitly conceding that the author has exhausted all available domestic remedies, it rejects her allegations as not sufficiently substantiated. On the merits, the State party argues that the author makes sweeping allegations of a general nature without direct relevance to her case. It nevertheless provides an overview of its legislative and institutional framework for protecting and supporting victims of domestic violence and makes comprehensive observations on the merits of the case.

4.2 The State party submits that under its Constitution "Any international instruments, which have been ratified in accordance with the constitutionally established procedure, promulgated and having come into force with respect to the Republic of Bulgaria, shall be considered part of the domestic legislation of the country. They shall supersede any domestic legislation stipulating otherwise." It also submits that the Law on Protection Against Discrimination prohibits direct and

indirect discrimination based on sex. The State party does not dispute the facts of the case as presented by the author. However, it emphasizes that most of the alleged incidents referred to by her took place in Warsaw and thus outside the jurisdiction of the State party.

4.3 In its observations on the merits of the case, the State party submits that it took appropriate measures, in accordance with the Convention, to provide adequate protection against domestic violence, including by adopting specific legislation. Thus, the fast-track sui generis procedure in the Law on Protection against Domestic Violence of 2005, enabling Courts to issue immediate protection orders and to shift the burden of proof in favour of victims, was in conformity with the highest international women's rights standards. In certain cases, it provides for the possibility to issue protection orders only on the basis of a victim's statement and to adopt immediate orders within 24 hours. In the main proceedings, documents issued by organizations supporting victims of domestic violence may be admitted as evidence.

4.4 The State party submits that the author has not contested that the above procedure was effectively applied in her case. Thus, on 27 September 2007, the Plovdiv District Court instituted proceedings under article 18 of the Law on Protection against Domestic Violence and issued an order for immediate protection, imposing measures under items 1, 3 and 4 of article 5 (1), as well as under article 5, paragraph 3, of the Law concerning the temporary residence of the children with the author. The State party concludes that it cannot be held responsible for the continuation of the alleged situation of domestic violence. It argues that the author has failed to substantiate her claim that she and her children were left without protection by the State party following the decision of 18 December 2007 in which the District Court declined to issue a permanent protection order and during the subsequent appeal proceedings before the Plovdiv Regional Court.

4.5 In relation to the author's claim that the Plovdiv courts neglected the history of domestic violence suffered by her and the negative effects on the children, placing the burden of proof entirely on her, the State party submits that on appeal, the Plovdiv Regional Court observed that the aim of the Law on Protection against Domestic Violence was not to police the family life of spouses but rather to provide for urgent court interventions in cases where domestic violence might be imminent; hence the one-month time limit in article 10 (1). It clearly indicated that the events surrounding the author's and her husband's family life, the origin of their conflicts and the possible existence of a pattern of violent behaviour would have been relevant to determining the severity of permanent measures to be issued against her husband. However, such measures could only be imposed after proving that an act of domestic violence had occurred during the relevant one-month period, notably on 21 September 2007. In the absence of such evidence, the question did not arise. The Court observed that while the author's declaration under article 9, paragraph 3, of the Law on Protection against Domestic Violence was sufficient to issue an immediate protection order, issuing a permanent order required a higher standard of proof. It found that the author had failed to substantiate that her husband had violated her physical integrity on 21 September 2007. The Regional Court considered that the certificate issued by the director of the Centre for Women's Rights had limited evidentiary value and contained no information on violence exercised by the husband. Rather, it stated that on 21 September 2007, the author's husband had shown an aggressive attitude and was warned by the police not to

violate the physical integrity of the author and that of the representative of the Centre for Women's Rights. On the burden of proof, the Regional Court considered that the medical certificates and other evidence showed "a bilateral process of intolerability between the two spouses, within which the distinctions between perpetrator and victim of violence are blurred".

4.6 The State party submits that the absence of any police interventions following the issuance of the immediate protection order on 27 September 2007 indicates that there were no breaches of the order and that the necessary protection was afforded to the author and her children.

4.7 The State party also submits that the testimony of the author's father did not corroborate her claim that her contacts with her family had been restricted by her husband, while the testimony of her children showed that they were not afraid of their father, thus indicating that he had not abused them.

