

A.S.E v. Bulgaria

WRITTEN SUBMISSION OF THE LEGAL AID NETWORK OF THE NATIONAL NETWORK FOR CHILDREN, BULGARIA**I. Introduction and general observations**

1. By letter dated 15 June 2021, the European Court of Human Rights ("the Court") granted the Legal Aid Network of the National Network for Children ("The Legal Aid Network") leave to make written submissions in the above proceedings. **The intervener** The National Network for Children (www.nmd.bg) ("NNC"¹) is the largest Bulgarian member organization in the field of children's rights functioning as of 2003 and officially registered in 2006. The NNC is based in Sofia, Bulgaria and consists of more than 135 organizations working for and with children in Bulgaria. Its activities cover the promotion, protection and observation of children's rights in the country of Bulgaria. The Legal Aid Network of the NNC² was established in 2020 as a subdivision of NNC to increase the NNC's advocacy through the work on significant, or so-called "strategic cases" for children's rights protection, as well as to offer qualified legal aid in cases related to children. The objectives of the Legal Aid Network can be synthesized by the following: 1) improving the protection of children's rights; 2) advocacy for the improvement of the legal framework that protects children's rights; 3) raising the legal culture in the field of children's rights. To ensure the above, the Legal Aid Network is comprised of key experts in the field of child rights and human rights in general which ensures that the Legal Aid Network offers a robust knowledge in the field of children's rights protection and as such – strives to achieve their due implementation on a national level. Some of the professionals in the Advisory Board are practicing lawyers with substantive expertise in the field of domestic violence, working in NGOs focusing on prevention and providing legal assistance to women and girls – victims of domestic violence.

2. These proceedings concern a state's response to complaints of gender-based violence against a minor girl. The case refers to a minor female in an especially vulnerable position in the situation when one of her parents has passed away and in conflict with the other - her mother. This violence was perpetrated by a private actor – the applicant's much older ex-partner who began the relationship with the Applicant when she was 15. The offence was reported to the prosecutor's office by the director of the local Directorate for social assistance. This case concerns the prosecution of light bodily harm inflicted on a minor girl and the fact that according to the national legislation such offence is not prosecutable by the Prosecution, but merely by the victim, which in this case is a minor female. The failure of the authorities to take a pro-active, sensitive approach to the case contradicts the obligation of the State to ensure compliance under Articles 3, 6, 13 and 14 of the ECHR and asks for urgent amendments in the relevant Bulgarian legislation to ensure proper administration of justice in such cases. The Legal Aid Network does not comment on the facts of the case, but seeks to make submissions on the general principles which are relevant to the determination of the case.

II. Statistics on the issue of domestic violence in Bulgaria and whether there is an official data collected by the State

¹ Official website of the National Network of Children (NNC), Bulgaria in English, <https://nmd.bg/en/>

² Legal Aid Network's section of the NNC's website, <https://nmd.bg/campaigns/mrezha-za-pravna-pomosht/>

3. **Regarding the topic of domestic violence - the State does not maintain official statistics on the number of women-victims suffering from domestic violence.** In the Committee on the Elimination of Discrimination against Women Concluding observations on the eighth periodic report of Bulgaria (CEDAW/C/BGR/8)³, the Committee **calls upon the State to create a database and systematically collect statistical data on all forms of gender-based violence, including domestic and sexual violence, disaggregated by sex, age, disability, nationality and the relationship between the victim and the perpetrator.** The Committee thus recalls its General recommendation No. 35 (2017) on gender-based violence against women which updates General recommendation No. 19 (1992), which already have recommended the Government to adopt substantive measures to of similar nature. The above illustrates that such a recommendation was made several times throughout the years and yet remains unaccomplished in 2021.

