



**Convention on the Elimination
of All Forms of Discrimination
against Women**

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**Committee on the Elimination of Discrimination
against Women**

Communication No. 31/2011

**Views adopted by the Committee at its fifty-third session,
1-19 October 2012**

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| <i>Submitted by:</i> | S.V. P. (not represented by counsel) |
| <i>Alleged victim:</i> | The author's daughter, V. P. P. |
| <i>State party:</i> | Bulgaria |
| <i>Date of communication:</i> | 3 December 2010 (initial submission) |
| <i>Document references:</i> | Transmitted to the State party on 5 May 2011 (not issued in document form) |
| <i>Date of adoption of decision:</i> | 12 October 2012 |

Annex

Views of the Committee on the Elimination of Discrimination against Women under the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women

concerning

Communication No. 31/2011, S. V. P. v. Bulgaria*

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| <i>Submitted by:</i> | S. V. P. (not represented by counsel) |
| <i>Alleged victim:</i> | The author's daughter, V. P. P. |
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| <i>Date of communication:</i> | 3 December 2010 (initial submission) |
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The Committee on the Elimination of Discrimination against Women, established under article 17 of the Convention on the Elimination of All Forms of Discrimination against Women,

Meeting on 12 October 2012,

Adopts the following:

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

1. The author of the communication is Ms. S. V. P., a Bulgarian national, born on 14 November 1973, mother of V. P. P., born on 23 February 1997. She claims that her daughter is a victim of violations by Bulgaria of her rights under article 1, article 2, paragraphs (a), (b), (c), (e), (f) and (g), in conjunction with articles 3 and 5, article 12 and article 15 of the Convention on the Elimination of All Forms of Discrimination against Women (the Convention). The Convention entered into force for Bulgaria on 8 March 1982 and the Optional Protocol entered into force for Bulgaria on 20 September 2006. The author is not represented by counsel.

* The following members of the Committee participated in the adoption of the present communication: Ms. Ayse Feride Acar, Ms. Magalys Arocha Dominguez, Ms. Violet Awori, Ms. Barbara Bailey, Ms. Olinda Barreiro-Bobadilla, Ms. Niklas Bruun, Ms. Náela Gabr, Ms. Yoko Hayashi, Ms. Ismat Jahan, Ms. Soledad Murillo de la Vega, Ms. Violeta Neubauer, Ms. Pramila Patten, Ms. Silvia Pimentel, Ms. Maria Helena Pires, Ms. Victoria Popescu, Ms. Zohra Rasekh, Ms. Patricia Schultz, Ms. Dubravka Šimonović and Ms. Xiaoqiao Zou.

Factual background

2.1 The author submits that her daughter lives with her and her husband in the town of Pleven, in the North of Bulgaria. The author claims that her daughter has been diagnosed as mentally retarded and with an affective disorder, mania without psychotic disorder, as a result of an act of severe sexual violence, of which she was a victim in 2004, when she was seven years old. She is attending a school for children with special needs. The perpetrator of that act was B. G., a Bulgarian national, born in 1958. On 24 June 2004, he met the child in front of the building where she lived and managed to convince her to follow him to an apartment, claiming that he would show her pictures. In the apartment he undressed the child, told her to lie on the floor and started kissing her face. He took her panties off and started kissing and licking her bottom. Then he took off his trousers, brought out his penis and made the child kiss it. He told her to raise herself and spread her legs, than inserted his finger into the child's anus, causing her acute pain. He tried to insert his penis into the child's vagina, causing her acute pain in the process, but did not succeed in penetrating her. The child was begging him to stop. When he failed to penetrate her, he stopped, allowed her to get dressed and told her to go home and not to tell her parents what happened. The child ran home and reported the attempted rape to her mother, who filed a complaint with the authorities.¹ The perpetrator was eventually prosecuted under article 149, paragraph 1, of the Criminal Code on sexual molestation, which provides: "Whoever commits an act to arouse or satisfy sexual desire without copulation regarding a person under 14 years of age shall be punished by imprisonment for fornication [...]" At the time the offence was committed, sexual molestation of a minor was punishable by up to five years' imprisonment and was not considered a serious crime.² In 2006, an amendment to article 149, paragraph 1, of the Criminal Code was adopted and sexual molestation of minors became punishable by imprisonment from one to six years, thus reaching the threshold for a serious crime.

2.2 The act of indictment by the District prosecutor was not issued until 17 April 2006, almost two years after the offence was committed. On 13 June 2006, the Pleven District Court reviewed and approved a plea-bargaining agreement between the prosecutor and the accused which, the author submits, was detrimental to the victim. The perpetrator admitted that he was guilty of sexual molestation and received a three-year suspended sentence in accordance with article 55 of the Criminal Code.³ The Criminal Procedure Code provides

¹ Indictment against B.G.