4.8 With regard to the events of 21 September 2007, the State party submits that both the Plovdiv District Court and subsequently the Plovdiv Regional Court established beyond reasonable doubt that no act of domestic violence had been perpetrated on that day. Therefore, neither the author nor her children had been subjected to violence during the one-month period referred to in article 10 (1) of the Law on Protection against Domestic Violence. Since the Court did not find an imminent threat to her or the children's life and health, the legal prerequisites for issuing a permanent protection order under the Law were absent. While observing that serious family rows had taken place between the author and her husband in the presence of the children, repeatedly escalating to physical violence, the Court found that such violence had been exercised by both spouses. Both spouses had submitted medical certificates and had called the police on several occasions. There was no evidence that the author's husband had abused the children, both of whom were fond of him and had no fear of him. The Court also considered that the author had failed to substantiate her claims that her husband had restricted her social contacts, prevented her from taking up employment, and neglected his children.

4.9 The State party concludes that the author has failed to substantiate her allegations of violations of her rights under the Convention.

5. Interim measures of protection

5.1 On 12 February 2009, the Committee, pursuant to article 5, paragraph 1, of the Optional Protocol and rule 63 of its rules of procedure, requested the State party to take such appropriate and concrete interim measures of protection in favour of the author and her children, as may be required to avoid irreparable damage to them while their communication is under consideration by the Committee. The Committee also requested the State party to ensure the protection and physical integrity of the author and her children at all times, including when the author's husband exercises his visitation rights at the author's residence. It further invited the State party to provide information on the measures taken to give effect to the Committee's request by 13 April 2009 at the latest.

5.2 The State party did not respond to the request for interim measures of protection in its submission on admissibility and merits dated 12 June 2009. On 16 June 2009, the Committee therefore reiterated its request to be provided on an

urgent basis with information on the type of measures taken by the State party to give effect to the Committee's request for interim measures.

5.3 On 1 July 2009, the State party replied to the Committee's request, recalling that the Plovdiv District Court had issued an immediate order for protection on 27 September 2007, ordering the author's husband not to perpetrate domestic violence against the author and their children, not to approach the author's house, and that the children's temporary residence should be with the author until the end of the main court proceedings. It also recalled that after careful consideration of the facts of the case, both the District and Regional Courts had established beyond doubt that no act of domestic violence had been committed against the author. The State party reiterated that the absence of any subsequent police intervention indicated that there were no breaches of the protection order of 27 September 2007 and that the necessary protection was granted to the author and her children. The State party emphasized that although the protection measures under the Law on Protection against Domestic Violence were not continued, the author has the right at any time in case of danger of domestic violence to request protection from the police under article 6 of the Law on the Ministry of Interior. The State party submitted that the protection of the life, health and property of citizens is one of the basic tasks of the police. It concluded that the author and her children continued to enjoy all the protection required to avoid irreparable damage to them and to ensure their physical and mental integrity, and that no additional measures were required.

5.4 On 21 July 2009, the Committee informed the State party that "It is the Committee's understanding that the State party is taking all necessary measures of protection to avoid irreparable damage to the author and her children and to continue to ensure their physical and mental integrity."

6. The author's comments on the observations of the State party on admissibility and merits and on the interim protection measures

6.1 On 8 August 2009, the author commented on the State party's submissions which, in her view, merely repeat the conclusions of the Plovdiv courts without refuting her allegations. She submits that NGO reports and statistical data referred to in her communication support the facts and allegations contained therein. She challenges the effectiveness of State party institutions to combat domestic violence and reiterates that without effective implementation by the national courts and authorities and without an adequate understanding of the specific nature of domestic violence on their part, the Law on Protection against Domestic Violence will remain meaningless. The State party merely provided information on the legal framework on gender equality and discrimination rather than providing information on domestic violence and measures to strengthen the implementation of the Law, such as training for judges and law enforcement officials and rehabilitation programmes for victims of domestic violence.

6.2 The author submits that the claim of the State party that she had never alleged violent treatment by her husband on 21 September 2007 was inaccurate and ignored her application for an immediate protection order, which was granted, and which stated that she and the representative of the Foundation accompanying her had been attacked by her husband in the presence of the police, as confirmed in the written statement of the Foundation.

6.3 On the burden of proof, the author emphasizes that the State party itself admitted that the Law on Protection against Domestic Violence only "makes it possible", without clearly requiring it, to shift the burden of proof in favour of the victim of domestic violence. She reiterates that the lack of clarity of the Law and its interpretation by the courts disproportionately affects women. In the present case, the courts had placed the burden on her to prove beyond reasonable doubt that her husband had violated her physical integrity on 21 September 2007 and to provide written evidence for that purpose.

