



BULGARIA:
Challenges with addressing domestic violence in compliance with the
International Covenant on Civil and Political Rights
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Statement submitted by The Advocates for Human Rights,
a non-governmental organization in special consultative status
pursuant to HRC resolution 5/1 of 18 June 2007

I. Background

1. The Advocates for Human Rights (The Advocates) is a non-profit organization that seeks to implement international human rights standards in order to promote civil society and reinforce the rule of law. By involving volunteers in research, education, and advocacy, we build broad constituencies in the United States and select global communities. The Advocates holds special consultative status with the Economic and Social Council. The Advocates has worked in partnership with the Bulgarian Gender Research Foundation in Bulgaria since 1994, publishing human rights reports on domestic violence in Bulgaria in 1996 and 2008, training court monitors in 2004, consulting on drafting and passing the 2005 domestic violence law, and training police and judges on effective implementation of the new law.

2. Efforts are underway, however, at the National Statistical Institute of Bulgaria to establish an easily collected and internationally comparable set of information measuring the scale, prevalence and severity of violence against women.ⁱ

3. Nevertheless, the statistics that are available show that domestic violence is a widespread problem in Bulgaria. A 2003 national opinion poll showed that domestic violence is a private issue according to 49.2% of the respondents, while 50.8% consider it a public issue.ⁱⁱ A 2009 report, echoing a 2006 figure, estimated that one in four women had been a victim of domestic violence.ⁱⁱⁱ A 2009 report stated that nine hundred thousand women suffer domestic abuse each year.^{iv}

4. This submission addresses Bulgaria's compliance with its human rights obligations in the context of domestic violence. In summary, the Bulgarian government has taken many positive steps toward protecting victims of domestic violence and punishing perpetrators. The Advocates applauds the 2005 passage of the Law on Protection against Domestic Violence (LPADV), its 2009 amendment, and the subsequent efforts towards effective implementation (Replies from the Government of Bulgaria to the list of issues, paragraphs 42-45). Furthermore, the government's national programs for prevention and protection against domestic violence, financial support for shelters, and specialized services for victims are to be equally recognized (Replies from the Government of Bulgaria to the list of issues, paragraphs 46-48). The use of tools such as a 24-hour free hotline, specialized emergency and social rehabilitation centers, and trainings for judges and prosecutors should be taken up countrywide.

II. Challenges in Addressing Domestic Violence

5. The adoption of the LPADV and its subsequent amendments marked an important step in ensuring the right of victims to equal protection of the law. Further changes need to be made in order to effectively implement the law and provide better protection to women.

6. *Regular Trainings for Legal System Actors:* Regular trainings of legal system actors—including police, judges, prosecutors and social services—is necessary to ensure effective implementation of the LPADV and protection of domestic violence victims. NGO trainings of police, as well as collaborations with and initiatives by the Ministry of the Interior, have facilitated a positive police response in protecting victims. While judicial implementation has revealed both positive and negative practices, new judicial rotations onto the bench indicate that trainings for new judges must be continued on a regular basis.

7. *Directorate for Social Assistance:* The Directorate for Social Assistance’s use of the LPADV to protect victims and remove perpetrators from the home has been lacking; instead, the directorate relies on the Child Protection Act to protect children. Also, directorate’s history of removing children from a non-violent victim indicates a strong need for training on domestic violence.

8. *Funding:* The Bulgarian Government must make a real commitment to funding the NGOs and advocates that conduct the monitoring and training on domestic violence. An annual line item allocation is commendable, but the funds disbursed must be of a realistic amount that will sustain their important work against domestic violence.