² The author refers to article 93 of the Criminal Code, which defines serious crimes as crimes punishable by more than five years' imprisonment.]

³ Article 55 of the Criminal Code reads :“(1) In case of exceptional or of a great number of attenuating circumstances, where even the mildest punishment provided by law proves disproportionately severe, the court:

1. shall fix a punishment under the lowest limit;

2. shall substitute:

a) (Amended, SG No. 153/1998) life imprisonment for deprivation of liberty for a term from fifteen to twenty years;

b) (Amended, SG No. 28/1982, SG No. 10/1993, SG No. 62/1997, amended and supplemented, SG No. 92/2002 - effective 01.01.2005, with respect to the punishment of probation, amended, SG No. 26/2004, SG No. 103/2004) deprivation of liberty, where the lowest limit has not been specified - for probation, and with respect to minors - for probation or public censure.

c) (Amended, SG Nos. No. 28/1982, SG No. 10/1993, SG No. 62/1997, SG No. 92/2002, SG No. 103/2004) probation - for a fine BGN of one hundred (100) up to five hundred (500)

(2) In the cases of sub-paragraph 1 of the preceding paragraph where the punishment is a fine, the court may specify punishment under the lowest limit by one half at most.

that plea bargaining cannot be allowed for serious malicious crimes, but since the charges did not meet the serious crime threshold at the time the crime was committed, the agreement was approved. On 13 June 2006, the court rejected the author's request to participate as a civil claimant and file a civil claim for moral damages in the criminal proceedings in accordance with article 84, paragraph 1 of the Criminal Procedure Code (CPC).⁴ Her request was denied because of the plea bargaining allowed earlier. Article 381 of the Criminal Procedure Code⁵ only requires the court to reject a plea-bargaining agreement in case its content does not secure compensation for material damages; securing compensation for moral damages is not mandatory. In the present case, no material damage had been identified, thus leaving the author's daughter with no effective compensation.

2.3 The author, on behalf of her daughter, filed a separate law suit to the Regional Court in Pleven under the tort provision of article 45 of the Law on Contracts and Obligations from 1950,⁶ which states that everybody is obliged to compensate damages which he/she has "guiltily" inflicted on another. The claim stressed the severe trauma suffered by the author's daughter, leaving her in constant fear, stress and depression and claimed 50,000 leva (approximately 25,000 euros) for moral damages. According to article 52 of the same Law,⁷ moral damages are awarded by the court in accordance with the principle of equity. An expert psychiatric opinion from 23 January 2008 presented to the Court stated that the author's daughter suffered from emotional lability, volitional instability, motor hyperactivity, difficulty concentrating and evasive behaviour when required to speak about the incident of sexual violence. The experts concluded that the author's daughter was developing a hyperkinetic syndrome, characterized by the symptoms mentioned above, but also by a low level of concentration. She was found to be in the lower part of the normal intellectual development scale.

2.4 On 5 February 2008, the Regional Court in Pleven issued a ruling based, to a large extent, on the experts' opinion. It recognized the long-term effect of the sexual violence on the author's daughter and sentenced the perpetrator to pay 30,000 leva (15,000 euros) for moral damages. Based on the ruling, a writ of execution was issued on 9 April 2008. On 26 May 2008, the author and her husband filed a claim for execution before a private bailiff in Pleven. A special execution file was established on the basis of the claim. Since then and up

(3) In such cases the court may not impose the lesser punishment provided by law along with punishment by deprivation of liberty.

(4) (Repealed, SG No. 28/1982)." Unofficial translation.

⁴ Article 84(1) of the Criminal Procedure Code reads: "Art. 84. (1) The injured and his/her heirs, as well as the legal persons who suffered damages from the crime, may file a civil claim for compensation of the damages and to establish themselves as civil claimants in the court procedure." Unofficial translation.

⁵ Article 381 of the Criminal Procedure Code reads: "Agreement on settlement of the case in the court procedure

Art. 384. (1) Under the conditions and in accordance with the procedure of this chapter, the court of first instance may approve an agreement on the settlement of the case, reached after the institution of the court proceedings but before the conclusion of the court investigation.

(2) The court shall appoint a defender for the defendant, where he/she has not authorised one himself/herself.

(3) In such case, the agreement shall be approved only with the consent of all parties." Unofficial translation.

⁶ Article 45 of the Law on Contracts and Obligations reads "Everyone is obliged to repair the damages he/she guiltily inflicted on others. In all cases of tort guilt is assumed until proven otherwise." Unofficial translation.

