

**SEX DISCRIMINATION AND SEXUAL HARASSMENT
IN THE WORKPLACE IN BULGARIA**

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Sex Discrimination and Sexual Harassment in the Workplace in Bulgaria
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DEDICATION

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I. PREFACE

In many parts of the world, women have experienced breakthroughs in their rights in employment. Despite these advances, women from every country and culture continue to face sex discrimination and sexual harassment in the workplace.[1] The international community has recognized both discrimination based on sex in the terms and conditions of employment and sexual harassment as violations of the fundamental human rights of women. Human rights advocates from around the world are organizing to address these issues.

The United Nations has directly condemned discrimination in employment based on sex.[2] Article 23 of the Universal Declaration of Human Rights ("Universal Declaration") provides that everyone has the right to "just and favourable conditions of work" as well as "equal pay for equal work." [3] In addition, the Convention on the Elimination of All Forms of Discrimination Against Women (the "Women's Convention") specifically charges member States to take appropriate action to eliminate discrimination against women in employment.[4] Discrimination based on sex is also expressly forbidden in Bulgaria's new Constitution[5] and its Labour Code.[6] The United Nations and the European Union[7] have recognized sexual harassment as an insidious form of violence against women[8] and as sex discrimination in employment.[9] Sexual harassment, like other forms of violence, is a demonstration of power and control and can cause physical, emotional, economic and professional injuries to those who experience it. It includes both physical violence and more subtle forms of violence such as coercion.[10] Sexual harassment undermines the inherent dignity of a person and violates the right of every human being to physical and mental integrity. It violates a woman's right to just and favorable working conditions.[11]

International law defines sexual harassment as "such unwelcome sexually determined behavior as physical contacts and advances, sexually colored remarks, showing pornography and sexual demands, whether by words or actions." [12] This type of conduct is discriminatory when a woman has reasonable grounds to believe that her objection would result in adverse employment action or when it creates a hostile working environment.[13]

In Bulgaria, women's rights in employment are at a crisis stage. Bulgaria's transition to democracy and a free market economy since 1989 has plunged it into an economic crisis, producing high unemployment rates. A majority of Bulgaria's unemployed are women.[14] Professional women and women over 40, regardless of their level of education, experience or skill, are most affected.[15] Fewer jobs mean that women are especially vulnerable to discrimination and ill-treatment by their employers. The support programs available under socialism, designed to maintain a high level of female participation in the workforce, have shrunk or disappeared.[16] Women who have jobs are paid 68% or less than the income of men for equal work in certain industries.[17]

Women are often employed in dead-end, low paying jobs.[18] Women also face unwelcome and unwanted sexual demands by bosses and co-workers.[19] Given

Bulgaria's economic crisis, women believe they have no choice but to accept these circumstances or risk losing their jobs.

As part of a continuing effort to document and monitor women's human rights abuses in Bulgaria, Minnesota Advocates for Human Rights ("Minnesota Advocates"), in collaboration with the Bulgarian Centre for Human Rights ("BCHR") and the Gender Project for Bulgaria Foundation ("GPF"), conducted research on discrimination against women in employment and sexual harassment in the workplace.[20] In July and October 1997, and again in May 1998, a delegation from these organizations interviewed women of all ages with different levels of skill and education. The delegation also interviewed employers (both Bulgarian companies and international companies with branches in Bulgaria), trade union representatives, attorneys, human rights groups and academics about sexual harassment and sex discrimination in the Bulgarian workplace.

In addition, BCHR and GPF, with assistance from Minnesota Advocates, conducted two surveys on working women in Bulgaria (the two surveys are collectively referred to as the "Surveys"). The two Surveys include The Research for Job Offers in Bulgaria for Presence and Absence of Discrimination Based on Gender and Age Survey (the "Advertisement Survey") [21] and the Survey on the Situation of Women in the Workplace (the "Employment Survey"). [22] Both of the Surveys were designed to determine the existence of sex discrimination and sexual harassment against women in the workplace in Bulgaria. [23]

A. Summary of Findings

Sex discrimination and sexual harassment in employment are serious and pervasive problems for women in Bulgaria. Women suffer from discrimination in every phase of the employment process: (i) women experience discrimination in the recruitment and hiring process -- they are hired for low-level, low-paying positions with limited opportunities for advancement; (ii) the terms and conditions of women's employment are not equal to men's -- they are paid far less than men for equal work; and (iii) women face sexual harassment in the workplace -- women are subjected to unwelcome hints and sexual comments, demands for sexual favors and, in the most extreme cases, rape, at the hands of their supervisors and co-workers.

A woman's fundamental right to employment opportunities as well as to just and favorable working conditions are not protected at any phase of the legal process. Laws that currently exist under Bulgaria's Labour Code that prohibit discrimination against women and protect women's rights in employment are routinely ignored by employers and are not enforced by the Bulgarian Government. Other Labour Code provisions restrict certain types of employment opportunities for women who are pregnant or who have young children. [24] Many women have limited resources, impeding their ability to hire an attorney to enforce the existing labor laws through the Bulgarian courts. [25] Even if they could afford an attorney, there is currently no private right of action for women who are victims of sexual harassment. Trade unions do not take seriously their obligation to protect women from sexual harassment or unequal treatment in employment.

By failing to enforce its laws and condemn or respond to the problems of sex discrimination and sexual harassment in employment, the Bulgarian government has failed to protect women's rights to equality in the workplace and to a safe and dignified work environment. Bulgaria's failure to provide effective remedies to victims of sex discrimination and sexual harassment violates the right to an effective remedy for the violation of fundamental human rights guaranteed by international human rights law.[26] By its inaction, the Bulgarian Government is in violation of its own Constitution and laws. It is also in violation of its international obligations as a member of the United Nations and as a country associated with the European Union.

The Bulgarian Government has failed to protect the following rights of women in Bulgaria:

1. Sex discrimination experienced by women in the workplace is a violation of the fundamental right to work, to equality under the law and the right to be free from discrimination in employment because of sex guaranteed by the Bulgarian Constitution,[27] the Bulgarian Labour Code[28] and such international instruments as the Universal Declaration of Human Rights[29] and the Convention on the Elimination of All Forms of Discrimination Against Women;[30]
2. Sexual harassment in the workplace is a form of violence against women and a violation of a woman's right to safe, equitable and dignified working conditions guaranteed by the Declaration on the Elimination of Violence Against Women,[31] General Recommendation 19 of the Committee on the Elimination of All Forms of Discrimination Against Women[32] and the European Union's Resolution on Violence Against Women;[33]
3. Bulgaria has failed to provide an adequate remedy for women who suffer sex discrimination in employment as guaranteed by the Universal Declaration of Human Rights[34] and the International Covenant on Civil and Political Rights;[35]
4. The Bulgarian Government, by failing to adopt policies and regulations to improve the working conditions of women and prevent sexual harassment in the workplace and by failing to promote training and educational programs for employers and employees on the problem of sexual harassment, is in violation of the Declaration on the Elimination of Violence Against Women,[36] General Recommendation 19 of the Committee on the Elimination of All Forms of Discrimination Against Women[37] and the European Union's Resolution on the Protection of Dignity of Women and Men at Work;[38] and
5. The Bulgarian Government, by failing to protect women workers from discrimination and by repealing the protections for "equal pay for equal work" in its Labour Code, has violated its Constitution and its existing labour laws which

guarantee a woman's right to equality under the law and forbid discrimination based on sex.

B. Recommendations

Based upon the results of the Surveys and the findings of the delegation, Minnesota Advocates for Human Rights makes the following recommendations:

1. The Bulgarian Government should adopt new legislation that protects women against sexual harassment and provides a private cause of action against employers who engage in such behavior.
2. The Bulgarian Government should reinstate a provision in its Labour Code that guarantees a woman's right to "equal pay for equal work" to ensure that its Labour Code is consistent with the constitutional provisions that guarantee that no privileges or restrictions of rights shall be made on the grounds of sex and the Bulgarian Government should enforce that provision against employers.
3. The Bulgarian Government should enforce the laws prohibiting discrimination in employment already available under its Labour Code to ensure that women are not discriminated against in employment due to their biological function as mothers and should develop and implement programs such as child care to support working women in balancing their professional and family responsibilities.
4. The Bulgarian Government should impose severe financial penalties upon employers who discriminate against women in the hiring process and in their job advertisements by requiring qualities such as youth or beauty which are not necessary to perform the essential job functions and are applied disproportionately to women candidates, negatively affecting a woman's ability to obtain a job.
5. The Bulgarian Government should support programs and policies that encourage and support the education and skill development of women, to ensure that women have equal opportunity to pursue meaningful professions;
6. The Bulgarian Government should educate the public about the problem of sex discrimination against women, including sexual harassment, and support education programs for employers, employees, school children, university students, young parents and nongovernmental organizations on the subject of sex discrimination and sexual harassment in the workplace and in educational institutions;
7. The Bulgarian Government should conduct or support additional research on women in the workplace to gain a better understanding of the nature and cause of

sexual discrimination against working women;

8. The Office of the Minister of Human Rights and/or the General Labour Inspectorate Office should review and, if necessary, revise any articles of its Labour Code which are based on antiquated gender stereotypes that keep women from achieving their full potential in the workplace; and

9. The Bulgarian Government should create an administrative body to review complaints of sex discrimination and sexual harassment in the workplace.