9. *Prosecution of Batterers for Trivial and Middle-Level Injuries:* Challenges still remain in ensuring effective protection against domestic violence and holding perpetrators accountable. Prime among these is the need for amendments to the Bulgarian Criminal Code to ensure perpetrators are punished for acts of domestic violence. Provisions in the Criminal Code hinder victims of domestic violence from obtaining justice. Article 161(1) of the Criminal Code requires that where the victims of domestic violence suffers a trivial or middle-level injury inflicted upon them by a spouse, brother or sister, or another relative, the penal prosecution must be instituted on the basis of a complaint by the victim:

(1) For trivial bodily injury under Article 130 and 131, paragraph (1), sub-paragraphs 3 - 5, for trivial and medium bodily injury under Article 132, for the crimes under Article 144, paragraph (1), Articles 145, 146 - 148a, as well as for bodily injury under Articles 129, 132, 133 and 134, inflicted on a relative of ascending and descending line, a spouse, brother or sister, the penal prosecution shall be instituted on the basis of complaint by the victim.^v

10. Thus, where a victim of domestic violence has suffered a trivial-level injury, she must file a complaint and proceed through the criminal justice system alone. Also, victims who sustain medium-level injuries from a relative must proceed through the criminal justice system without the help of a prosecutor.^{vi} These victims may prosecute their cases on their own, but must locate and call their own witnesses and present their own evidence in court. Without a state prosecutor to institute penal prosecution, one attorney stated that a perpetrator of such an injury, knowing that he is subject only to a private prosecution, could easily influence a victim not to prosecute, given their close relationship and the power and control over victims exercised by the perpetrator.^{vii}

11. While the LPADV provides an important civil remedy, it offers no criminal prosecution except where the offender violates the order for protection. In this case, the offender would be publicly prosecuted for obstructing a judgment, not for the infliction of injuries.^{viii} Article 161(1) of the Criminal Code denies victims of domestic violence equal and effective access to the criminal justice system, equal protection before the law, and does not provide an effective remedy for harm they have suffered. Responsibility for prosecuting violence against women should lie with prosecution authorities and not with victims, regardless of the level or type of injury. Without providing for state-initiated prosecution, Bulgaria’s current criminal law will not allow it to fulfill its international obligations.

12. *Prosecutorial Implementation:* Although the criminalization of a violation of an order for protection brings an important change to the laws, prosecutors still remain uncertain as to their

role in these cases. The reticence to prosecute such violations that preceded the amendments still continues post-amendments, thus demonstrating an ongoing need for trainings of prosecutors on domestic violence and the LPADV.

III. Violations of the International Covenant on Civil and Political Rights

13. Domestic violence violates a woman's rights to life, freedom from torture, equality before the courts, equal protection before the law, equality with men before the law and protection of the family, among others. The following articles of the International Covenant on Civil and Political Rights articulate a state's duty to protect these fundamental human rights that are commonly violated in domestic violence cases.

14. *Right to life and security of person (Article 6)*: The right to life is shared by both men and women. However, violence directed against women by their intimate partners (current or former spouses, boyfriends, dating partners) is an epidemic that has devastating and unequal physical, emotional, financial and social effects on women and children.

15. *Prohibition of torture or cruel, inhumane or degrading treatment or punishment (Article 7)*
The Committee against Torture acknowledged that domestic violence may constitute torture or ill-treatment under CAT as well as violate the right not to be subjected to torture or ill-treatment under Article 7 of the ICCPR.

16. *Administration of Justice (Article 14)*: When a state fails to ensure that its criminal and civil laws adequately protect women and consistently hold abusers accountable, or that its agents—such as police and prosecutors—implement the laws that protect victims of domestic violence, that state has not acted with due diligence to prevent, investigate and punish violations of women's rights.

17. *Protection of the family, the right to marriage and equality of the spouses (Article 23)*: General comment 19 of the ICCPR protects the family and equality of the spouses. Both general recommendation 18 and 19 ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution.

18. *Equality before the law (Article 26)*

States are required under international law to provide all citizens with equal protection of the law. If a state fails to provide individuals who are harmed by an intimate partner with the same protections it provides to those harmed by strangers, it has failed to live up to this obligation. For example, when judges impose higher sentences on those who assault strangers than those who assault their intimate partners, battered women have been denied equal protection.