6.4 For the author, the distinction made by the State party between the provocation of a row as a bilateral act and violence as being unilateral in nature, as well as its definition of violence as a physical act, fails to understand the complex nature of domestic violence, especially emotional and psychological violence. The narrow interpretation by the courts of domestic violence as an immediate threat to the life and health of the victim does not cover the emotional and psychological integrity of victims of domestic violence.

6.5 On interim measures, the author expresses concern that following the Committee's request under article 5, paragraph 1, of the Optional Protocol, the State party did not respond at first and failed to contact her to make arrangements for the application of such measures. In its response dated 1 July 2009, the State party mainly referred to the order by the District Court for immediate protection, despite the fact that the order had ceased to have effect from the adoption by the Regional Court of its final decision on 7 April 2008.

6.6 The author submits that immediately after the expiry of the order for immediate protection, her husband again started to harass her and the children through repeated calls, attempts to manipulate them to agree with his position, and criminal complaints against the author. In light of the general length of court proceedings, she agreed to a settlement allowing him to see the children once per month. Her husband interpreted this as surrender on her part and reinforced his attempts to make her cede child custody to him. His applications to court to spend the summer holidays with the children and to take their son to live with him in Poland, thereby separating the children, were dismissed. He also complained to the prosecutor's office about not being allowed to enter the apartment where the author and the children were living. The author submits that prior to the divorce judgment dated 8 May 2009 of the Plodiv District Court, she was permanently stressed and lived in constant fear.

6.7 The author argues that through the decision of the courts not to issue a permanent protection order, the State party has failed to grant her and her children protection. Other remedies available to her under the Law on the Ministry of Interior would have been ineffective, as they could only have resulted in a written warning against her husband not to harass her. Domestic violence was not specifically criminalized and certain types of assault were exempted from ex officio prosecution if committed by a family member. As a result of the negligence of the State party and its failure to ensure the necessary protection to avoid irreparable damage to the author and her children, they had suffered considerable emotional and psychological harm during the divorce proceedings.

6.8 The author submits that the State party's argument that she would have to present new facts for additional immediate protection measures to be issued was erroneous, as the State party had an ongoing duty to comply with the Committee's

interim measures request under the Optional Protocol. She also submits that the State party only pays "lip service" to its obligations under the Convention without implementing them in practice, and that it has not reported to the Committee since 1994.

7. Additional observations by the State party

7.1 On 7 December 2009, the State party submitted observations on the author's comments, stating that the Law on Protection against Domestic Violence provided her with an effective remedy. In the absence of other applications seeking protection from domestic violence lodged by her, it should be presumed that the incident on 21 September 2007 was an isolated conflict between the author and her husband. The State party reiterates that the fact that she has not reported any new incidents between her and her husband since the issuance of the immediate protection order on 27 September 2007, indicates that the protection measures taken by the State party were effective and adequate. In any event, the author has failed to exhaust available domestic remedies with regard to any possible incidents which she has not notified to the State party authorities.

7.2 The State party argues that the present case is not similar to *A.T. v. Hungary* (Communication No. 2/2003), where the Committee found a violation by Hungary of its obligation under the Convention to provide the author with effective protection from threats to her life, physical integrity, and physical and mental health. Whereas no specific law against domestic violence was in force and no restraint or protection orders were available to victims in Hungary at the time, in the present case, the author was granted prompt and adequate protection under the Law on Protection against Domestic Violence. The author's claim that the State party had failed to provide her with immediate protection from her husband and that its legal and institutional framework was still inadequate for granting coordinated, comprehensive and effective protection and support to victims of domestic violence was therefore manifestly unfounded.

7.3 On 14 September 2010, upon the request of the secretariat, the State party submitted translations of the Law on Protection against Domestic Violence and of the divorce judgment dated 8 May 2009 of the Plovdiv District Court dissolving the marriage between the author and her husband. The Court concluded that both spouses were guilty of causing the breakdown of the marriage: "It was ascertained that both spouses were frequently involved in arguments, altercations and exchange of verbal offence, as well as physical abuse. Facts indicating the use of physical abuse are available in the social services report submitted by the relevant Social Assistance Directorates in respect of the court matter, as required, and the medical certificates ... concerning injuries inflicted upon the wife. The wife, in turn, used insolent language with regard to her husband, as established in the testimony which also indicates that the arguments were often initiated by the wife." Based on a social services report dated 17 October 2007 by the Plovdiv Social Assistance Office, the Court considered that it was in the best interest of the children not to be separated and, given the fact that the author was providing the necessary care for them and in light of their young age, awarded child custody to the author, while granting the father visitation rights. It also ordered the father to pay child maintenance.