4. Such statistics on gender-based violence are often kept by the NGOs - crisis centres for providing support to victims of domestic violence and by the hotlines administered by NGOs. The annual report for 2020 of the Ombudsman of the Republic of Bulgaria⁴ quotes data from the NGO sector to report that the cases of domestic violence have substantially increased during the pandemic due to COVID-19, for example the hotline emergency calls have risen from 30% of cases of domestic violence of all calls to 60%. As stated by the World Health organization (WHO), violence against women tends to increase during every type of emergency, including epidemics.⁵ The report of WHO also states that 1 in 3 women worldwide have experienced physical and/or sexual violence by an intimate partner or sexual violence by any perpetrator in their lifetime. Most of this is intimate partner violence.

5. At the same time, the Ombudsman of Bulgaria states in the monitoring report for 2020 that there is a lack of a unified information system for the other forms of domestic violence: targeting the elderly, targeting children, targeting people with disabilities and differentiated by gender.

6. The NGO Bulgarian Helsinki Committee also keeps statistics on the number of murders committed against women, which is available at a designated website⁶. According to those statistics, the number of convictions for murder and attempted murder of women for the period from 2012 to 2017 is 141.

7. According to the data of the Ministry of Interior, the Bulgarian courts have issued 3,057 restraining orders, from which 349 for violence directed against men and 898 for violence exercised towards children (this number includes both data for all sexes) meaning that 1810 restraining orders were issued to women. The ombudsman states that studies by NGOs and in media publications show that in 2019, at least two women a month lost their lives as a result of domestic violence.

8. The report Violence Against Women Prevalence Estimates of the World Health Organization⁷ states that regarding Bulgaria, the prevalence estimates of lifetime and past 12 months physical and/or sexual intimate partner violence (IPV) among ever married/partnered women aged 15–49 years of 2018 was 19. The prevalence estimates of lifetime intimate partner violence range is also defined as 22% in high-income countries and Europe, the group including Bulgaria. This would mean that close to a quarter

³ Committee on the Elimination of Discrimination against Women Concluding observations on the eighth periodic report of Bulgaria (CEDAW/C/BGR/8)
https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolNo=CEDAW/C/BGR/CO/8&Lang=en

⁴ [https://www.ombudsman.bg/pictures/ANNUAL%20REPORT%202020\(1\).pdf](https://www.ombudsman.bg/pictures/ANNUAL%20REPORT%202020(1).pdf)

⁵ <https://www.who.int/publications/i/item/covid-19-and-violence-against-women>

⁶ <https://ubita.org/>

⁷ <https://www.who.int/publications/i/item/9789240022256>

of women aged 15-49 years who have been in a relationship have been subjected to physical and/or sexual violence by their intimate partner at least once in their lifetime (since age 15).

9. The NNC has filed official requests under the Access to Public Information Act to the Ministry of Interior and to the Supreme Cassation Prosecutor's Office. The requested information asked for the data for 2020 on women-victims of domestic violence, including: a) Murder (Art. 116 of the Penal Code of the Republic of Bulgaria ("PC") b) Bodily injury (Art. 131, 5a PC), c) Kidnapping and illegal restraint (Art. 142, 5a), Article 142a, d) Coercion (Art 143, (3), e) Threat Article 144 (3) f) Stalking Article 144 a (3). As a result of the procedure, both the Ministry of Interior and the Supreme Cassation Prosecutor's Office provided official responses under the Access to Public Information Act. With a decision of 22.02.2021, the Ministry of the Inferior provided the following statistics: the number of all women-victims of domestic violence (meaning situations where a case was opened and it was classified under the Penal Code) in Bulgaria for 2020 were 342. Those cases of women-victims are distributed as follows: a) Murder - 2 b) Bodily injury - 181, c) Kidnapping and illegal restraint - 3 d) Coercion - 4 e) Threat - 0 f) Stalking - 11. With its letter from 20.11.2020, the Supreme Cassation prosecutor's office answered that the prosecutor's office does not gather the requested data as part of its official statistics. Furthermore, such information could not be provided, according to the Prosecutor's office, since data for crimes was gathered solely under the main criminal provisions of the offence regardless of whether the victim is a minor, woman or other vulnerable and the data is not distributed across each of the offences' specific hypothesis.