⁷ Article 52 of the Law on Contracts and Obligations reads: "Art. 52. Moral damages are determined by the court in accordance with the principle of equity" Unofficial translation.

to the date of submission of the communication, the private bailiff took all measures possible under the domestic legislation, upon the author's and her husband's initiative, to identify the perpetrator's assets and ensure the execution of the judgement. Besides an initial amount of 1,000 leva (500 euros), received from the perpetrator's employer, the inquiry showed that there were no assets under the perpetrator's name and no further moneys could be collected. The author submits that it was she, and not the State party, that had to act in order to secure the execution of the Court's ruling, that the execution procedure is not free of charge for the victim, and that she had to pay over 3,000 leva (1,500 euros) for the execution procedure to be implemented. Despite all these efforts, her daughter's right to compensation remains valid only on paper. After contacting several State authorities on this issue, the author was told that the existing laws did not, in the present case, enable the implementation of the court judgement.

2.5 After the crime was committed, the perpetrator continued to live in the close vicinity of the victim's home, in the neighbouring apartment block. She has repeatedly expressed her fear of further aggression from him.⁸ The author submits that the current legislation in Bulgaria provides no protection for the victims of sexual crimes after the end of the criminal proceedings.

Complaint

3.1 The author submits that her daughter is a victim of violation of her rights under article 1; article 2, paragraphs (a), (b), (c), (e), (f) and (g); read in conjunction with articles 3 and 5; article 12 and article 15 of the Convention.

3.2 The author submits that the State party did not act with due diligence for the effective protection of the author's daughter against the sexual violence suffered and its consequences. She maintains that it had failed to ensure her right to effective compensation for the moral damage suffered. In the meantime, and as a result of the sexual violence, the author's daughter's rights to health, including reproductive health, and education are affected and they may be further affected. She further maintains that the State party had also failed to provide the author's daughter with proper rehabilitation services and counselling. The author also maintains that the State party failed to adopt adequate legislative and policy measures to guarantee the author's daughter's rights against the risk of further violence by the perpetrator, as he continues to live in the neighbouring apartment block. The author further submits that her daughter's rights are not guaranteed against stereotyping of her as a girl with disability who has suffered sexual violence and against the perception, endorsed by the law, that the sexual violence that she suffered was a mild form of violence.

3.3 The author refers to the definition of discrimination against women under article 1 of the Convention and recalls that, according to the Committee's general recommendation No. 19 (1992) on violence against women, it includes gender-based violence and in particular acts that inflict physical, mental or sexual harm or suffering.⁹ She submits that women and girls in Bulgaria are far more affected than men by sexual violence and by the failure of the

⁸ The author notes that the Criminal Procedure Code, adopted in April 2006, provides for the possibility for a victim of a crime or the prosecutor to request a restriction order, forbidding the alleged perpetrator to approach the victim until a verdict enters into force. The above law however cannot be applied in the case of the author's daughter.

⁹ The author makes reference to paragraph 9 of the Committee's general recommendation No. 19, which states: "States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation."

State to take sexual violence seriously, especially against young girls, who are the main victims, as well as their right to effective compensation for the violence suffered.¹⁰ She maintains that the failure of the State party to ensure protection for her daughter against sexual violence and its consequences, including the failure to ensure compensation and rehabilitation, amount to discrimination against her and have the effect of impairing the full realization of her human rights.

3.4 The author submits that the lack of a special law on equality between men and women and the lack of explicit recognition of violence against women in Bulgaria, as well as the absence of special measures in favour of women and girl victims of sexual violence had resulted in inequality in practice and denial of her daughter's enjoyment of her human rights. She notes that during the consideration of Bulgaria's second and third periodic reports to the Committee,¹¹ the Government representative had acknowledged that in the Bulgarian society there was *de jure*, but not *de facto* equality for women and that the Committee had observed that the reports did not reflect any government strategy regarding national machinery to address women's issues and to implement the Convention. She also notes that one of the dominant concerns of the Committee was the problem of violence against women in Bulgaria, in both the public and private spheres and that the Committee recommended that legislative measures protecting women against violence should be strengthened. She further notes that in 2009 Bulgaria had submitted an overdue periodic report to the Committee which reflected the same "approach of formal equality" and that its content showed that no steps had been taken to implement the recommendations of the Committee, namely that there is no special gender equality legislation and no gender equality mechanism in Bulgaria.