Issues and proceedings before the Committee

8. Consideration of admissibility

8.1 Pursuant to rule 72, paragraph 4, of its rules of procedure, the Committee shall consider the applicability of the admissibility grounds referred to in articles 2, 3 and 4 of the Optional Protocol before considering the merits of the communication.

8.2 With regard to article 4, paragraph 1, of the Optional Protocol, the Committee notes that the author has submitted and the State party has explicitly conceded that all available domestic remedies have been exhausted by the author.

8.3 With regard to article 4, paragraph 2 (a), of the Optional Protocol, the Committee has been informed that the same matter has not already been and is not being examined under another procedure of international investigation or settlement.

8.4 With regard to the State party's argument that the author has failed to substantiate her claim that she is a victim of violations of articles 1, 2 (a)-(c) and (e)-(g), 5 (a), and 16, paragraph 1 (c), (g) and (h), of the Convention, the Committee considers that she has provided sufficient elements to substantiate her claims for purposes of admissibility.

8.5 The Committee has no reason to find the communication inadmissible on any other grounds and thus finds it admissible.

9. Consideration of the merits

9.1 The Committee has considered the present communication in light of all the information made available to it by the author and by the State party, as provided in article 7, paragraph 1, of the Optional Protocol.

9.2 The Committee considers that at the heart of the present communication lies the author's allegation that the State party has failed to provide her with effective protection against domestic violence, in violation of article 2 (c) and (e)-(g), read in conjunction with article 1, and articles 5 (a) and 16 of the Convention.

9.3 The Committee recalls that, in accordance with its general recommendation No. 19, discrimination within the meaning of article 1 encompasses gender-based violence against women.[1] Such discrimination is not restricted to action by or on behalf of Governments. Rather, under article 2 (e) of the Convention, States parties may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation.[2]

9.4 The Committee notes that the State party has taken measures to provide protection against domestic violence by adopting the Law on Protection against Domestic Violence, which includes a fast-track procedure for issuing immediate

[1] General recommendation No. 19 (1992) on violence against women, para. 6.
[2] Ibid., para. 9.

protection orders. However, in order for the author to enjoy the practical realization of the principle of equality between women and men and of her human rights and fundamental freedoms, the political will that is expressed in such specific legislation must be supported by all State actors, including the courts, who are bound by the obligations of the State party.[3] The issue before the Committee is therefore whether the refusal of the Plovdiv courts to issue a permanent protection order against the author's husband, as well as the unavailability of shelters, violated the State party's obligation to effectively protect the author against domestic violence.

9.5 This would first of all require that the author applied for a permanent protection order. In her complaint dated 27 September 2007 to the Plovdiv Regional Court, she asked for the "issuance of an order for immediate protection under the terms of article 18, paragraph 1 of the Law on Protection against Domestic Violence", and asked the Court to impose measures under article 5, paragraph 1 (items 3 and 4), of the Law, which sets out the measures of protection that may be imposed by the courts in case of both immediate and permanent protection orders for a period of 3 to 18 months. The Committee observes that the fact that the author requested such measures to be imposed for a period of one year indicates that she applied for a permanent protection order, in accordance with article 5, paragraph 2, of the Law.

9.6 The Committee reiterates that it is not in a position to review the assessment of facts and evidence by domestic courts and authorities, unless such assessment was in itself arbitrary or otherwise discriminatory. The decisive question is therefore whether or not the refusal of the Plovdiv courts to issue a permanent protection order against the author's husband was arbitrary or otherwise discriminatory.

9.7 The Committee recalls that the Plovdiv District Court essentially based its decision to refuse a permanent protection order on the assumption that, during the relevant one-month period from 27 August to 27 September 2007, no act of domestic violence had been perpetrated against the author or her children by the husband, and that there was no imminent threat to their life or health. On appeal, the Plovdiv Regional Court reasoned that the author had not shown that the fact that her husband had struck at her on 21 September 2007 amounted to violence, thereby placing the burden of proof on the author: "... striking, as described, is not associated with disturbance of the physical [integrity] of the plaintiff or at least it is not stated so, neither [is there any evidence]. Striking at someone, you can exercise violence but only after breaking certain limits of abuse, and as is the case, the statements of V. K. do not make it clear how exactly she was struck at, namely on the procedure date, neither how her inviolability was affected."