III. Regarding the concept of "light bodily harm" under the national legislation and the manner in which it can be prosecuted according to the national legislation, including whether a differentiated approach is adopted according to the law in cases when the victim is a minor:

10. The Penal Code (Articles 129 and 130) criminalizes the infliction of severe and medium bodily injury. However, the infliction of light (or "trivial") bodily harm and any form of corporate punishment that is not considered medium or severe is not considered a criminal offence *ex officio*, but a crime conditional to a victim's complaint - privately prosecutable offence. This is the case even when the victim is a minor as the applicable legal provisions do not differentiate whether the victim is a child or not. Samples of severe bodily injuries are permanent weakening of the eyesight or hearing; permanent disturbance of speech, difficulties of the movement of the extremities, the body or the neck, disturbance of the functions of the sexual organs without causing reproductive incapacity; breaking of a jaw or knocking out of teeth, without which chewing or speech are impaired; disfigurement of the face or of other parts of the body; permanent impairment of health not dangerous to life or impairment of health temporarily dangerous to life; injuries which penetrate into the cranial, thoracic and abdominal cavities⁸. Offences which are considered medium bodily injury are continuous disturbance of consciousness; permanent blindness of one or both eyes; permanent deafness; loss of speech, reproduction inability; disfigurement which causes permanent disturbance of the speech or of a sensory organ; loss of one kidney, the spleen or a lung lobe; loss or mutilation of a leg or an arm; permanent general health impairment, dangerous to life⁹.

11. Art. 130, para 1 of the PC states that trivial bodily injury constitutes another impairment of health apart from the cases under Articles 128 and 129. As presented, the cases considered as medium and severe bodily injuries are limited in their number and quite drastic and serious. Therefore, it can be concluded that the vast majority of body injuries fall outside of the *ex officio* prosecutable offences,

⁸ Art. 128, para. 2 the Penal Code of the Republic of Bulgaria

⁹ Art. 129, para. 2 the Penal Code of the Republic of Bulgaria

though the injuries can be equally endangering and pain-inflicting, especially when concerning women and children.

12. Private prosecution is hard for a victim to initiate and maintain especially when the victim is a minor and where the victim is in a vulnerable position (for example, at the case at hand where the child victim is a girl with absent parents and in the case where the person having committed the offence is her partner who is also the provider of shelter and means of survival for her). It should be taken into account that the Istanbul Convention stipulates that investigations into or prosecution of the offence should be ex officio (Article 55) - a provision that is not reflected in the national legislation. Currently, there is lack of any data that the Government collects on the number of criminal cases for inflicting light bodily harm initiated by either man, women, children or other vulnerable groups in the cases of gender-based violence and how many of them have led to a verdict against the perpetrator. The lack thereof illustrates the failure of the State to ensure compliance with its international obligations for proper administration of justice and efficient prosecution of those crimes, thus leaving gender-based crimes without adequate national measures for protection.

13. The above approach has already been adopted by the Court in the case of *Volodina v. Russia*, where alike Bulgaria the majority of domestic-violence cases have been classified as private prosecution offences thus placing the onus of prosecution on the victim. The Court has adopted the view that such an approach disproportionately and adversely affects the prospects of success for victims seeking access to justice. It follows that victims of domestic violence have been placed in a *de facto* situation of disadvantage¹⁰ - a rationale that should be replicated¹⁰ in the case at hand. Such notion was also additionally elaborated by this Court in *Kontrovà v. Slovakia* 31 May 2007, *Kurt v. Austria* 15 June 2021 (Grand Chamber), *Association Innocence en Danger v. France and Association Enfance et Partage v. France* 4 June 2020, *E. and Others v. the United Kingdom* (no. 33218/96) 26 November 2002, etc.

14. Moreover, the Committee on the Elimination of Discrimination against Women specifically states in its Concluding observations on the eighth periodic report of Bulgaria (CEDAW/C/BGR/8)¹¹ that it remains concerned by the fact that all forms of gender-based violence, including physical, sexual, psychological and economic violence, against women and girls are not defined and criminalized in the current legislation, nor is there provision for ex officio prosecution of acts of gender-based violence against women.