IV. RECOMMENDATIONS

19. Bulgaria's future path must see it further reform the laws to support the fight against domestic violence perpetrators, continue trainings of the legal sector and public awareness campaigns, ensure adequate funding and implement the necessary programs in order to create zero tolerance toward domestic violence. The Advocates makes the following recommendations:

A. Amendments to domestic legislation:

- Amend the criminal laws to allow state prosecution in cases of low and medium-level assaults when the victim and perpetrator are related.
- Promote policies that allow prosecutors to press charges against defendants without the consent or even involvement of the victim. Within any strategy, however, the three goals of prosecution should be: (1) to protect the victim, (2) to deter the defendant from further violent acts by holding

him accountable for his actions, and (3) to communicate to the community that domestic violence will not be tolerated.

- Promote policies that recognize the importance of maintaining the custody of children with non-violent parents. Support policies that allow and enable women to take their children with them to shelters.

B. Justice and Legal Sectors

- Ensure that the state adequately and consistently supports and funds NGOs to continue specialized training on women's human rights, domestic violence and implementation of the LPADV. Such trainings should be mandatory, regular and country-wide for police, prosecutors, judges, DSA and child protection authorities.
- Continue working to increase the coordinated community response among NGOs, police, courts, the DSA, health care providers and the media.

C. Funding

- Continue to provide NGOs with sufficient and regular funding to realistically carry out their work on domestic violence and trainings.

D. Public Education and Prevention

- Support comprehensive prevention programs and educational programs in schools and other educational institutions.

V. Suggested Questions for the Committee to ask Bulgaria:

- What measures have been taken to effectively investigate, prosecute, and sanction perpetrators of domestic violence?
- How many cases of the civil courts have resulted in civil protection orders?
- Are violations of orders for protection being prosecuted?
- How many cases are there of repeat offenders?
- Are prosecutors being encouraged to assist victims with their complaints to expedite the long and arduous process? Are prosecutors aware that they can begin such a procedure on behalf of the victim themselves?
- Now that the pilot training for magistrates has been completed will there be efforts to make this training mandatory for all judges and prosecutors?
- Is the government disbursing all the funds promised to NGOs in the full amount and on time?

APPENDIX: [Implementation of the the Bulgarian Law on Protection against Domestic Violence: A Human Rights Report](#), The Advocates for Human Rights and the Bulgarian Gender Research Foundation (BGRF) (2008), available at http://www.advrightrights.org/sites/608a3887-dd53-4796-8904-997a0131ca54/uploads/FINAL_REPORT_2.pdf.

ⁱ NATIONAL STATISTICAL INSTITUTE OF BULGARIA, INDICATORS TO MEASURE VIOLENCE AGAINST WOMEN, (2009).

ⁱⁱ OPEN SOC'Y INST., FACT SHEET, VIOLENCE AGAINST WOMEN: DOES THE GOVERNMENT CARE IN BULGARIA? 2 (2006), available at http://www.cwsp.bg/upload/docs/BULGARIA_VAW_FACT_SHEET_2006.pdf (last visited Apr. 1, 2010).

ⁱⁱⁱ U.S. DEP'T OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES – BULGARIA (2007) [hereinafter DEP'T OF STATE HUMAN RIGHTS COUNTRY REPORT], available at <http://www.state.gov/g/drl/rls/hrrpt/2007/100552.htm> (last visited Apr. 1, 2010); *Every fourth woman in Bulgaria is a victim of domestic violence – report*, Sofia Echo, Mar. 6, 2010.

^{iv} *Press Digest – Bulgaria*, Reuters, Dec. 12, 2006.

^v Criminal Code, Art. 161(1)(Bulg.).

^{vi} For trivial bodily injury under Article 130 and 131, paragraph (1), sub-paragraphs 3 - 5, for trivial and medium bodily injury under Article 132, for the crimes under Article 144, paragraph (1), Articles 145, 146 - 148a, as well as for bodily injury under Articles 129, 132, 133 and 134, inflicted on a relative of ascending and descending line, a spouse, brother or sister, the penal prosecution shall be instituted on the basis of complaint by the victim. Criminal Code, art. 161(1); see also: MINNESOTA ADVOCATES FOR HUMAN RIGHTS, DOMESTIC VIOLENCE IN BULGARIA 10 (1996).

^{vii} ELLINGEN ET AL., *supra* note **Error! Bookmark not defined.**, at 40.

^{viii} LPADV, art. 21(2); Criminal Code, art. 161(1).