II. SEX DISCRIMINATION AND SEXUAL HARASSMENT IN EMPLOYMENT IN BULGARIA

A. Introduction

Bulgarian women face a number of obstacles in the workplace. They bear a disproportionate burden of the unemployment in the country -- women are the first fired and last hired for jobs. They are frequently not considered for many high paying positions because of antiquated stereotypes of gender roles in Bulgarian society. Appearance and age restrictions that have no relation to job duties are more often applied to women. In addition, many women who are employed are subjected to various forms of sexual harassment. This harassment ranges from pornography in the workplace to unwelcome jokes and comments of a sexual nature, groping, fondling, pressure for sexual favors, sexual blackmail and sometimes rape.

Because of Bulgaria's difficult economic situation and high unemployment, many women are desperate to find employment. They often take jobs for which they are overqualified or they endure sexual harassment in their workplaces because they have no other options. When Minnesota Advocates conducted its research on domestic violence in Bulgaria in 1995,[39] women repeatedly described sexual harassment as one of the biggest problems for women in Bulgaria. Women reported that they tolerate the harassment because they fear they will lose their jobs and they believe they have no recourse if they report the harassment.

In addition to the fear of losing their jobs, shame and secrecy enshroud the issue of sexual harassment in Bulgaria, making it difficult to have a meaningful dialogue about the subject or to determine the pervasiveness of sexual harassment in employment. There is also a great deal of misunderstanding surrounding the issue of sexual harassment. First, both women and men accept sexual harassment in the workplace as normal behavior from men.[40] A male prosecutor in Sofia stated that sexual harassment is seen as acceptable in Bulgarian society, that it is normal for a boss to have sexual relations with his secretary.[41] A male manager stated that all of the talk about sexual harassment laws and control of men's behavior in the workplace is "completely unnatural." He ended the interview by stating that Judeo-Christian ethics and their control of sexuality hurt men and interfere with natural human relationships.[42]

In addition, many Bulgarians believe that any attempt to protect women from unwelcome sexual advances would interfere with welcome and consensual social interaction.[43] Women, especially young women, are seen as the initiators of sexual advances, not the victims of such behavior.[44] One woman stated that in her experience, there are women who use the harassment to get a higher salary or position.[45] Even prosecutors fear raising awareness of the issue of sexual harassment will encourage women to blackmail their male bosses.[46] In reality, however, all of the legal regulations against sexual harassment in the workplace, on regional, national and international levels, prohibit only unwelcome and unwanted behavior that negatively impacts a woman's ability to do her job.

B. Background

Bulgaria has spent the past decade in both political and economic transition. In 1989, with the collapse of socialism as a political, economic and social system, Bulgaria began the transition to a democracy and free market economy. The first free elections in Bulgaria took place in 1990 and, in 1991, Bulgarians ratified a new Constitution. Although Bulgaria is not yet a member of the European Union, it has been an associated country since the early 1990's.

Prior to 1989, Bulgaria operated under a socialist system of government. Under this system, women in Bulgaria were required to work outside the home.[47] All workers were employed and belonged to labor unions.[48] Women's rights, as with all other areas of society, were State controlled during the Socialist era. In theory, the State assumed the role of guarantor of women's rights and provider of all social and economic benefits.[49] Bulgaria's transition to a free market economy has not been painless. The privatization of Bulgaria's economy has produced staggering unemployment rates. Currently, close to 30% of all workers are unemployed.[50] "The common citizen has suffered a substantial reduction in living standards: production is in sharp decline; the distribution of income is worsening; unemployment is increasing . . . Today the vast majority of the population . . . [is] living in economic conditions which are demonstrably worse than experienced under the inefficiencies of central planning." [51]

Women in particular have been hardest hit by Bulgaria's economic crises. Women were disproportionately affected by the massive wave of unemployment in Bulgaria in 1990 and 1991. In 1991, women made up 62% of Bulgaria's unemployed.[52] In 1989, approximately 85% of working age women were employed outside of their homes. By 1995, only 59% of women were employed outside the home -- a reduction of 25% over a 5-year period.[53] Single mothers, who make up 14% of all Bulgarian households, are especially vulnerable in the transition process.[54] It is not surprising, therefore, that women make up the majority of Bulgaria's poor.[55]

Bulgaria's move toward privatization in a democracy has also greatly diminished the role of the State as protector of women workers' rights. Companies largely ignore the child care and maternity leave protections included in the Labour Code due to the financial burden such regulations impose.[56] The State does little to enforce such regulations.[57] Labor unions have also been weakened. Many people expressed the opinion that labor unions are part of the former system of government and that they are too bureaucratic and too far removed from the realities of the workplace to provide any meaningful protection to workers.[58] Newly privatized companies have fought efforts by employees and labor unions to organize their workforce.[59]

C. Evidence of Sex Discrimination and Sexual Harassment Against Women in Employment in Bulgaria

Despite the fact that in 1994 women made up 52% of Bulgaria's college graduates,[60] 60% of vocational school participants[61] and 47% of the workforce,[62] women are

discriminated against in the workplace in Bulgaria. First, women in Bulgaria are discriminated against in the employment hiring and recruiting process. The interviews by the delegation and the Advertisement Survey revealed, among other things, that: (i) employers specifically seek female candidates for positions traditionally filled by women, such as secretaries, hairdressers or cooks -- jobs that are low paying and offer little room for advancement -- regardless of a woman's education or skill level; and (ii) employers disproportionately use and apply selection criteria such as age or beauty (which are not related to adequate performance of essential job functions) to female applicants.[63] Second, women are also discriminated against after they are hired. According to the results of the Employment Survey, almost 35% of female respondents indicated that they felt discriminated against in the workplace because of their sex.[64] Finally, both men and women interviewed by the delegation described incidents of severe sexual harassment experienced by women in the workplace.

1. Women Are Hired for "Traditional" Women's Positions That Are Low Paying with Little Opportunity for Advancement

According to the results of the Advertisement Study, almost 80% of the advertisements for "traditional" female jobs such as hairdressers, cooks and housemaids requested female candidates.[65] Almost 97% of the job advertisements for secretarial functions specifically requested female candidates and 80% of the advertisements for the job positions requiring physical labor requested male candidates.[66] For job offers that require "qualified labor," over 50% of the advertisements specifically requested male candidates while only slightly more than one-third of the advertisements stated the employers' preference for female candidates.[67]

One employment agency manager reported that companies often request male candidates to fill certain positions. Because he usually has several qualified female candidates to place, the manager tries to convince employers to consider the women.[68] He added, however, that in his opinion, the ideal candidate for most positions is generally a man.[69]

The President of a Bulgarian manufacturing company described the commonly held view in Bulgaria that more than 90% of all jobs are gender specific. He said that men are accustomed to "being the chief," and that they are naturally better suited for leadership positions. He also said that men should be paid more than women, even if men and women do the same job, because, in his opinion, men will always perform better than women.[70]

One Bulgarian employer said that he does not believe women are capable of doing factory work; rather, "men do factory work and women do office work." [71] Yet, this employer will not allow the women participate in sales activities. He believes it is a "fact" that men are better at preparing offers and making sales.[72] He added that he is much more "comfortable" working with men but he keeps his women employees because they do such a good job he cannot, from a business perspective, justify terminating them.[73] The result of this gender stereotyping is that highly educated Bulgarian women, often fluent in several languages, are underemployed as secretaries, administrative assistants,

translators, or other "traditional" female positions (cooks, hairdressers, housemaids) that are low paying and lack opportunities for advancement. A spokesperson for an international company that places employees in Bulgaria, confirmed that women often take secretarial/administrative jobs despite their professional degrees.[74] A woman interviewee working as a translator for a large mining company commented that there were no women in management at the company.[75] This woman also stated that in the small town where the company is located, there is a special vocational school for engineers. The teachers at this vocational school are women engineers, teaching men students. The women are teachers because they cannot obtain jobs as engineers with the mining company – jobs that pay significantly more than teachers' salaries.[76] One United States company with an office in Bulgaria employs engineers. All of its engineers are male and all of its secretaries are female. Three out of the four secretaries at the company are also engineers. These women generally earn 60% of the men's salaries. The male manager of the company said that the women engineers working as secretaries are not considered for engineering positions when they become available. He said, "they do a good job as secretaries. This is special work and they have good skills. [If they were promoted], we would have to train someone new. It is easier to hire a new engineer from the outside than to hire a new secretary." [77]

2. Gender Neutral Criteria Such as Appearance and Age Are Applied More Often to Women

Often, employment advertisements designate attributes or skills that are not necessary to perform essential functions of a job. In addition to specifying the sex of candidates, many employers have specific age or appearance requirements for potential employees.[78] Companies usually seek young candidates, mostly in their twenties and early thirties and often list good appearance as an important attribute for women.[79] A manager of a United States based international company said that he liked to hire young people who will be with the company for a long time. He, however, also asks for photographs with the initial job application.[80] Another manager of a United States based international company said that although they do not specify an age range in their advertisements, "realistically," they would not hire anyone older than 40.[81]

Bulgarian employers argue that age limitations are justified because, to be competitive, they need "young, energetic, workers" or they need to replace employees trained in "antiquated socialist methods of work." [82] Despite these gender neutral justifications, employers more frequently apply age restrictions to female candidates.[83] For example, age restrictions are pervasive in advertisements requesting secretarial assistance.[84] Forty-one percent of the advertisements for secretarial work that specifically request women restrict the age of the ideal candidate to under 35 years of age.[85] In more than 10% of such advertisements, the employer is seeking women under the age of 25.[86] Even if employers applied age restrictions equally to men and women, such requirements would have a disparate impact on women because they more often leave the workforce during the earlier years of their careers to have children.