15. The NNC has been advocating for the last 10 years for the criminalization as ex-officio offences for all forms of corporal punishment against children, including all cases of bodily injury, not merely the medium and severe ones as regulated by current penal legislation. Although substantive efforts were put into this, still the applicable legal framework remains unchanged.

16. In the current legal framework, there is a possibility in the penal procedure Code of the Republic of Bulgaria under Art. 49, which states that the instituted penal procedure shall be preceded under the general order in extraordinary cases, where the victim of a crime, prosecuted on a complaint of the victim, is not able to defend his/her rights and legitimate interest due to a helpless status or dependence on the perpetrator of the crime. However, these conditions are subjective as the term 'extraordinary' is not strictly defined and each prosecutor performs its own assessment whether the conditions of Art. 49 PPC are fulfilled. No official data is available on the number of cases Art. 49 PC has been used by the

¹⁰ Case of *Volodina v. Russia*, ECHR, 41261/17, §123

¹¹ Committee on the Elimination of Discrimination against Women Concluding observations on the eighth periodic report of Bulgaria (CEDAW/C/BGR/8)

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/BGR/CO/8&Lang=en

prosecution to offer adequate protection for minor victims and as such - cannot be deemed to represent an effective remedy.

17. The only specific rule for children-victims of domestic violence is set in article 2, para. 2 of the Protection against Domestic Violence Act, according to which: "(2) Any domestic violence committed in the presence of a child shall be considered mental and emotional violence against the said child." Therefore, any violence against a parent is considered violence toward the child as well and he/she is a victim of this violence. There are no specific provisions for children when the violence is not committed by a parent.

18. The provisions in the Penal Code (PC) related to domestic violence (DV) were adopted in 2019. These introduce DV as an aggravating circumstances provision in several other criminal offences, including - Murder (Art. 116 a), Bodily injury (Art. 131, 5a), Kidnapping (Art. 142, 5a), Article 142a, Coercion (Art 143, (3), Article 144 (1). Article 93, para. 31 PC defines domestic violence as an aggravating circumstances provision – "the crime has been committed in the conditions of domestic violence, if it has been preceded by systematic exercise of physical, sexual or mental violence, placing in economic dependence, compulsory restriction of privacy, personal liberty and personal rights and is exercised against an ascendant, descendant, spouse or ex-spouse, a person with whom he has a child, a person with whom he is or has been in civil partnership, or a person with whom he lives or is lived in one household." This definition introduces the condition of "systematic exercise" (according to Bulgarian legal theory and some of the existing case-law¹² – systematic would mean of no less than three separate occasions) of violence, thus creating additional hardships for the victim of domestic violence (especially a child) to take legal actions and receive protection while facing the burden of proof for the three separate occasions.

19. Article 46 of the Istanbul Convention introduces the circumstances that should be taken into consideration as aggravating in determining the sentence in relation to the offences established in accordance with the Convention, where two of the provisions are: a) the offence was committed against a former or current spouse or partner as recognised by internal law, by a member of the family, a person cohabiting with the victim or a person having abused her or his authority; and b) the offence, or related offences, were committed repeatedly.

20. The existing provision in the PC (art. 46 a) and b) appears to be a combination of the above provisions, thus narrowing the scope of the protection of the victims of domestic violence by not regulating two separate aggravating circumstances provisions and by creating a provision where the latter (the systematic exercise) appears to be a condition for the application of the first (committed by a spouse or partner). Additionally, one of the measures for protection against DV set up in article 5 of the Protection against Domestic Violence Act is "1. obligating the perpetrator to refrain from committing domestic violence;" which grants no real protection for the victim of abuse.

21. Moreover, the national legislation does not provide for offences committed against or in the presence of a child to be acknowledged as aggravating circumstances provision – whereas such a provision is stipulated in Article 46d of the Istanbul Convention.