9.8 The Committee recalls that gender-based violence constituting discrimination within the meaning of article 2, read in conjunction with article 1, of the Convention and general recommendation No. 19, does not require a direct and immediate threat to the life or health of the victim. Such violence is not limited to acts that inflict physical harm, but also covers acts that inflict mental or sexual harm or suffering, threats of any such acts, coercion and other deprivations of liberty.[4] Similarly,

[3] See Committee on the Elimination of Discrimination against Women, Communication No. 5/2005, *Hakan Goekce and Others v. Austria*, Views adopted on 6 August 2007, para. 12.1.2, and Communication No. 6/2005, *Banu Akbak and Others v. Austria*, Views adopted on 6 August 2007, para. 12.1.2.

[4] General recommendation No. 19 (1992) on violence against women, para. 6.

article 2, paragraph 1, of the Law on Protection against Domestic Violence defines domestic violence as "any act of physical, sexual, psychic, emotional or economic violence as well as the attempt for such violence, any forced restriction on the personal life, the personal liberty and the personal rights, against related persons or persons that are or have been in family relationship or cohabitation". The Committee notes that while an immediate protection order in accordance with article 18, paragraph 1, of the Law requires that the victim's complaint "contains data about a direct, immediate or impending threat to the life or the health of the aggrieved person", no such threat is required for the issuance of a permanent protection order. Rather, article 4, paragraph 1, of the Law merely provides that: "In case of domestic violence the aggrieved person shall have the right to address the court for protection."

9.9 The Committee concludes that the Plovdiv District Court, when deciding on a permanent protection order under article 5, paragraph 1, items 1, 3 and 4, of the Law on Protection against Domestic Violence on 18 December 2007, as well as the Plovdiv Regional Court in its appeal decision of 7 April 2008, applied an overly restrictive definition of domestic violence that was not warranted by the Law and was inconsistent with the obligations of the State party under article 2 (c) and (d) the Convention, which forms part of the legal order of, and is directly applicable in, the State party. Both courts focused exclusively on the issue of direct and immediate threat to the life or health of the author and on her physical integrity while neglecting her emotional and psychological suffering. Moreover, both courts unnecessarily deprived themselves of an opportunity to take cognizance of the past history of domestic violence described by the author by interpreting the purely procedural requirement in article 10 of the Law on Protection against Domestic Violence, i.e., that a request for a protection order must be submitted within one month from the date on which the act of domestic violence has occurred, to preclude consideration of past incidents having occurred prior to the relevant one-month period. The courts also applied a very high standard of proof by requiring that the act of domestic violence must be proven beyond reasonable doubt, thereby placing the burden of proof entirely on the author, and concluded that no specific act of domestic violence had been made out on the basis of the collected evidence. The Committee observes that such a standard of proof is excessively high and not in line with the Convention, nor with current anti-discrimination standards which ease the burden of proof of the victim in civil proceedings relating to domestic violence complaints.

9.10 The Committee recalls that in accordance with article 5, paragraph 1, of the Optional Protocol, it requested the State party to take appropriate and concrete interim measures of protection in favour of the author and her children. In reply, the State party assured the Committee that the author and her children enjoyed all the protection required to avoid irreparable damage to them and to ensure their physical and mental integrity. The Committee also recalls its preliminary understanding that the State party was taking "all necessary measures of protection to avoid irreparable damage to the author and her children and to continue to ensure their physical and mental integrity".[5] However, the Committee stresses that such understanding was based on a summary assessment of the risk of irreparable harm to the author and did

[5] See para. 5.4 above.

not imply a determination on admissibility or on the merits of the communication, in accordance with article 5, paragraph 2, of the Optional Protocol.

9.11 The Committee addressed articles 5 and 16 together in its general recommendation No. 19 (1992) in dealing with family violence. In its general recommendation No. 21, the Committee stressed that "the provisions of general recommendation 19 [...] concerning violence against women have great significance for women's abilities to enjoy rights and freedoms on an equal basis with men". It has stated on many occasions that traditional attitudes by which women are regarded as subordinate to men contribute to violence against them. In respect of the case now before the Committee, on the question of whether the decisions of the Plovdiv courts were based on gender-based stereotypes, in violation of articles 5 and 16, paragraph 1, of the Convention, the Committee reaffirms that the Convention places obligations on all State organs and that States parties can be responsible for judicial decisions which violate the provisions of the Convention.[6] It further notes that under articles 2 (f) and 5 (a), the State party has an obligation to take appropriate measures to modify or abolish not only existing laws and regulations, but also customs and practices that constitute discrimination against women, while under article 16, paragraph 1, the State party must take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations. In this regard, the Committee stresses that stereotyping affects women's right to a fair trial and that the judiciary must be careful not to create inflexible standards based on preconceived notions of what constitutes domestic or gender-based violence. In the present case, the compliance of the State party with its obligations under articles 2 (d) and (f) and 5 (a) to banish gender stereotypes needs to be assessed in light of the level of gender sensitivity applied in the judicial handling of the author's case.