According to a spokesperson for a Bulgarian trade union, it is almost impossible for a woman over 38 years of age to find a job.[87] A highly educated and skilled 40 year-old woman who was trained as an economist and accountant, described her experience when she attempted to change jobs. She was interested in pursuing a career with a private company in Bulgaria, performing accounting work and using a computer. Although the interviewer admitted that she met all the job qualifications, he told her the company was looking for a younger candidate. When she asked him, "What do you want, a diligent employee or a girl for entertainment?" the interviewer responded, "the second one." She received the same response from three other companies. She gave up looking for a new job.[88] Another woman, educated as an engineer, could not find a job after she turned 40. Her husband, also an engineer, has never had problems finding employment.[89] The manager of a United States based fast food company reported that the company specifically requests young people under the age of 30 to fill its management training positions.[90]

In addition to youth, employers seek attractive, single women to fill secretarial and administrative positions, rather than requiring that the candidate have strong computer skills or language skills.[91] Some advertisements strongly suggested that sexual obligations may also be a part of the job. For example, one advertisement for a secretarial position requested a "beautiful and attractive secretary, companion girl, less than 25 years of age." Another advertisement for a French teacher required "not married, woman, able to travel abroad." [92]

The manager for a large United States tobacco company with an office in Bulgaria acknowledged that the company uses age restrictions (23-32 years of age) in their advertisements for jobs.[93] When the company first opened an office in Bulgaria, it sought young, pretty, intelligent girls as employees, believing that these attributes would make it easier to make contacts for sales.[94] Generally, the company hires women to work as receptionists, secretaries or office administrators for its Bulgarian office.[95] Despite employers' desire for youth and beauty, employers do not want a woman employee who will become pregnant or who has young children. It is not uncommon for a potential employer to ask a woman whether she has a child or plans to have children.[96] Sometimes employers demand that a woman certify that she is not pregnant at the time she applies for a job.[97] Ultimately, therefore, Bulgarian women find themselves in an impossible situation. On the one hand, employers refuse to hire women over age 40. On the other hand, employers do not want to hire women of child bearing age to avoid the financial burden and workplace disruption of maternity leave and leave related to child care.

3. The Terms and Conditions of Employment for Women are Not Equal to those of Men

In addition to the challenges women face in finding employment, once hired, women continue to face discrimination in the terms and conditions of their employment. In 1992, the guarantee of equal pay for equal work was removed from the Bulgarian Labour Code.[98] While women are consistently paid less than their male counterparts, the wage

gap is widening. In 1994, women's average pay was less than 75% that of men's pay.[99] By 1997, the trade unions reported that the gap had widened -- women were paid only 65% to 68% of men's wages.[100] Not a single economic sector, even those sectors that are historically dominated by women, offers women an average pay that is equal to or greater than that of men.[101]

Limited access to meaningful employment opportunities is a major factor in the wage gap. Because women are typically hired for lower-skilled positions, women find themselves with limited career advancement opportunities. Positions with better salaries are accessible mainly to men, while women are often employed on a short-term basis, for minimum wage and without benefits.[102]

Employers' antiquated and stereotypical views of women may also drive the gap in wages. Many companies openly admit that they pay their female employees less than their male employees. One company owner stated that he pays his female employees less than his male employees even if the men and women are doing the same job.[103] He believes that it is acceptable to pay men more because, "they will always do the job better. They will be more focused. The women will be more emotional." [104]

4. Women Experience Both *Quid Pro Quo* Sexual Harassment and Hostile Environment Sexual Harassment in the Workplace

Bulgarian women also experience sexual harassment in the workplace. While sexual harassment is forbidden under the Labour Code as a violation of the Code's guarantee of "equitable and dignified working conditions," responses to the Surveys and interviews suggest that both *quid pro quo* sexual harassment and a hostile work environment are prevalent in the Bulgarian workplace.[105]

Given the lack of employment opportunities for women, many women accept the conditions in their workplace until the conditions become so unbearable that they quit their jobs. Women do not believe that they have any other recourse. For example, a woman wrote to a readers' advice column of a women's newspaper in Sofia asking for advice about a problem at work. The woman had recently been promoted to a management position at her job and her boss was pressuring her to become his mistress. He indirectly threatened to terminate her if she did not agree. The majority of readers who responded to her request for advice encouraged the woman to leave her job because she had no recourse against her boss or the company. One reader, however, wrote back and suggested that the woman stay in her job and try to get something out of the sexual relationship to achieve her career goals. This reader also noted that the woman should sleep with the man because the same thing would probably happen to her in her next job. "It's the same thing whether you stay or whether you go." [106]

Another woman described a friend who sought advice for a problem the friend was having at work. Her friend, "Ana," was the youngest and lowest paid employee. Ana asked her manager for a raise after a period of high inflation. He made sexual advances toward her and indicated that she would get a raise if she engaged in sexual relations with

him. Ana left her job and did not even receive the past wages she had already earned. The woman said, "I would not advise her to do anything but leave her job. There is nothing else to do. If it went to court, . . . the restaurant has lots of money to hire lawyers. Who would pay her lawyers. She has no money." [107]

a. Evidence of *Quid Pro Quo* Sexual Harassment

According to the results of the Employment Survey, 10% of the female respondents experienced questions of a sexual nature during a job interview and almost all such respondents indicated that they believed their negative answers to the sexual questions reduced their chances of receiving a job offer. [108] Almost 15% of female respondents reported that they had experienced unwelcome sexual contact from their co-workers, supervisors or both. [109] A majority of those respondents who had experienced unwelcome sexual contact were aged 18 to 35. [110] If they refused the sexual advances, close to 33% of respondents indicated that they suffered negative consequences such as reduced status and decreased pay. [111] In a test survey conducted in May and June of 1997 at conferences on domestic violence in Bulgaria, the majority of the conference participants indicated that they had experienced requests for sexual favors from a supervisor or co-worker. [112]

Many people interviewed by Minnesota Advocates reported severe incidents of *quid pro quo* sexual harassment. Both men and women reported that women must engage in sexual relations with their bosses simply to keep their jobs. [113] A male manager described the atmosphere at his former company. He said sexual relations between supervisors and subordinates was "very common." Many male supervisors took for granted that their female subordinates would engage in sexual activities with them. While he acknowledged that many women believed that to keep their jobs they must provide sexual favors, he explained his belief that most women "voluntarily" engaged in this behavior. [114] One woman reported that her friend was seeking an office assistant job. After attending several job interviews, her friend was unable to find a position that did not require providing sexual favors to the boss. [115] Another woman reported that upon her return to work after a maternity leave, it became necessary for her to leave the office at 5:00 p.m. to pick up her daughter. Her boss was not happy with the early departure time, but made it clear to her that if she did something "extra" to make up her time, he would allow it. The woman said that it was clear to her that something "extra" meant something sexual. [116]

Another woman reported that she was sexually harassed by the general manager of a state-owned construction company. He asked her to start a relationship with him and he hinted about sexual favors. The manager made up reasons to be near the woman. He would ask her to come over to his desk, saying "I can't read this, come closer . . ." She turned down his requests for a sexual relationship. Although she was not fired, she was not given the opportunity to travel abroad, as was normal for someone in her position. [117]

In the first month of operating its hotline, the Animus Association[118] received calls from women who quit their jobs because their bosses were pressuring them to have sexual relations with them.[119] Many of the women who receive counseling services for domestic violence at the Animus Association also report experiencing sexual harassment in their workplaces.[120]

The manager of the Bulgarian office of a multi-national corporation stated, "honestly, there is a problem with sexual harassment in Bulgaria." In his company, several women complained that their supervisors were trying to force them to engage in sexual acts.[121] He noted that in Bulgaria "the mentality is that men can do whatever they want to women subordinates." [122] He is aware that one of his company's clients raped his own secretary several times and threatened her to keep her from reporting the rapes. The woman has sought treatment for mental distress.[123]