¹² "It is obvious that the legislator **did not intend to criminalize every act of domestic violence, but only the one that is characterized by a system from which an increased public danger of the act can be derived.** According to the understanding established in legal theory and practice, in order for an act to be considered systematic, it must be performed at least three times." - Judgement of Ihtiman Regional Court Dated 9th March 2020 in Case №671/2019

22. Furthermore, the Protection against Domestic Violence Act defines the conditions which have to be in place in order for a victim to seek protection, Art. 3 states that protection may be sought by any individual having suffered from domestic violence by: 1. a spouse or former spouse; 2. a person with whom that individual is in marital cohabitation; 3. a person with whom that individual has a child; 4. an ascendant; 5. a descendant; 6. a sibling; 7. a relative by affinity up to the second degree; 8. a guardian or foster parent. This definition containing list of persons to which the victim is related to is highly restrictive as it clearly leaves out persons with whom the victim has had a relationship or sexual encounter and protects victims not from every possible partner but solely from their legal spouses, 'marital' co-habitans and people with whom they share a child with.

IV. Statistics from the Prosecution (if any) on the number of similar cases where the Prosecution has failed to initiate pre-court proceedings against the perpetrator or reasons for failure to collect and classify such data; Number of cases initiated by minors for light bodily harm and the conclusions reached in most of them;

23. There is no official Statistics available to the public from the Prosecution on the number of similar cases where the Prosecution has failed to initiate pre-court proceedings against the perpetrator or reasons for failure to collect and classify such data. The Prosecutor's office of the Republic of Bulgaria publishes an annual Report on the implementation of the Law and activity of the Prosecutor's office and the investigative authorities. However, the report for 2020 does not contain such information neither differentiated by age (whether the applicant was minor or not), nor by offence. However, the report states that: "Corresponding to the sustainable reduction of registered crime and of the quality (validity) of the signals submitted to the prosecutor's office is the reduced number of the newly formed pre-trial proceedings - 90 142 (99 180; 105 869). Decrease is observed both in the fast proceedings - 14 908 (18 234; 20 460) and in the pre-trial proceedings investigated under the general procedure - 75 234 (80 946; 85 409)."¹³

24. The number of cases initiated by minors for light bodily harm and the conclusions reached in them is also not readily available to the public.

25. According to one of the information legal systems operating in Bulgaria – Ciela, the number of court rulings issued in total under the heading of light bodily harm is 1748 for 2020 and 2021. This number, when put into the context of Bulgaria where domestic violence alone is highly spread, is indicative of the lack of adequate measures and instruments institutioned by the Government to ensure effective protection of victims of gender-based violence and minors. There is no possibility granted by the informational legal systems to extract data on the issue of how many of the applicants were minors, nor differentiated by the gender of the applicants.

IV. The perception of domestic violence within the Bulgarian social context, the issue with the ratification of the Istanbul convention and the proposed amendments to the Protection Against Domestic Violence Act.

26. In 2019, the draft Strategy for the Child (2019 — 2030) was placed under a serious disinformation attack and as a result was not adopted despite the fact that the Government is legally obliged under article 1, para 3 of the Child Protection Act to adopt such a Strategy. The prevention and protection of

¹³ Report on the implementation of the Law and activity of the Prosecutor's office and the investigative authorities, https://prb.bg/bg/pub_info/dokladi-i-analizi, p. 4

children from violence was one of its strategic goals which is still not achieved and not on the agenda for upcoming legislative amendments.

27. The Bulgarian Parliament did not ratify the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, also known as the Istanbul Convention. It was further declared unconstitutional by the Constitutional Court¹⁴. The reasoning offered by the Constitutional Court is that the Istanbul Convention does not contain the concept of gender, while using two terms for sex - "sex" and "gender". When the Convention introduces the expression "gender-based identity", it derives from the idea that the social dimension of gender is independent of the biological one, claims the Constitutional Court. The distancing from the concept of "sex" as a biological feature - male / female is perceived by the Constitutional court to be in breach of the stated goals of protecting women from all forms of violence. The Constitutional court states that the internal contradiction in the Convention is obvious when comparing the aims declared in Art. 1 of the Convention and its title with the definition of "gender" thus given in the Convention. Moreover, the very definition of the term 'gender' would be unnecessary if the stated purpose of the international treaty actually corresponded to its title 'to prevent and combat violence against women', claims the Constitutional Court. This two-layered nature of the conceptual apparatus, of the meaning embedded in the concepts used, in practice does not lead to the achievement of gender equality, but erases the differences between them, whereby the principle of equality loses its meaning. Thus, the court deems the Istanbul Convention unconstitutional.