3.5 The author maintains that the absence of such a legislation and gender equality body creates the environment for the continuing discrimination against her daughter in relation to the violence suffered and its consequences. She further maintains that, in her daughter's case, the State had not ensured the legislative and policy measures for her protection from sexual violence and its consequences, since it had not provided a reliable system for effective compensation of the victims, including for moral damages. The execution procedure for civil court judgements does not give guarantees for real compensation. The Legal Aid Act (enacted in January 2006) does not provide for legal aid for the execution procedure, even to victims who are disabled as a result of the sexual violence experienced, such as the author's daughter. The Law for Support and Financial Compensation of Victims of Crimes does not cover moral damages at all. There is no State fund for victims/child victims of sexual violence. In addition the State did not ensure the safety of the author's daughter after the end of the criminal proceedings, since the perpetrator was released and lives in the vicinity of their home.

3.6 The author further maintains that the State party had failed to provide protective and support services for her daughter and other victims of sexual assault and that special rape crisis centres, trained health workers, psychologists, rehabilitation and counselling

¹⁰ The author submits that young girls are the main victims of sexual violence in Bulgaria; that sexual molestation crimes constitute 5.54 per cent of the crimes against children; and that girls represent about 70 per cent of the victims. The data submitted comes from a study conducted by the Association of Judges in 2009-2010 entitled "Criminological risk factors in crimes committed by and against children".

¹¹ Bulgaria's second and third periodic reports were considered during the Committee's 18th session in 1998.

services are not available.¹² She maintains that the above constitute violations of her daughter's rights under article 2, paragraphs (a), (b), (c), and (e), of the Convention.

3.7 With regard to the alleged violations of her daughter's rights under article 2, paragraphs (f) and (g), read in conjunction with article 5 of the Convention, the author submits that the whole attitude of the State towards the severe violations of women's rights that sexual violence represents, is conditioned by the deep ideological stereotyping of sexual crimes as acts of "debauchery", as crimes against honour. That stereotyping approach also marks the mild punishment for the perpetrator in her daughter's case and the lack of an effective remedy for ensuring compensation for the consequence of the grave violation of her rights. The author submits according to article 158 of the Penal Code "In the cases of Articles 149 - 151 and 153, the perpetrator shall not be punished, or the imposed punishment shall not be served, if prior to the enforcement of the sentence there follows a marriage between the man and the woman." The above articles cover cases of molestation and rapes, including statutory rape, and according to the author this "solution" of the law goes against women's rights, rewards the perpetrator, rather than punishing him and illustrates the "patriarchal ideology" of the law. The author maintains that, in violation of the Convention, the State party has failed to review and repeal the above provisions of the law.

3.8 With regard to the alleged violation of her daughter's rights under article 12 of the Convention, the author submits that the State party had failed to ensure legal and policy measures, including health-care protocols and hospital procedures to address violence against women and abuse of girl children and the provision of appropriate health-care services. In particular she submits that the State party did not provide trained personnel for the specific case of sexual violence. As a result of the violence suffered the author's daughter was diagnosed as a person with disability and the author submits that the State party had failed to ensure the appropriate special health care services.

State party's submission on the merits

4.1 On 16 January 2012, the State party submits that it is pursuing a consistent policy aimed at preventing and eliminating any forms of discrimination, including against women and girls. The Ministry of Labour and Social Policy (MSLP) has been implementing a number of gender equality and anti-discrimination projects with the main purpose of increasing public sensitivity through information campaigns, seminars and round tables. The participants in these events are introduced to the legal framework for gender equality, the international commitments of Bulgaria as a State party implementing a number of international human rights instruments, including the Convention on the Elimination of All Forms of Discrimination against Women and the Committee's general recommendations. More than 3,000 representatives of the bodies of central and local government, the judicial system, social partners and civil society have received training in the field of gender equality, conditions of work, equal remuneration of men and women, etc. The National Council on Equality between Women and Men has made a considerable contribution in this direction and is developing and executing the national policy on the issues of equality of men and women in cooperation with governmental and non-governmental partners. National plans for active encouragement of the equality of men and women have been implemented on an annual basis.

4.2 The State party further submits that it had supported the adoption of the European Pact for gender equality (2011-2020), which places a "new accent" on the commitment

¹² She further submits that the Government does not ensure regular analysis, monitoring and reporting on the legislation related to gender equality, and in particular to violence against women and girls, which would have helped to avoid violations of women's and girls' rights, such as her daughter's.

of the member States to campaign against all forms of violence against women.¹³ It submits that it firmly supports the actions aimed at development of preventive measures against violence based on gender, including trafficking for sexual and labour exploitation, since the prevention of violence based on gender is of paramount importance and requires active education, training and close cooperation between all institutions and organizations. The State party submits that at national level the Ministry of Interior, in cooperation with non-governmental organizations (NGOs), organized numerous “initiatives connected with the active prevention of violence based on gender and human trafficking” and as a result there was “heightened awareness” among citizens of the concrete problems and “lasting tendencies” in the reduction of such cases.