Even for professional positions, women reported that sexual favors are expected from them. A young law school graduate described a contract position she was offered that required legal research and a commitment to engage in "phone sex" with her supervisor at least twice a week. Her potential employer stated this requirement in her initial offer. The young lawyer said that this was not the first position she had been offered where sexual favors were an express part of the job duties.[124]

b. Evidence of a Hostile Work Environment

In addition to pervasive *quid pro quo* sexual harassment, many women in Bulgarian workplaces also experience hostile work environments. Women must endure unwelcome and unwanted requests for sexual favors, sexual advances, jokes of a sexual nature, pornography, constant comments about their appearance, and even touching and fondling. According to the Employment Survey, almost half of the female respondents experienced comments and hints of a sexual nature that made them feel uncomfortable.[125] More often, these women were young, aged 18 to 25 and from small towns. Thirty-five percent of respondents reported that they were subjected to pornography in the workplace.[126]

Many women reported incidents of a hostile work environment. For example, they complained that people in their offices openly displayed pornographic pictures and that the companies did not forbid it.[127] One male manager said that it is very common for men to display pornographic pictures. He said he has worked in offices where the pictures were displayed from floor to ceiling.[128] Another manager said that he has not received complaints about the pictures of nude women hanging in his company's offices. But, if he did, he would not demand that an employee remove the pictures. Depending on the situation, he might recommend it, but he would let the employee decide the type of pictures he wanted to display.[129]

Pornography is so pervasive in Bulgaria that many women do not feel that they can complain about it. One woman described a sexually explicit photograph of a naked woman on the screen saver of her colleague's computer. She said it was somewhat

artistic so she could not call it "pornography." [130]

A woman who worked as a secretary for a trading company described her experience with unwelcome sexual hints and sexual innuendoes from clients and other guests who came into the office. [131] Rather than being concerned about the harassment, her bosses encouraged her to look "sexier" in the office. They would ask her to polish her nails and not wear her glasses in the office. When she wore skirts to the office, her bosses would compliment her and ask her why she did not wear short skirts more often. [132] Another woman reported that she spent 25 years as a secretary for a company and spent two-thirds of her time at work guarding her boss's office door, convincing clients, and even his wife, that he was busy. In reality, he was having sex in his office. [133]

Another woman reported that she knew a woman who worked in the cafeteria of a factory who had suffered bruises to her breasts from a man grabbing her while she worked. The woman was too frightened and ashamed to report the groping, even to her husband. Rather, she told her husband that she received the bruises when carrying heavy pots and pans. [134]

Some international companies include prohibitions against sexual harassment in their employment policies. Several managers reported that they have grievance mechanisms within their companies and provide training specific to the problem of sexual harassment. [135] Several women from the companies that have regulations governing sexual harassment said that the regulations made them feel protected. [136] One woman attributed the low turnover rate in her company to these protections. She said she stayed with the company because of the many stories about sexual harassment in the workplace from friends and family members. She said, "it's a jungle out there, even if I am frustrated in this position, I will not leave because I know I have these protections." [137] The managers, however, also discussed the difficulties in getting male employees to acknowledge the problem sexual harassment and to take it seriously. [138] For example, one man interviewed stated that "a law against sexual harassment might be okay, but sex is natural; it involves natural forces that move men to do things that are against morality. This is millions of years of human behavior. You can't change this." [139]

III. BULGARIA'S EXISTING CONSTITUTIONAL PROTECTIONS AND LAWS PROHIBITING SEX DISCRIMINATION IN EMPLOYMENT

The Bulgarian Labour Code sets out a tripartite system to oversee labor. [140] This system includes employers, the government and trade unions. [141] An employee can report an employment problem to the trade union, if the employee is a member of the union, or to the office of the General Labor Inspectorate, which is charged with enforcing Bulgaria's Labour Code. [142] The Inspectorate has the power to compel employers to make changes in their workplaces or to develop policies to address the problem. It can impose a fine on a company if the company does not comply with the Inspectorate's recommendations. [143]

The office of the General Labor Inspectorate, however, does not have the resources to inspect all of the newly formed companies in Bulgaria.[144] If it does inspect or investigate complaints and impose a fine, such fines are low and are rarely deterrents for employers.[145] In addition, few employees complain to their labor unions or the Inspectorate, given Bulgaria's dire economic crises and high unemployment rate. Many workers fear retaliation and the loss of their jobs if they complain.[146] Others believe that even if they do complain, nothing can be done -- there is little to no protection or support within the Bulgarian legal and labor systems.[147]

There is no social condemnation of sex discrimination or sexual harassment in Bulgaria. Sex discrimination and sexual harassment are tolerated in the Bulgarian workplace and not taken seriously by the Government or labor unions. A former employee of the National Employment Service in Bulgaria, when discussing the incidents of sexual harassment in Bulgaria, stated, "There is tolerance to this [sexual harassment] and it's getting worse and worse, especially as these managers get used to doing it and nobody responds. They think they cannot be prosecuted and are free to do what they want." [148] A woman who worked as an assistant to an engineer for a military company, reported that her boss requested sexual favors of her in exchange for training her for his engineering position – training which was part of his job responsibilities. This woman complained to the Ministry of Defense regarding his behavior, and when she told the Inspector about the sexual advances, the Inspector inquired, "What's bad in his liking you?" [149]

Although there are some laws that protect women against sex discrimination, many women have no money to hire attorneys and there is no legal aid system in Bulgaria to provide attorneys at low or no cost. Moreover, additional legal barriers exist for women seeking redress for sexual harassment claims. Currently, there are no Labour Code provisions prohibiting sexual harassment. Women must use the Criminal Code to bring a sexual harassment complaint in the courts. A criminal action, however, has a higher standard of proof than a civil action and provides no remedy against the employer.[150]

A. The Right to be Free From Sex Discrimination and Sexual Harassment in the Workplace Under Bulgaria's Current Legal System

Bulgaria's new Constitution and its Labour Code include provisions that protect women workers from sex discrimination. Such provisions, however, are not enforced by the Bulgarian Government. In addition, certain protections for women included in the Labour Code have a detrimental effect on women. These protections are based on stereotypical notions of women in the workplace and impede their career advancement. These protections also create a financial burden on employers that deter them from hiring women. Moreover, Bulgarian laws do not address the specific problem of sexual harassment in the workplace.

1. Bulgaria's New Constitution

Bulgaria's new Constitution, ratified in 1991 lauds the virtue of equality in its preamble. The preamble to the Constitution pledges the founders' "loyalty to the universal human

values of liberty, peace, humanism, equality, justice and tolerance." [151] Article 6 of the Constitution specifically states that "[a]ll persons are born free and equal in dignity and rights." [152] Article 6 further proclaims every citizen's equality under the law and denounces any discrimination on the basis of sex as well as other factors. [153]

The Constitution also provides certain protections for women with young children and mandates the State's involvement in the protection of pregnant women and mothers. [154] In Article 14 of the Constitution, "family, motherhood and children" are protected. [155] Article 47 specifically states that "Mothers shall be the object of special protection on the part of the state and shall be guaranteed prenatal and postnatal leave, free obstetric care, alleviated working conditions and other social assistance." [156]

2. Bulgaria's Labour Code

When Bulgaria adopted its new Constitution in 1991, it made several changes to its Labour Code to reflect the changes to its Constitution. Article 1(3) states that the purpose of the Code is to "ensure the freedom and protection of labour, as well as equitable and dignified working conditions." [157] While the provision of "equal pay for equal work" was removed from the Code, other protections for women remained in the Code. Article 8 of the Code expressly states that "in the exercise of labour rights and duties no discrimination, privileges or restrictions shall be allowed on the grounds of . . . sex." [158] Women, therefore, are entitled to a working environment and terms and conditions of employment that are equal to that of men.

The Code includes several provisions that provide specific protections for women workers. In addition to providing safe and healthy working conditions, [159] employers must provide female employees with maternity leave. [160] Under a separate section entitled "Special Protection For Women," a female worker is entitled to work at home until her child reaches the age of six and upon return to the workplace, the employer must provide her with her job, or if the job has been eliminated, with another job. [161] With a few limited exceptions, Article 333 of the Code forbids an employer from terminating a pregnant woman or a woman with children under the age of three without the permission of the Labour Inspectorate.

Many of these female-specific protections, however, are ignored by employers and are not enforced by the Bulgarian Government. [162] In addition, while these provisions are designed to protect and assist working women during their childbearing years, in practice, these protections can have a negative impact on working women. They sometimes deter employers from hiring women of childbearing age or women with children due to the added financial burden of such regulations. [163] Moreover, some of these protections reflect antiquated views of pregnant women and women with children and are detrimental to a woman's career advancement. For example, Article 310 prohibits employers from sending pregnant women or mothers of children under the age of three on a business trip without regard to the specific circumstances or desires of individual women. [164]

In addition, the Labour Code does not include specific language protecting women from sexual harassment in the workplace. Certain provisions regarding unlawful termination and compensation for time lost from work due to occupational injuries could be used to compensate women for injuries and losses sustained due to sexual harassment.[165] To date, none of these provisions has been applied to sexual harassment claims.