28. The Constitutional Court also states that legal equality between the sexes is protected on a constitutional level¹⁵, which **does not mean equal treatment of both sexes, but requires consideration of biological characteristics and differences between them**. Sex is among those explicitly established in Art. 6, para. 2 of the Constitution, signs on the basis of which privileges or restrictions in the rights are not allowed (decision № 1 of 27.01.2005 under case file № 8/2004). The constitutional text considers biological sex as a concept with a clear legal content.

29. Despite the fact that the Republic of Bulgaria is not a party to the Istanbul Convention, the Court has relied upon the provisions of this Convention in a number of cases, including invoking the Convention's definition of violence against women (such as the case Bălşan v Romania (No. 49645/09), § 79) and referencing the scope of the state's obligations to investigate and prosecute gender-based violence as set out in Article 49 of the Istanbul Convention as set forth in Talpis v Italy (No. 41237/14), § 129.

30. The European Parliament resolution on the rule of law and fundamental rights in Bulgaria (2020/2793(RSP)) recommends that the Government of Bulgaria should do what is necessary to allow for the ratification of the Istanbul Convention.¹⁶

31. As stated in para. 17 of the Resolution, the European parliament takes note of the ruling of the Constitutional Court of 27 July 2018 regarding the incompliance of the Istanbul Convention with the Constitution of Bulgaria; regrets the fact that this decision prevents Bulgaria from ratifying the Convention; is deeply concerned by the persistent negative and misrepresentative public discourse regarding the Convention, which has been shaped by a widespread disinformation and smear campaign following negative coverage on the topic by several media outlets with alleged links to government and opposition parties, made all the more worrisome by the participation of politicians and political parties

¹⁴ The Bulgarian Constitutional Court declared the Istanbul Convention unconstitutional because the Constitution does not contain the concept of gender: <http://www.constcourt.bg/bg/Acts/GetHtmlContent/f278a156-9d25-412d-a064-6ffd6f997310>

¹⁵ Art. 6, para. 2 of the Constitution

¹⁶ At: https://www.europarl.europa.eu/doceo/document/B-9-2020-0309_EN.html

represented in the Bulgarian Parliament **is concerned that the persistent negative attitude towards the Convention further contributes to the stigmatisation of vulnerable groups at risk of gender-based violence**, whose situation has been particularly exacerbated by the COVID-19 and lockdown measures throughout Europe, including Bulgaria, **and further emboldens and inculcates a feeling of impunity among the perpetrators of gender-based crimes; regrets the fact that recent changes to the Criminal Code which introduced stricter penalties for gender-based violence have proven insufficient to address the complexity of the issue and above all to prevent it; calls on the Bulgarian authorities, therefore, to enhance the prevention and fight against domestic violence, to do what is necessary to allow for the ratification of the Istanbul Convention**, and to introduce as many elements from the Convention which are in line with its constitutional order while seeking a broader solution for the remaining elements, as well as increasing the number of shelters and other social services needed to provide support for the victims of domestic violence.

32. Furthermore, in its Concluding observations on the eighth periodic report of Bulgaria, the Committee on the Elimination of Discrimination against Women states that is particularly concerned by increases in cases of **anti-gender discourse** in the public domain, public backlash in the perception of gender equality and misogynistic statements in the media, **including by high-ranking politicians**.

33. In January 2021 a **project proposal for the amendment of the Protection against Domestic Violence Act** has been opened for public consultation, where the term “systematic” was abolished from the definition in Art. 93, para.31 of the Penal Code. Moreover; the draft proposal seeks to widen the protection of any individual having suffered from domestic violence with extending the existing list of possible offenders, adding: 1. a person with whom that individual is in cohabitation on a marital basis or a person who is the ex-husband of the parent; 2. a person from which it is assumed that the victim is pregnant.