4.3 The State party submits that victims of discrimination have the option of submitting a complaint before the Commission for Protection against Discrimination or before a court. The Commission is an anti-discrimination body which cooperates closely with civil society and the media, carries out training, surveys, organized awareness-raising campaigns, etc. Since its establishment in 2005, the complaints lodged before the Commission have been constantly rising, which, according to the State party, demonstrates increased confidence in this institution.¹⁴ The procedure before the Commission is free of charge for complainants and all costs are borne by the State Budget.

4.4 Regarding the present case, the State party submits that it concerns a crime criminalized under the Criminal Code of the Republic of Bulgaria. The complainant has defended the rights of her underage child in the subsequent penal proceedings and the case came to a conclusion with a plea-bargaining agreement. A civil court has examined the subsequent civil case on damages for pain and suffering and loss of amenity in accordance with the Civil Procedure Code and the Obligations and Contracts Act. The civil proceedings had been concluded and the court had come to a decision on the damages in the complainant’s favour.

4.5 The State party submits that, as is evident from the documents provided by the complainant, the perpetrator was charged and found guilty under article 149, paragraph 1, of the Criminal Code, which at the time the offence was committed provided for punishment by imprisonment for up to five years. Since then, the State party submits that it has taken into account the “severe sexual violence nature of the crime, its relationship to how the female sex is perceived in society and, in order to eliminate any views on the inferiority of the female sex” and has amended article 149, paragraph 1, of the Criminal Code, setting a minimum sentence of one year and extending the upper limit of the penalty for the crime to up to six years, thus making it a serious crime. The amendment was adopted in 2006 and the State party maintains that it demonstrates its will to implement “the conditions and agreements expressed in CEDAW article 2 (b) and (c)”. In addition, the Criminal Procedure Code no longer allows the admittance of a plea-bargaining agreement under article 381, paragraph 2, in such cases.

4.6 Another change to the Criminal Code, which reflects the increased measures taken by the State party on the matter of sexual crimes and pertaining to their close relationship to discrimination against women, was made in 2007, namely, article 149 of the Criminal Code, which was supplemented with a new point 4 to paragraph 5, stating: “Fornication

¹³ The State party submits that the Pact was adopted on 7 March 2011 by a Conclusion of the European Union Employment, Social Policy, Health and Consumer Affairs Council.

¹⁴ The State party submits that in 2005, there were 27 complaints to the CPD, in 2009: 1039, and in 2010: 838. Cases alleging discrimination against women were as follows: 3 in 2006; 10 in 2007, 10 2008; 6 in 2009, and 10 in 2010.

shall be penalized by imprisonment from five to twenty years if it constitutes a particularly grave case.” The term “particularly grave case” is defined in article 93 of the Criminal Code as a case “in which the crime perpetrated, in view of the harmful consequences that have occurred and of other aggravating circumstances, reveals extremely high degree of social danger of the act and the perpetrator”. The State party maintains that it has thus further strengthened its legislation regarding acts of sexual violence, increasing the protection of women against discrimination by allowing an increase in the sentences in cases that require that additional measure. The State party has recognized the need to further increase the penalty for sexual violence crimes in such severe cases in the hope of preventing them and guaranteeing the full human rights and fundamental freedoms of women.

4.7 The State party further submits that the competent Bulgarian authorities have enforced the relevant provisions of the Child Protection Act. The social workers from the “Child Protection” services in the town of Pleven have stepped forward and initiated observation of the child on grounds of the court case. The child is diagnosed with disability “with 50% capabilities of social adaptation with external help.” The State party further submits that the parents have maintained close contact with the child’s teachers, who have provided help with any problems that have emerged with the child’s behaviour; that “Child Protection” services have been conducting regular consultations with the parents. The State party maintains that “at an earlier stage,” it was suggested that the child be directed towards a “suitable specialist”, but the parents declined the suggestion because at the time the school psychologist of the school for children with disabilities was working with the child. The child was accepted into the second grade in the school year 2005/2006 and was directed to the above school by an expert committee on pedagogic evaluation at the Regional Inspectorate of Education. Previously the child had attended a regular elementary school.