3. Bulgaria's Criminal Code

The Bulgarian Criminal Code does not include a specific reference to sexual harassment. Nonetheless, several articles of the Criminal Code could be used by women against their supervisors who sexually harass them.[166] Article 153 punishes a person who compels a woman into sexual intercourse by "taking advantage of [the woman's] material or official dependency upon him." [167] Although this article has not yet been applied in the employment context, theoretically, a supervisor who forces his female colleague into having sexual intercourse with him, threatening termination or other harmful consequences to compel her to submit, could be prosecuted under this article. If convicted, the supervisor faces the threat of three years in prison.

Articles 153, and Articles 143 and 146, however, have limitations in their application to sexual harassment. For example, Article 153 specifically applies to sexual intercourse only.[168] Therefore, other harassing behavior such as sexually explicit comments, inappropriate language or touching and other sexual activity not deemed intercourse would not be punishable under Article 153.[169] In addition, a woman would have to prove that sexual intercourse had occurred against her will and that she was financially dependent on the harasser.[170] Most important, the Criminal Code does not provide a private cause of action for a victim of sexual harassment against her employer.[171]

IV. INTERNATIONAL LAW ON SEX DISCRIMINATION AND SEXUAL HARASSMENT IN THE WORKPLACE

Discrimination in employment based on sex and sexual harassment violate the most basic principles of international human rights law. As a member of the United Nations, Bulgaria must comply with its directives and regulations regarding sex discrimination and sexual harassment in the workplace. The provisions of the Universal Declaration of Human Rights and other human rights instruments define Bulgaria's obligations as a member of the international community. Bulgaria has ratified the International Covenant on Civil and Political Rights and the Convention on the Elimination of All Forms of Discrimination Against Women and is bound by the terms of these treaties. In addition, the Bulgarian Constitution provides that international law supersedes Bulgarian law.

Article 5 expressly states that its provisions must be interpreted in conformity with international law and where Bulgarian laws differ from international law, international law controls.[172] Finally, as a country associated with the European Union, with full membership anticipated after the year 2000, Bulgaria should also comply with all of the European Union's directives and regulations regarding human rights.

International human rights instruments prohibit discrimination in employment based on sex and condemn sexual harassment as a form of violence against women. In addition, they also reflect an understanding that sexual harassment is a serious and widespread problem. Both the United Nations and the European Union have recognized an affirmative obligation on the part of member States to eliminate discrimination against women in employment and to adopt guidelines, principles and codes of conduct to protect women from sexual harassment in the workplace.

A government's failure to remedy inequalities in the workplace based on sex discrimination and sexual harassment is a violation of its obligations under international law. By its failure to enforce legislation and propose policies to ensure equality between the sexes and to address sexual harassment in the workplace, Bulgaria is not in compliance with international law.

A. Women in Bulgaria are being denied the fundamental right to work, to equality under the law, to safe, equitable and dignified working conditions and the right to be free from discrimination based on sex

Article 23 of the Universal Declaration provides that "everyone has the right to work, to free choice of employment, to just and favourable conditions of work . . ." and "Everyone, without any discrimination, has the right to equal pay for equal work." [173] The Civil and Political Covenant states that all persons are equal under the law and expressly prohibits discrimination against all persons on any grounds, including sex. [174] The Civil and Political Covenant also charges States Parties "to respect and to ensure to all individuals . . . the rights recognized in the present Covenant, without distinction of any kind, such as race, color, sex . . .," [175] and to undertake "to ensure the equal rights of men and women to enjoyment of all civil and political rights" provided for in the Civil and Political Covenant. [176] In addition, the Women's Convention expressly prohibits discrimination in employment. [177]

The European Union has also been very active in defining the specific obligations of its member States to provide legal protections against sex discrimination and sexual harassment in the workplace. In December 1994, the Council of Ministers of the European Union adopted the Recommendation on the Promotion of Positive Action for Women (the "Positive Action Recommendation"). [178] The Positive Action Recommendation urges member States to adopt policies to eliminate existing inequalities affecting women in the workplace and to promote a better balance between the sexes in employment. The Positive Action Recommendation also encourages employers to promote positive action within their own organizations by suggesting guidelines, principles or codes of conduct for its employees. [179]

Evidence gathered by the delegation together with the results of the Surveys indicate that sex discrimination in employment against women is a serious, widespread problem in Bulgaria. Women suffer from higher unemployment than men; women are paid far less than men for equal work; and women, especially professional women or women over 40, have limited opportunities for meaningful employment. The evidence also indicates that

the Government does not respond to the problem of sex discrimination. Existing Bulgarian laws designed to protect women in the workplace are not enforced against employers. The Bulgarian Government has not created a system that provides recourse for women who are victims of sex discrimination and sexual harassment or that ensures that women are not retaliated against when they complain. Bulgaria, therefore, has not complied with the Universal Declaration, the Civil and Political Covenant, the Women's Convention and certain resolutions of the European Union.

B. Women in Bulgaria are being denied an effective remedy for acts violating their fundamental human rights

The Universal Declaration[180] and the Civil and Political Covenant[181] impose on its member States the requirement that they provide an effective and adequate remedy for acts violating fundamental rights guaranteed by constitution or by law.

As set forth above, the Bulgarian legal system does not provide an adequate remedy for denying a woman her fundamental right to work, to equality under the law and to safe, equitable and dignified working conditions. Women face serious obstacles at each step of the legal process. The Bulgarian Government does not generally enforce its existing laws designed to protect pregnant women or mothers from discrimination. The Labour Code contains certain provisions that, while designed to protect women, actually restrict their employment opportunities when pregnant or raising young children.

In 1991, the Bulgarian Government repealed the provision of the Labour Code that guaranteed women "equal pay for equal work." Bulgaria has no laws that address the issue of sexual harassment in the workplace. Complaints to the General Labor Inspectorate office often are not investigated. If complaints are investigated and wrongdoing is found, the small fines imposed against the employer do little to deter the behavior. In addition, there is no mechanism to ensure that a woman who complains will not be subject to retaliation. The lack of recourse under the Bulgarian legal system for a woman suffering discrimination or sexual harassment in the workplace violates Bulgaria's obligation under the Universal Declaration and the Civil and Political Covenant to provide an adequate remedy for the violation of a woman's fundamental human rights.

C. Women in Bulgaria are subjected to sexual harassment, a form of violence against women in the workplace and a form of employment discrimination, in violation of international treaties and regulations

The international community has recognized sexual harassment as a human rights abuse and a violation of "dignity . . ."[182] Sexual harassment is condemned as a form of violence against women, denying a woman her right to "safe, equitable and dignified working conditions." 183] In addition, both the United Nations and the European Union have defined sexual harassment as a form of sex discrimination in employment.[184] The Committee on the Elimination of Discrimination Against Women issued General Recommendation 19 which specifically addresses violence against women and sexual harassment in employment.[185] General Recommendation 19 provides that "equality in

employment can be seriously impaired when women are subjected to gender specific violence, such as sexual harassment in the workplace." [186] General Recommendation 19 recognizes both *quid pro quo* sexual harassment and hostile work environment sexual harassment as forms of discrimination. Under General Recommendation 19, sexual harassment is defined to include "such unwelcome sexually determined behavior as physical contacts and advances, sexually colored remarks, showing pornography and sexual demands, whether by words or actions." [187] This conduct is identified as discriminatory when a woman has reasonable grounds to believe that her objection would result in adverse employment action or when it creates a hostile work environment. [188] In 1986, the European Parliament adopted the Resolution on Violence Against Women. [189] In that resolution, the European Parliament calls on the Council of Europe to encourage national governments to conduct studies and gather statistics relating to violence against women. [190] Specifically, it calls on the European Commission of Human Rights (the "Commission") to conduct a study estimating the costs incurred by member States' social security bodies for illness or absence from work due to sexual blackmail or the costs to productivity in private industry due to sexual blackmail. [191]

The Resolution on Violence Against Women also includes detailed recommendations for member States to address sexual harassment. For example, the European Parliament calls on the Commission to review national labor and antidiscrimination legislation to determine their applicability to cases of sexual harassment and to propose additional legislation to address any inadequacies in these laws. [192] The European Parliament also calls on government and labor unions to educate the labor force about the individual rights of workers and the remedies available to victims of sex discrimination and sexual harassment. [193]

The Commission has developed a detailed "Code of Practice on Measures to Combat Sexual Harassment." [194] The Code of Practice includes a detailed definition of sexual harassment as a form of employment discrimination and sets out recommendations to employers on how to deal effectively with the problem of sexual harassment. [195]

The Bulgarian Government fails to meet these international standards. As discussed above, women have no recourse or remedy for sex discrimination and sexual harassment in the workplace. There are no governmental agencies specifically set up to handle complaints of this nature. There is no oversight of the General Labor Inspectorate office to ensure complaints are investigated and properly punished. There are no government-sponsored programs to provide training and education for employers and employees on the detrimental effects of discrimination and sexual harassment in the workplace. There are no government-sponsored programs to study the problem of sexual harassment and the resulting costs from loss of productivity and illness or absence from work. There are no laws in Bulgaria that specifically prohibit sexual harassment in the workplace and the Bulgarian Government has not proposed any legislation to address this inadequacy. The Bulgarian Government has failed to meet its obligations to eliminate sex discrimination, promote equality between the sexes in the workplace and eradicate sexual harassment from the workplace as outlined in General Recommendation 19 and the European Union's Resolution on Violence Against Women.