34. However, the said proposal for amendments of the Protection against Domestic Violence Act, despite its positive response by the non-government sector and experts in the field of domestic violence, has not been introduced to the Parliament yet after the public consultation and the wide public discussion conducted by the Ombudsman of the Republic of Bulgaria. Therefore, the problems raised in the Protection against Domestic Violence Act and the Penal Code remain.

35. On another subject, gender-based violence against women in Bulgaria is affected and often exacerbated by cultural, economic, ideological, technological, political, religious, social and environmental factors. According to the Committee, gender-based violence in general against women may amount to torture or cruel, inhuman or degrading treatment in certain circumstances, **including in cases of rape, domestic violence or harmful practices**. We submit that according to the facts presented, the multiple beatings of the minor applicant should be classified as gender-based violence as domestic violence is a form of gender-based violence. This notion is further supported by the Court in the case *Opuz v Turkey*¹⁷ and also reflects CEDAW Committee’s General Recommendation No. 35 (GR 35)¹⁸ where it is proclaimed that gender-based violence affects women and girls throughout their life cycle.

36. Furthermore, the Committee endorses, in para. 35 of GR 35 the view of other human rights treaty bodies and special procedures mandate holders that, **in determining when acts of gender-based violence against women amount to torture or cruel, inhuman or degrading treatment, a gender-sensitive approach is required to understand the level of pain and suffering experienced by women**, and that the purpose and intent requirements for classifying such acts as torture are satisfied when acts or omissions

¹⁷ *Opuz v Turkey*, ECtHR App. No. 33401/02, 9 June 2009, Para 200

¹⁸ https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/GC/35&Lang=en

are gender-specific or perpetrated against a person on the basis of sex. The Committee regards **gender-based violence against women as being rooted in gender-related factors, such as the ideology of men's entitlement and privilege over women**, social norms regarding **masculinity, and the need to assert male control or power**, enforce gender roles or prevent, discourage or punish what is considered to be unacceptable female behaviour. Those factors also contribute to the explicit or implicit social acceptance of gender-based violence against women, often still considered a private matter, and to the widespread impunity in that regard.

37. The fact that often, the Bulgarian Prosecutors do not find certain acts from a partner to a woman constituting bodily injuries and physical violence as violence, domestic violence nor gender-based violence and do not hold them sufficient to press charges are signals of those same ideologies rooted in Bulgarian society and understanding of women and girls' 'place' in a relationship and in the community. Often, girls such as the Applicant at hand, who have no persistent parental relationship in their life and are left on their own, and are therefore prone to relationships in which their partner could provide shelter and a certain amount of lacking care in their life, are judged for starting a serious relationship early and the focus is put specifically on the girl and not on the elder partner as a responsible adult. Similar to these conclusions are noted by the Committee on the Elimination of Discrimination against Women its Concluding observations on the eighth periodic report of Bulgaria, where the Committee states that is particularly concerned by the promotion of a concept of traditional family values that confines women solely to the role of mothers with domestic responsibilities and **the lack of a comprehensive strategy for the elimination of discriminatory stereotypes regarding the roles and responsibilities of women and men in the family and in society;**

38. Furthermore, in *V.K. v. Bulgaria* (Communication No. 20/2008, 15 October 2008), the CEDAW Committee took the view that **"gender-based violence constituting discrimination** within the meaning of article 2, read in conjunction with article 1, of the [CEDAW] Convention and general recommendation No. 19, **does not require a direct and immediate threat to the life or health of the victim"** (§ 9.8).

39. Under the Convention and general international law, the Committee states that a State party is **responsible for acts or omissions of its organs and agents that constitute gender-based violence against women**,¹⁹ which include the acts or omissions of officials in its executive, legislative and judicial branches. Article 2 (d) of the Convention provides that States parties, and their organs and agents, are to refrain from engaging in any act or practice of direct or indirect discrimination against women and ensure that public authorities and institutions act in conformity with that obligation. Besides ensuring that laws, policies, programmes and procedures do not discriminate against women, in accordance with articles 2 (c) and (g), States parties must have **an effective and accessible legal and legal services framework in place to address all forms of gender-based violence against women committed by State agents**, whether on their territory or extraterritorially, which is not case at hand.