4.8 The State party submits that at the time of the enrolment of the child in the school for children with disabilities, experts had considered that she was depressed and was refusing to approach the male members of the staff. Having received help by the psychologist, the child had become calm, had built a firm emotional connection with the class head teacher, and had overcome her anxiety in her relationships with others, had successfully adapted to the group of children and had been expressing the will to help others in need. It further submits that in the school year 2011/2012, the child is in the seventh grade and regularly attends the school classes. She has developed “healthy self-confidence and now plays a leading role in celebrations, holiday and school events”.

Author’s comments on the State party’s observations

5. On 7 March 2012, the author submits that the State party’s submission is not pertinent to the substance of the communication, as it does not address the “central issue” of the lack of mechanisms for effective compensation and reparation for the damage suffered by her daughter and the related violations of the Convention. The author contests the State party’s submission and maintains that the social services in their home town have never taken an interest in the situation of her daughter, and that the State party has never offered any specialized child psychologist to treat her. She maintains that the State party’s submission describing her daughter “living in an environment of constant State care and almost in serenity contains elements of underestimation of her situation and is an offence to her dignity”. She submits that, contrary to the State party’s submission, her daughter’s situation is in fact worsening, that she continues to live as a person with disability and that

she had been recently diagnosed with hypomania.¹⁵ She further submits that she had been contacted by the State party's authorities with a request to provide them with a Bulgarian translation of her submission to the Committee, that the government representatives' attitude was "offensive and victimizing" and that they demanded to know what the complaint was about and who the lawyers assisting her were.

State party's further submission

6. On 24 April 2012, the State party submits a translation of a "Social report", dated 18 April 2012 and signed by the Director of the Social Assistance Directorate, Child Protection Division, of the Municipality of Pleven. It states that in 2007 the social worker, after examining the available documentation on the case, had expressed the position that the claim made for financial compensation was in the child's interest. The report confirms that before the attack the author's daughter studied in a regular school and that afterwards she had to be transferred to a school for children with disabilities. It assesses the family environment of the child and states that she is currently attending eighth grade and that after working with a psychologist she has "built her self-confidence and has become a leader in celebrations, festivities and school events".

Author's comments on the State party's further submission

7. On 2 July 2012, the author submits that the "Social report" submitted by the State party is from a date much later than the main period indicated in the communication. Moreover, she submits that such reports are usually produced under the Law on Child Protection by the social assistance bodies of the State party in court proceedings related to divorce or custody law suits, or in a procedure related to the identification of children at risk in their families. She maintains that the above document has nothing to do with the procedure under the Convention, where the responsibility of the State party and not of the parents is at stake, and therefore she considers it irrelevant to the present case.

Issues and proceedings before the Committee

Consideration of the admissibility

8.1 In accordance with rule 64 of its rules of procedure, the Committee shall decide whether the communication is admissible or inadmissible under the Optional Protocol.

8.2 The Committee is satisfied that the matter had not already been and was not being examined under another procedure of international investigation or settlement.

8.3 The Committee further notes that the State party has not challenged the admissibility of the communication, that it has no reason to find the communication inadmissible on any ground and accordingly finds the communication admissible.

Consideration of the merits

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

9.2 In the present case, the Committee observes that the following facts were not contested by the parties: the author's daughter was the victim of an act of sexual violence in 2004; charges against the perpetrator of the crime were not issued until 17 April 2006, almost two years after the offence was committed; the case was closed in June 2006,

¹⁵ The author presents a copy of the relevant medical certificate, dated 17 January 2012.

following the approval by the court of a plea-bargaining agreement between the prosecutor and the accused, which provided for a suspended sentence and did not award compensation for the pain and suffering suffered by the victim; a civil court judgement, sentencing the perpetrator to pay compensation for “moral damages”, could only be secured after the author filed a private civil law suit and was not issued until 5 February 2008, four years after her daughter suffered the act of sexual violence; the judgement de facto could not be executed with the mechanisms available in the domestic legislation. In addition, the Committee notes the author’s submissions that the failure of the State party to ensure her daughter’s protection against the consequences of the sexual violence, including the failure to ensure compensation and rehabilitation, amount to discrimination against her and have the effect of impairing the full realization of her human rights, and that women and girls in Bulgaria are far more affected than men by sexual violence and by the failure of the State to take seriously sexual violence, especially against young girls, who are the main victims of sexual violence in Bulgaria, or their right to effective compensation for the violence suffered.