V. CONCLUSION

Discrimination based on sex and sexual harassment in employment are serious and widespread problems in Bulgaria which are virtually ignored by employers, labor unions and the Bulgarian Government. Women in Bulgaria are routinely denied their basic right to be free from discrimination and violence in the workplace. By failing to respond properly to the problems of sex discrimination and sexual harassment, the Bulgarian Government is in violation of its own Constitution and Labour Code. It has failed to meet its commitments as a member of the United Nations and as a country associated with the European Union and has violated international human rights law. The Bulgarian Government should comply with the recommendations set forth in this report to eliminate the serious human rights abuses currently experienced by women in the workplace in Bulgaria.

ENDNOTES

[1] For example, women in the United States earn only 74% of what men earn for the same work. Women in Sweden, England and New Zealand earn only 80% of men's wages. See Gudrun Schyman, *Welfare Mother 'Gudrun the Red' Seeks to Halt Blairite Drift*, *The Guardian*, Sept. 18, 1998; Danya Levy, *Government Policies Erode Gains in Women's Rights*, *The Evening Post*, Sept. 21, 1998; Polly Toynbee, *Women: When Two Scribes go to War. At Issue, the Future for Feminism. And the Contenders? Novelist Fay Weldon and columnist Polly Toynbee. Let Battle Commence*, *The Guardian*, May 26, 1998; and William Presecky et. al., *Candidate Debates to Hit Public TV*, *Chicago Tribune*, October 6, 1998.

[2] Sex discrimination in employment is unequal treatment in the terms and conditions of employment based on an employee's sex. The most obvious form of sex discrimination is the use of a sex classification in hiring or promotion decisions. For example, sex discrimination occurs if an employer refuses to consider a woman for certain positions or if the employer requires credentials or levels of performance of women not required of men. Employment discrimination based on sex can take more subtle forms.

Discrimination in employment based on sex may also exist if a seemingly gender neutral employment practice has an unjustified adverse impact on the employment opportunities of women. For example, certain employment requirements, such as education or age, may be applied in such a way as to have a negative, disparate impact on women.

[3] Universal Declaration of Human Rights, art. 23(1) & (2), G.A. Res. 217A (III), U.N. Doc. A/810 at 71 (1948) [hereinafter the Universal Declaration].

[4] Convention on the Elimination of All Forms of Discrimination Against Women, art. 11, G.A. Res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, *entered into force* Sept. 3, 1981 [hereinafter the Women's Convention].

[5] The Constitution of the Republic of Bulgaria, Article 6(2) (1991).

[6] The Bulgarian Labour Code, Article 8(3) (1992).

[7] The European Union was formerly called the European Communities.

[8] Declaration on the Elimination of Violence Against Women, art. 2(b), G.A. Res. 48/104, 48 U.N. GAOR Supp. (No. 49) at 217, U.N. Doc. A/48/49 (1993) [hereinafter the Declaration on Violence]. Article 2(b) of the Declaration on Violence specifically includes sexual harassment as a form of violence against women.

[9] United Nations Committee on the Elimination of Discrimination Against Women: General Recommendation 19: Violence Against Women (Eleventh Session, New York, Jan. 1992) U.N.Doc. A/47/38 CEDAW/1992/L.1/Add.15 [hereinafter General Recommendation 19]. Paragraphs 17 and 18 provide that sexual harassment is a form of discrimination in employment against women.

[10] Declaration on Violence, *supra* note 8, art. 1. The United Nations has defined violence against women broadly to include both physical and nonphysical violence. In the Declaration on Violence, the phrase "violence against women" is defined as, "any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life."

[11] General Recommendation 19, *supra* note 9, para. 7.

[12] *Id.* at para. 18. See also the Resolution on the Protection of the Dignity of Women and Men at Work, *Official Journal of the European Communities*, Vol. 33, No. C.157, Para. 1, June 27, 1990, pages 3-4 [hereinafter the EU Resolution on Dignity].

[13] *Id.*; Both the United Nations and the European Union definitions of sexual harassment include two types of conduct in the workplace. The first, *quid pro quo* sexual harassment means that an employer conditions the granting of economic or job benefits upon the receipt of sexual favors from a subordinate or punishes a subordinate for refusing to comply with such sexual demands. The second prohibits conduct that creates a hostile work environment. A hostile work environment exists when women are subjected to unwelcome requests for sexual favors, jokes of a sexual nature, pornography, sexual bantering, fondling and, in extreme cases, rape.

[14] Women's Environment and Development Organization (WEDO), *Mapping Progress*, 42 (March 1998).

[15] Interview with an Information Policy Expert from a Bulgarian trade union, May 12, 1998. Among professionals, there are four times as many women unemployed as men.

[16] Lalith deSilva, *Women's Emancipation Under Communism: A Re-evaluation*, East European Quarterly, XXXVII, No. 3 (September 1993); Emily Stoper and Emilia Laneva, *Women's Employment Rights in the U.S. and Bulgaria: A Dialog* (1995) (unpublished manuscript, on file with California State University -- Hayward, Hayward, California, U.S.A.).

[17] *Alternative Report on the Implementation of the Convention on the Elimination of All Forms of Discrimination Against Women by the State of Bulgaria to the Members of the United Nations Committee on the Elimination of Discrimination Against Women*, Women's Alliance for Development and the Bulgarian Centre for Human Rights, at 8, (January 1998) [hereinafter Alternative Report on CEDAW].

[18] The United Nations Development Programmes, *Bulgaria 1995 Situation of Women*, at 2 (1995).

[19] See results of Employment Survey, *infra* Section II.C.4.

[20] The delegation from Minnesota Advocates consisted of: Robin Phillips, Director of the Women's Human Rights Program at Minnesota Advocates, and Marjorie Allard, Johanna Bond and Marlene Kayser, Minnesota Advocates volunteers. GPF was represented by Stanimira Hadjimitova, Radka Valkova and Kalinka Slivkova in some interviews and the Bulgarian Centre for Human Rights was represented by Jivka Marinova.

[21] The Advertisement Survey included a review of 8,189 advertisements for jobs that ran in two newspapers, *24 Hours* and *Courier*, during May and June 1997. The delegation chose these two months because May is a month in the "regular" work year, while June ads included vacation and resort listings together with other seasonal work. The results of the Advertisement Survey are attached hereto as Appendix A.

[22] The Employment Survey data were collected through personal interviews with 600 Bulgarian workers, 490 of whom were women and 110 of whom were men. The participants were from small, medium and large-sized companies in Bulgaria from a variety of industries, including the military, public sector jobs such as schools, hospitals and post offices, dressmaking, construction, service industries such as airlines, hotels and restaurants, the government, the private business sector and the media, including radio and television. An initial 20% of respondents refused to participate in the Survey and

they were replaced by willing participants in similar age and education categories. The results of the Employment Survey are attached hereto as Appendix B.

[23] The Employment Survey was distributed to a convenience sampling of people only. The results of the Employment Survey are not intended to be representative of the Bulgarian workplace as a whole.

[24] Article 310 of the Bulgarian Labour Code forbids business travel by pregnant women or women with children under the age of three regardless of the circumstances of a particular woman.

[25] There are no government subsidized legal aid services available in Bulgaria.

[26] See the International Covenant on Civil and Political Rights, art. 2(1), G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, *entered into force* March 23, 1976 [hereinafter the Civil and Political Covenant] and the Universal Declaration, *supra* note 3, art. 8.

[27] Bulgarian Constitution, Article 6.

[28] Bulgarian Labour Code, Article 8(3).

[29] Universal Declaration, *supra* note 3, art. 1 & 2.

[30] The Women's Convention, *supra* note 4, art. 11.

[31] The Declaration on Violence, *supra* note 8, art. 2(b).

[32] General Recommendation 19, *supra* note 9, para. 17 & 18.

[33] European Parliament Resolution on Violence Against Women, *Official Journal of the European Communities*, Vol. 29, No. C.176, July 14, 1986, pages 73-83. [hereinafter the EU Resolution on Violence].

[34] Universal Declaration, *supra* note 3, art. 8.

[35] Civil and Political Covenant, *supra* note 26, Part II, art. 2(3)(b).

[36] The Declaration on Violence, *supra* note 8, art. 2(b).

[37] General Recommendation 19, *supra* note 9, para. 24.

[38] EU Resolution on Dignity, *supra* note 12. See also the EU Resolution on Violence, *supra* note 33.

[39] Minnesota Advocates for Human Rights, *Domestic Violence in Bulgaria*, March 1996.

[40]

[41] Interview, July 18, 1997.

[42] Interview, May 15, 1998.

[43] Interview with prosecutor, July 18, 1997; Interview with lawyer, July 22, 1997.

[44] Interview with Bulgarian prosecutor, July 18, 1997.

[45] Interview, July 23, 1997.

[46] Interview with male and female prosecutors, July 18, 1997.