40. Moreover, States parties are **responsible for preventing such acts or omissions by their own organs and agents**, including through training and the adoption, implementation and monitoring of legal provisions, administrative regulations and codes of conduct, and for investigating, prosecuting and applying appropriate legal or disciplinary sanctions, as well as providing reparation, in all cases of gender-based violence against women, including those constituting international crimes, **and in cases of failure, negligence or omission on the part of public authorities**²⁰.

¹⁹ International Law Commission, articles on responsibility of States for internationally wrongful acts, article 4, Conduct of organs of a State. See also Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts, article 91.

²⁰ General Recommendation 35, CEDAW Committee, para 23

41. Such a principle of due diligence - the notion of positive obligations, requiring that the State adopt reasonable measures to prevent serious rights violations and to investigate, prosecute and punish perpetrators is well-established by this Court.²¹ The Court recalls that it has already found the State's failure to protect women against domestic violence breaches their right to equal protection of the law and that this failure does not need to be intentional²². These obligations arise whether or not the violation is committed by State agents or non-State actors.²³ **In a case regarding the State party in the case of M.C. v. Bulgaria, this Court elaborated on how the due diligence standard must be interpreted to give meaningful effect in particular contexts, and against the practical realities, of other forms of violence against women, therefore the due diligence standard requires measures that will be effective in the particular context, taking into account the unique and complex characteristics of the violations in question.**

42. Furthermore, as noted by this Court, investigation requires a "context-sensitive assessment of the credibility of the statements made and for verification of all the surrounding circumstances."²⁴ From the facts presented in this case, such an investigation does not seem to be conducted.

43. The Committee on the Elimination of Discrimination against Women²⁵ expresses concerns in its latest Concluding observations on Bulgaria that women and girls in Bulgaria, in particular those facing intersecting forms of discrimination, **have limited access to justice owing to pervasive corruption, social stigma, the inaccessibility of the judicial system, gender bias among law enforcement officers, including the police**, the priority given to mediation and reconciliation procedures in cases involving gender-based violence against women, women's limited awareness of their rights and limited knowledge among judges and law enforcement officials of the Convention, the Optional Protocol thereto and the Committee's general recommendations. **Recalling its general recommendation No. 33 (2015) on women's access to justice, the Committee recommends that the State party should create supportive environments in which women are encouraged to exercise their rights, to report crimes committed against them and to actively participate in criminal justice processes, and prevent the revictimization of women in their interactions with the judicial and law enforcement authorities.** By the fact often the offences committed against women are dismissed as insufficient for pressing charges in criminal proceedings and the decision whether or not to prosecute cases of light bodily harm is left to the evaluation of each prosecutor, it can be concluded that the current legislation, as described, does not encourage but rather discourage women to report crimes and the recommendation is not put into practice.

44. Regarding the topic violence against women, the Committee remains concerned by the high rates at which complaints by victims of gender-based violence are withdrawn.

²¹ Osman v the United Kingdom, Appl. 23452/94, § 116, 28 October 1998; See also A. v. the United Kingdom, judgment of 23 September 1998, Reports of Judgments and Decisions 1998-VI, § 22; Z and Others v. the United Kingdom [GC], no. 29392/95, § 73, ECHR 2001-V

²² Eremia v. Republic of Moldova, no.3564/11 ,§85

²³ M.C. v. Bulgaria, no. 39272/98, § 151, ECHR 2003-XII; § 151

²⁴ M.C. v. Bulgaria, §177

²⁵ The Committee on the Elimination of Discrimination against Women adopted its latest Concluding observations on the eighth periodic report of Bulgaria (CEDAW/C/BGR/8) at its 1761st and 1762nd meetings (see CEDAW/C/SR.1761 and CEDAW/C/SR.1762), held on 19 February 2020 at its seventy-fifth session (10–28 February 2020).