9.3 The Committee recalls that States parties have an obligation under article 2 of the Convention to eliminate discrimination against women of all ages, including girls. The Committee further recalls that the definition of discrimination under article 1 of the Convention includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately and includes acts which inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. Gender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence.¹⁶ The Committee also recalls its general recommendation No. 19 to the effect that States parties should take appropriate and effective measures to overcome all forms of gender-based violence, whether by public or private act.¹⁷ Furthermore, the State parties may also be responsible for private acts under article 2 (e) of the Convention if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation.¹⁸

9.4 The Committee recalls that article 2, paragraphs (a), (f) and (g), establishes the obligation of States parties to provide legal protection and to abolish or amend discriminatory laws and regulations as part of the policy of eliminating discrimination against women and that they have an obligation to take steps to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.¹⁹

9.5 The Committee further observes that the State party does not provide any explanation as to why the act of sexual violence suffered by the author’s daughter was prosecuted as an act of molestation, rather than a rape or an attempted rape. The Committee finds that the facts of the present case reveal anal penetration of a sexual nature by a bodily part of the perpetrator as well as an attempted rape.²⁰ The Committee, notes that the perpetrator was prosecuted under article 149 of the Criminal Code, that the act committed was not classified as a serious crime and that the punishment for such acts of sexual violence was not equivalent to the punishment provided for in article 152 of the

¹⁶ See the Committee’s general recommendation No. 19 (1992), para. 6.

¹⁷ *Ibid.*, para. 24 (a).

¹⁸ *Ibid.*, para. 9.

¹⁹ See the Committee’s general recommendation No. 28 (2010) on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, para. 31.

²⁰ See definition of rape in article 36 of the Council of Europe Convention on preventing and combating violence against women and domestic violence, 11 May 2011.

Criminal Code for rape or attempted rape and that a plea-bargaining agreement was possible and was used in the present case. The Committee notes with concern that the perpetrator received only a suspended sentence of three years, which was considerably less than the prescribed statutory maximum sentence. The Committee finds that in the present case the State party failed to take positive measures under article 2 (b) of the Convention to adopt adequate criminal law provisions to effectively punish rape and sexual violence and apply them in practice through effective investigation and prosecution of the perpetrator.²¹ It also failed to provide for legislative measures that could provide support and protection to the victim of such violence in violation of article 2, paragraphs (a), (f) and (g), of the Convention.

9.6 The Committee notes that in 2006 the State party amended article 149 of the Penal Code to give the acts classified under article 149, paragraph 1 of the Penal Code the status of “serious crimes” and that plea-bargaining agreements are no longer possible for charges under that article. The Committee however observes that despite these legislative amendments the punishment for acts under article 149 is still lower than the punishment for rape or attempted rape and that sexual crimes continue to be prosecuted as acts of “debauchery”. The Committee further notes that under article 158 of the Criminal Code crimes under articles 149 - 151 and 153 are not punished, or the imposed punishment is not served, if prior to the enforcement of the sentence there follows a marriage between the man and the woman. The above articles cover cases of molestation and rape, including statutory rape. The Committee finds that such legislation is not in line with the Convention, and recalls that in its concluding observations, issued after the consideration of the combined fourth to seventh periodic reports of Bulgaria, it recommended that article 158 of Criminal Code be repealed.²² The Committee considers that the State party has failed to review and repeal the above provision of the law in line with its obligations under article 2 (g) of the Convention. It further observes that the above provision reflects harmful gender stereotypes, which are contrary to article 5 of the Convention.

9.7 The Committee also observes that the existing legislation does not appear to contain any mechanisms for protection of victims of sexual violence from re-victimization, since after the end of the criminal proceedings the perpetrators are released back into society and that there is no legal mechanism, such as a protection and/or restriction order, to ensure the protection of the victim. The Committee considers the lack of such provisions resulted in violation of the rights of the author’s daughter under article 2, paragraphs (a), (b), (e), (f) and (g); read together with articles 3 and 5, paragraph 1; of the Convention.

9.8 The Committee further takes note of the State party’s submission that it implements numerous programmes to promote the equality of women and men in society, but it observes that it does not provide any information as to how these programmes relate to the situation of girl victims of sexual violence and to the case of the author’s daughter in particular. No information is provided in particular on measures adopted to combat sexual violence against women and girls and to address the consequences of such violence on the enjoyment of their Convention rights. Accordingly the Committee finds that the State party has violated the rights of the author’s daughter under article 2, paragraph (c), and article 15 of the Convention.

9.9 The Committee also observes that the State party does not provide any explanation as to the length of the pretrial proceedings and in particular as to why nearly

²¹ See also the judgement of the European Court of Human Rights, *M.C. v. Bulgaria*, application No. 39272/98 of 4 December 2003.