[47] By 1980, close to half the labor force was women. *Women and Gender in Countries in Transition: A UNICEF Perspective*, UNICEF Regional Office for Central and Eastern Europe, Commonwealth of Independent States and Baltic States, 46 (1994). At the same time, however, women's roles and responsibilities in the home remained unchanged.

According to a survey, *The Problems of Working Women in Bulgaria*, conducted by the Agency for Social Analyses under the International Social Survey Programme in 1997, over 70% of the women polled responded that they were mainly responsible for the general domestic duties such as cleaning, cooking and laundry. This extra or double

workload on women becomes a basis for inequality as women have far less time for education and job training and for additional work hours.

[48] Stephen E. Nikolov, *The Emerging Nonprofit Sector in Bulgaria: Its Historical Dimensions*, Chapter 19, p. 341, The Nonprofit Sector in the Global Community: Voices from Many Nations, edited by Kathleen D. McCarthy, Virginia A. Hodgkinson and Russy D. Sumariwalli, First edition (1992). Under socialism, all who were employed were members of the trade unions. While the trade unions initially undertook certain functions such as financial support for families and individuals in need, the trade unions were eventually reduced to promoting and propagating the Bulgarian Communist Party policies.

[49] Nonetheless, women reported that they were discriminated against under socialism. Women were subjected to gender role stereotyping and were employed in low paying sectors of the economy which lacked mobility, leading to poor promotional opportunities. Lalith deSilva, *Women's Emancipation Under Communism: A Re-Evaluation*, East European Quarterly, XXVII, No. 3, at 306 (September 1993). In addition, Party bosses and other politically powerful figures made sexual demands on women in the workplace. One woman, in pointing out the problem before the transition, stated, "under socialism, a woman would have sex to obtain a promotion for herself or her husband. There was even a movie made about this." Interview with professor, American College of Sofia, July 18, 1997.

[50] *Mapping Progress*, *supra* note 14, at 42.

[51] Ruza Furst-Dilic, *Introduction*, Gains and Losses: Women in Transition in Eastern and Central Europe, x- xi, European Network for Women's Studies (1994).

[52] Maria Todovova, *Historical Tradition and Transformation in Bulgaria: Women's Issues or Feminist Issues?*, Journal of Women's History, Vol. 5, No. 3, p. 138 (Winter 1994).

[53] Dr. Lilia Dimova, Director, *Working Women: Constraint or Freedom of Choice (The Bulgarian Case)*, Agency for Social Analyses, at 1, (1995).

[54] *Women and Gender in Countries of Transition*, *supra* note 47, at 47.

[55] *Id.*

[56] Alternative Report on CEDAW, *supra* note 17, at 8-9.

[57] *Id.*

[58] Interview with representative from a labor union, July 23, 1997.

[59] Interview with representatives from a labor union, July 23, 1997 and May 12, 1998.

[60] *For Equal Rights and Opportunities of Women in Bulgaria*, Project on Institutional Development of the Women's Democratic Union in Bulgaria, 14 (Sofia 1994). These figures are from the National Statistical Institute.

[61] *Id.*

[62] *Id.*, at 15.

[63] See results of Advertisement Survey, attached hereto as Appendix A. The Government of the Czech Republic has recently prohibited employers from placing help-wanted advertisements specifying age, sex or beauty requirements for jobs. Employers will face fines up to one million korunas (\$32,720 U.S. dollars) for placing such ads. The Wall Street Journal Europe, Vol. XVI No. 212, December 1, 1998, at A1.

[64] See results of Employment Survey, attached hereto as Appendix B.

[65] See results of Advertisement Survey attached hereto as Appendix A.

- [66] *Id.*
- [67] *Id.*
- [68] Interview, May 15, 1998.
- [69] *Id.*
- [70] Interview, October 28, 1997.
- [71] Interview, president of small Bulgarian company, October 28, 1997.
- [72] *Id.*
- [73] *Id.*
- [74] Interview, May 12, 1998.
- [75] Interview, July 24, 1997.
- [76] *Id.*
- [77] Interview, May 11, 1998.
- [78] See Advertisement Survey attached hereto as Appendix A; Interview, manager of an employment placement agency, May 12, 1998.
- [79] *Id.*
- [80] Interview, May 12, 1998.
- [81] Interview, May 12, 1998.
- [82] Interview with Bulgarian employers, May 11 and May 12, 1998 and interview with a manager of an employment placement agency, May 12, 1998.
- [83] While the Advertisement Survey shows that age restrictions are also applied to men (33% of the advertisements requesting men for "qualified labor" restricted the age of the candidate to 35 years of age or younger), the anecdotal evidence and the survey results taken together indicate that women are subjected to age restrictions more often than men.
- [84] See results of Advertisement Survey, attached hereto as Appendix A.
- [85] *Id.*
- [86] *Id.*
- [87] Interview, May 12, 1998.
- [88] Interview with a female engineer, May 11, 1998.
- [89] Interview with a representative of the General Labor Inspectorate's office, July 21, 1997.
- [90] Interview, Human Resource Consultant for a large United States fast food company, May 11, 1998. In an earlier phone interview, a representative of the company said they do not hire people older than 26 years of age.
- [91] See results of Advertisement Survey, attached hereto as Appendix A.
- [92] *Id.*
- [93] Interview, October 31, 1997.
- [94] *Id.*
- [95] *Id.*
- [96] Interview with general manager of a corporation, May 12, 1998, and interview with an attorney, October 30, 1997.
- [97] Interview, October 29, 1997.
- [98] See the Bulgarian Labour Code, and *Bulgaria 1995 Situation of Women*, *supra* note 18, at 3.
- [99] *Bulgaria 1995 Situation of Women*, *supra* note 18, at 1.
- [100] Alternative Report on CEDAW, *supra* note 17, at 8.
- [101] *Women and Gender in Countries in Transition*, *supra* note 47, at 47.

[102] *Id.*; According to the results of the Employment Survey, attached hereto as Appendix B, more than 70% of the respondents worked for companies that employed women in management positions. What constituted a "management position," however, was not defined in the Survey. In addition, the Survey included only a small sample of Bulgarian workers. One cannot conclude, therefore, that the results of the Employment Survey contradict the overwhelming anecdotal evidence and other evidence provided by a Bulgarian labor union that, if lucky, women can achieve only low-level management positions and typically, they are shut out of management positions altogether.

[103] Interview with the president of a small company, October 28, 1997.

[104] *Id.*

[105] In addition to the workplace, Bulgarian women experience sexual harassment in institutions such as its universities. The Bulgarian Gender Research Foundation, a recently established nongovernmental organization based in Sofia, Bulgaria, conducted a small survey of 20 university students at the University of Sofia in 1998. Three of the respondents were male and 17 were female. Of those surveyed, 40% responded that there was sex discrimination in the admissions process and 70% responded that sexual harassment is normal at the university.

[106] Interview with a journalist, July 23, 1997.

[107] Interview, July 21, 1997.

[108] See results of the Employment Survey, attached hereto as Appendix B.

[109] *Id.* Women who indicated they suffered from sexual harassment described it as "terribly humiliating," "intolerable" and "nightmarish." For some women, the consequences of experiencing sexual harassment were severe. These women had to quit their jobs and, in extreme cases, seek psychiatric treatment.

[110] *Id.*

[111] *Id.*

[112] A preliminary survey on the existence of sexual harassment was conducted in May and June of 1997, at domestic violence conferences held in Bulgaria ("Test Survey"). A majority of the participants were professionals (doctors, attorneys, judges). Both men and women participated in the Test Survey. The results of the Test Survey were disturbing. In Sofia, for example, 72% of respondents answered that they had experienced jokes, comments or other conduct of a sexual nature in an employment situation which many found uncomfortable or unpleasant. In Plovdiv, 69% of women stated that co-workers or supervisors had requested sexual favors from them. In addition, many women reported unwanted touching or other unwelcome sexual attention from teachers, doctors, or on mass transportation. In the Test Survey, while the surveys were anonymous, they were filled out at a seminar in the presence of colleagues and collected by the survey organizers. Several participants explained that a completely anonymous method of distribution was necessary for participants to feel comfortable answering questions on this taboo and often embarrassing subject. The Employment Survey was conducted using one-on-one interviews. A perceived lack of anonymity may explain why the Employment Survey results are lower than the Test Survey results.

[113] Interviews, July 1997, October 1997 and May 1998.

[114] Interview, May 11, 1998.

[115] Interview with an office assistant, July 23, 1997.

[116] Interview with a secretary, July 23, 1997.

[117] Interview, May 12, 1998.

[118] Animus Association is a counseling center for women victims of violence. The Animus Association began operating a hotline for women victims of violence in Sofia in October 1997.

[119] Interview, October 28, 1997.

[120] *Id.*

[121] *Id.*

[122] Interview, October 31, 1997.

[123] *Id.*

[124] Interview, May 18, 1995.

[125] See results of the Employment Survey, attached hereto as Appendix B.

[126] *Id.*

[127] Interviews, May 11 and 12, 1998.

[128] Interview, May 11, 1998.

[129] Interview, May 12, 1998.

[130] Interview with human resources supervisor, May 12, 1998.