9.12 The Committee considers that the interpretation of the Plovdiv District and Regional Courts that the rationale behind the one-month period within which a victim needs to apply for a protection order (article 10, paragraph 1 of the Law on Protection against Domestic Violence) is to provide for urgent court interventions rather than to police the cohabitation of partners, lacks gender sensitivity in that it reflects the preconceived notion that domestic violence is to a large extent a private matter falling within the private sphere which, in principle, should not be subject to State control. Similarly, as stated above, the exclusive focus of the Plovdiv courts on physical violence and on an immediate threat to the life or health of the victim reflects a stereotyped and overly narrow concept of what constitutes domestic violence. Such stereotyped interpretation of domestic violence is, for example, reflected in the reasoning of the Plovdiv Regional Court that "Striking at someone, you can exercise violence but only after breaking certain limits of abuse, and as is the case, the statement of V. K. does not make it clear how exactly she was struck at, namely on the procedure date how her inviolability was affected." Traditional stereotypes of women's roles in marriage can also be found in the divorce judgment dated 8 May 2009 of the Plovdiv District Court which refers to the author's use of "insolent language" with regard to her husband and orders her to assume her maiden name upon dissolution of the marriage. The Committee concludes that the refusal of the Plovdiv courts to issue a permanent protection order against the author's

[6] See Committee on the Elimination of Discrimination against Women, Communication No. 18/2008, *Karen Tayag Vertido v. the Philippines*, Views adopted on 16 July 2010, para. 8.4.

husband was based on stereotyped, preconceived and thus discriminatory notions of what constitutes domestic violence.

9.13 The Committee also considers that the unavailability of shelters claimed by the author and not contested by the State party, where she and her children could have stayed following their return to Bulgaria in September 2007, constitutes a violation of the State party's obligation under article 2 (c) and (e) of the Convention to provide for the immediate protection of women from violence, including domestic violence. In this regard, the Committee recalls its general recommendation No. 19 (1992) on violence against women.

9.14 Lastly, the Committee would like to recognize that the author of the communication has suffered moral and pecuniary damage and prejudice. Even assuming that she was not directly subjected to physical domestic violence following the final rejection, with costs, of her application for a permanent protection order on 7 April 2008, she nevertheless suffered from considerable fear and anguish after the end of the court proceedings relating to the protection order, when she and her children were left without State protection, as well as from revictimization through the gender-based stereotypes relied upon in the court decisions.

9.15 Acting under article 7, paragraph 3, of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, and in the light of all the above considerations, the Committee is of the view that the State party has failed to fulfil its obligations and has thereby violated the author's rights under article 2 (c), (d), (e) and (f), in conjunction with article 1, and article 5 (a), in conjunction with article 16, paragraph 1, of the Convention, as well as general recommendation No. 19 of the Committee.

9.16 The Committee makes the following recommendations to the State party:

(a) Concerning the author of the communication:

Provide adequate financial compensation to the author commensurate with the gravity of the violations of her rights;

(b) General:

(i) Amend article 10 (1) of the Law on Protection against Domestic Violence so as to remove the one-month time limit and to ensure that protection orders are available without placing undue administrative and legal burdens on applicants;

(ii) Ensure that the provisions in the Law on Protection against Domestic Violence ease the burden of proof in favour of the victim by amending the Law accordingly;

(iii) Ensure that a sufficient number of state-funded shelters are available to victims of domestic violence and their children and provide support to NGOs offering shelter and other forms of support to victims of domestic violence;

(iv) Provide mandatory training for judges, lawyers and law enforcement personnel on the application of the Law on Protection against Domestic Violence, including on the definition of domestic violence and on gender stereotypes, as well as appropriate training on the Convention, its

Optional Protocol and the Committee's general recommendations, in particular general recommendation No. 19.

9.17 In accordance with article 7, paragraph 4, of the Optional Protocol to the Convention, the State party shall give due consideration to the views of the Committee, together with its recommendations, and shall submit to the Committee, within six months, a written response, including any information on any action taken in the light of the views and recommendations of the Committee. The State party is also requested to publish the Committee's views and recommendations and to have them translated into the Bulgarian language and widely distributed in order to reach all relevant sectors of society.