²² See the Committee’s concluding observations (CEDAW/C/BGR/CO/4-7), paras. 23-24.

two years had elapsed before an indictment was brought against the perpetrator. The Committee further observes that, despite the existence of a civil court judgement in favour of the victim, to date the victim has not received adequate monetary compensation for the pain and suffering endured, and that the legal mechanisms established by the State party do not appear to be adequate to ensure that she receives such compensation.²³

9.10 With regard to the author's claim that her daughter's rights under article 12 had been violated, the Committee recalls that gender-based violence is a critical health issue for women and that States parties should ensure: the enactment and effective enforcement of laws and the formulation of policies, including health-care protocols and hospital procedures to address violence against women and abuse of girl children and the provision of appropriate health services; and gender-sensitive training to enable health-care workers to detect and manage the health consequences of gender-based violence.²⁴ The Committee notes the author's claims: that the State party had failed to ensure legal and policy measures, including health care protocols and hospital procedures to address violence against women and abuse of girl children and the provision of appropriate health-care services; that the State party did not provide trained personnel for the specific case of sexual violence; that as a result of the violence suffered the author's daughter was diagnosed as a person with disability; and that the State party had failed to ensure the appropriate special health-care services. The Committee also takes note of the State party's submission that social workers from the "Child Protection" services in her home town have initiated "observation of the child" following the court case, that she was diagnosed with a disability, assigned to a special school for children with disabilities and that the school's psychologist worked with the child. The Committee however observes that the author has contested the assertion that social workers took charge of her daughter's case. It further observes that the State party has not provided information regarding any health-care protocols, or hospital procedures that were applied or the health services provided to the author's daughter in the immediate aftermath of the act of sexual violence that she experienced, and that scant information is provided as to the health care provided to the victim to address the long-term consequences of the violence. The Committee concludes that the State party has failed to ensure the enactment and application of policies, including health-care protocols and hospital procedures to address the sexual violence experienced by her and that it did not provide appropriate health services in her case and accordingly finds that the State party has violated the rights of the author's daughter's under article 12 of the Convention.

9.11 With regard to the author's claim that her daughter's rights under article 15 of the Convention had been violated, the Committee notes the State party's submission that its civil court ruled in favour of the applicant and issued a decision awarding compensation of moral damages to the author's daughter, but observes that the State party has failed to ensure the effective implementation of that court decision. The Committee observes that article 15 of the Convention embodies the principle of equality before the law, and that under this article, the Convention seeks to protect women's status before the law, be it as a claimant, a witness or a victim, and that the above includes the right to adequate compensation in cases of violence including sexual violence.²⁵ The Committee observes that the State party has not provided a reliable system for effective compensation of

²³ The documents submitted by the author demonstrate that to date her daughter has received the equivalent of 500 euros, while she and her husband spent over 3,000 leva (1500 euros) solely on covering the expenses for the execution procedure.

²⁴ See the Committee's general recommendation No. 24 (1999) on women and health, para. 15.

²⁵ See the Committee's general recommendation No. 19, para. 24 (i).

the victims of sexual violence, including for moral damages and that no legal aid scheme exists for the execution procedure, even for victims who are disabled as a result of the sexual violence experienced, such as the author's daughter. Accordingly, the Committee finds that the victim's right to effective compensation for the moral damage suffered under article 15, paragraph (1) in conjunction with article 2, paragraphs (c) and (e), of the Convention have been violated.

10. Acting under article 7, paragraph 3, of the Optional Protocol to the Convention, and in the light of all the above considerations, the Committee is of the view that the State party has failed to fulfil its obligations and has thereby violated the rights of the author's daughter under articles 2, paragraphs (a), (b), (c), (e), (f) and (g); read together with articles 1, 3 and 5, paragraphs (a) and (b); article 12 and article 15, paragraph (1); of the Convention and makes the following recommendations to the State party:

(1) Concerning the author of the communication, acting on behalf of her daughter:

To provide reparation, including appropriate monetary compensation, commensurate with the gravity of the violations of the rights of the author's daughter.

(2) General:

(a) To repeal article 158 of the Criminal Code, and to ensure that all acts of sexual violence against women and girls, especially rape, are defined in line with international standards and effectively investigated and that perpetrators are prosecuted and sentenced commensurately with the gravity of their crimes.

(b) To amend the 2006 Legal Aid Act to provide legal aid for the execution of judgements awarding compensation to victims of sexual violence.

(c) To provide an adequate mechanism for provision of compensation for moral damages to victims of gender-based violence, including through amending the Law on support and financial compensation to crime victims.

(d) To amend the criminal legislation to ensure effective protection from re-victimization of the victims of sexual violence after the perpetrators are released from custody, including through the possibility of obtaining protection and/or restriction orders against perpetrators.

(e) To ensure the enactment and application of policies, including health-care protocols and hospital procedures to address sexual violence against women and girls.

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