[131] Interview, July 18, 1997.

[132] *Id.* During times when she was not busy at the office, she began to learn German. Her bosses told her to stop learning German -- they preferred that she polish her nails instead of studying.

[133] Interview, July 18, 1997.

[134] Interview with a journalist, July 23, 1997.

[135] Interviews, October 29 and November 3, 1997.

[136] Interviews, October 29, 1997.

[137] *Id.*

[138] Interviews, October 29 and November 3, 1997.

[139] Interview, October 29, 1997.

[140] Bulgarian Labour Code, Article 3.

[141] *Id.*

[142] Interview with a representative of the office of the General Labor Inspectorate, July 21, 1997.

[143] *Id.*

[144] *Id.* Currently, there is one Inspector for every 20,000 Bulgarian workers. Interview with former employee of the National Employment Service, July 21, 1997.

[145] *Id.*

[146] Interviews, July 18, 21, 22 and 23, 1997.

[147] Interviews, July 22, 1997.

[148] Interview, July 21, 1997.

[149] The woman's boss wanted her fired because she refused his sexual demands, but because she was a member of a trade union, her boss could not directly fire her. He, therefore, tried to have her thrown out of the trade union so he could fire her. After the woman attended a trade union meeting and gave a speech defending her right to remain a member of the trade union, the trade union voted to retain her as a member. While she did not lose her job, her boss refused to train her, choosing to ignore her.

[150] Interview with a Bulgarian prosecutor, July 18, 1997.

[151] Bulgarian Constitution, Preamble.

[152] *Id.*, Article 6(1).

[153] *Id.*, at Article 6(2). In addition, Article 48 of the Constitution protects all workers and guarantees workers' right to "healthy and non-hazardous working conditions."

[154] *Id.*, Articles 14 and 47.

[155] *Id.*, Article 14.

[156] *Id.*, Article 47.

[157] Bulgarian Labour Code, Article 1(3).

[158] *Id.*, Article 8.

[159] *Id.*, Article 127. Article 127 requires employers to provide employees with "normal conditions to perform the job under the employment relationship he has agreed upon" including "safe and healthy working conditions."

[160] *Id.*, Article 163. Articles 164 and 165 guarantee working mothers paid leave for child rearing until the child reaches the age of two and unpaid leave until the child turns three years of age.

[161] *Id.*, Article 312.

[162] *Bulgaria 1995 Situation of Women, supra* note 18, at 2.

[163] *Id.*

[164] Bulgarian Labour Code, Article 310. Article 309 allows an employer to reassign pregnant women or nursing mothers to a more "suitable" job. Many of the managers interviewed identified those positions requiring travel as being appropriate only for men.

[165] Article 200 of the Labour Code requires that employers pay employees compensation for time lost from work due to occupational injuries or diseases. Under this article, women may be able to recover compensation for lost time due to psychological or physical harm resulting from sexual harassment by the employer, supervisor or co-worker.

Articles 344 – 346 protect an employee from unlawful dismissal. Under Article 344, a woman who is terminated from her job because she refuses to participate in a sexual relationship with her supervisor, can contest the lawfulness of her dismissal in court. If the dismissal is found to be unlawful, the women can demand reinstatement to her previous position as well as request compensation for her period of unemployment due to such unlawful dismissal.

[166] In addition to Article 153 of the Criminal Code, the anti-coercion provisions of the Criminal Code may also provide recourse for victims of sexual harassment. Article 143 punishes a person who "compels another to do, to omit or to suffer something contrary to his will, using for that purpose force, threats or abuse of his authority." Therefore, a boss who compels his subordinate to submit to a sexual relationship against her will, using threats of termination or other adverse employment action, and thereby abusing his authority as a supervisor, is subject to up to six years in prison

Section VII, Article 146 of the Criminal Code punishes a person who "says or does something degrading to the honour and dignity of another in the presence of the latter" Sexual comments made to a female co-worker that are degrading to her honour and dignity are punishable under this Article 146 by imprisonment or a fine.

[167] Bulgarian Criminal Code, Section VIII, Article 153 (as amended - SG No. 28/1982 & 89/1986).

[168] *Id.*

[169] Article 150 of the Bulgarian Criminal Code governs acts of sexual violence without rape. As is the case under Article 153, however, the challenge for women bringing claims of sexual harassment under the Criminal Code is that she is subject to a higher standard of proof than in civil actions.

[170] *Id.*

[171] Bringing a complaint of sexual harassment under the current Bulgarian laws is not without risk. In one case, a woman brought a complaint of sexual harassment against a Bulgarian man, who, in turn, brought a suit against the woman for defamation. The man withdrew his defamation suit but not before the reputation of the woman was badly discredited. She was accused of lying about the sexual harassment because she "wanted the man and he rejected her."

[172] Bulgarian Constitution, Article 5(4).

[173] Universal Declaration, *supra* note 3, art. 23(1).

[174] Civil and Political Covenant, *supra* note 26, art. 2(1).

[175] *Id.*, at art. 2.

[176] *Id.*; Adopted in 1993, the Vienna Declaration and Programme of Action, U.N. DOC. A/CONF. 157/24 (1993) declared that the "human rights of women and the girl-child are an inalienable, integral and indivisible part of universal human rights," and that "full and equal participation of women in political, civil, economic, social and cultural life, at the national, regional and international levels, and the eradication of all forms of discrimination on the grounds of sex" are priorities of the international communities.

[177] The Women's Convention, *supra* note 4, art. 11. The Women's Convention provides:

- "States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:
 - a) The right to work as an inalienable right of human beings;
 - b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;
 - c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining . . . ;"
 - d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;
 - f) The right to protection of health and to safety in working conditions . . .

[178] *Official Journal of the European Communities*, Vol. 27, No. L331, Dec. 19, 1984, at 34-35.

[179] *Id.*, para. 7.

[180] *Supra* note 3, art. 8.

[181] *Supra* note 26, art. 3.

[182] The Women's Convention, *supra* note 4. Recognizing sexual harassment as an "intolerable violation of the dignity of workers and trainees," the Council of Ministers of the European Union adopted the Resolution on the Protection of the Dignity of Women

and Men at Work, *Official Journal of the European Communities*, Vol. 33, No. C.157, June 27, 1990, at 3-4. In this Resolution, the Council calls on member States to develop training and education for employers and employees to combat sexual harassment, which is contrary to equal treatment.

[183] Universal Declaration, *supra* note 3, art. 23(1).

[184] General Recommendation 19, *supra* note 9, para. 18. See also the Commission Code of Practice on Measures to Combat Sexual Harassment, *Official Journal of the European Communities*, para. 2, Vol. 35, No. L.49, Feb. 24, 1992. Paragraph 2 of the Code of Practice states:

- Sexual harassment means unwanted conduct of a sexual nature, or other conduct based on sex affecting the dignity of women and men at work. This can include unwelcome physical, verbal or nonverbal conduct.
 - Thus, a range of behavior may be considered to constitute sexual harassment. It is unacceptable if such conduct is unwanted, unreasonable and offensive to the recipient; a person's rejection of or submission to such conduct on the part of employers or workers (including superiors or colleagues) is used explicitly or implicitly as a basis for a decision which affects that person's access to vocational training or to employment, continued employment, promotion, salary or any other employment decisions; and/or such conduct creates an intimidating, hostile or humiliating working environment for the recipient.

The essential characteristic of sexual harassment is that it is unwanted by the recipient, that it is for each individual to determine what behavior is acceptable to them and what they regard as offensive. Sexual attention becomes sexual harassment if it is persisted in once it has been made clear that it is regarded by the recipient as offensive, although one incident of harassment may constitute sexual harassment if sufficiently serious. It is the unwanted nature of the conduct which distinguishes sexual harassment from friendly behavior, which is welcome and mutual.

[185] General Recommendation 19, *supra* note 9, para. 17-18.

[186] *Id.*, at para. 17.

[187] *Id.*, at para. 18.

[188] *Id.*

Other United Nations' documents address sexual harassment as a human rights abuse. The Nairobi Forward Looking Strategies for the Advancement of Women, A/CONF. 116/28/Rev.1(85.IV.10) (1986), adopted in 1985, stated that "the working conditions of women should be improved . . . Appropriate measures should be taken to prevent sexual harassment on the job and sexual exploitation in the specific jobs." The Declaration on the Elimination of Violence Against Women, G.A. Res. 48/104 (1993), expressly condemns violence against women, including sexual harassment as a violation of the fundamental human rights of women. Most recently, the Beijing Declaration and Platform for Action, U.N. DOC. A/CONF. 177/20 (1995), adopted in 1995, also contains a strong condemnation of sexual harassment as a form of violence against women and a violation of human rights.

[189] The EU Resolution on Violence, *supra* note 33.

[190] *Id.*, at para. 1.

[191] *Id.*, para. 37(a) and (b).

[192] *Id.*, para. 38.

[193] *Id.*, para. 40.

[194] *Official Journal of the European Communities*, Vol. 35, No. L.49, Feb. 24, 1992.

[195] *Id.*, at para. 2, 3 and 5.