

FINAL THESIS

The Issue of Domestic Violence in Bulgaria and the Curious Case of the Istanbul Convention

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LLM Final Thesis

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EXECUTIVE SUMMARY (OR ABSTRACT)

This thesis will constitute a description of the issue of domestic violence in Bulgaria, and will introduce an assessment of the Bulgarian legislation regulating the problem of domestic violence, and try to provide insight into the complicated issue of the non-ratification of the Istanbul Convention. In doing that, the work at hand will introduce statistics, will provide the theoretical definitions of domestic violence used as used by academia and International documents, and focus on legislative issues and gaps related to protection of domestic violence, as well as case-law of the ECtHR on domestic violence having occurred in Bulgaria and case-law of CEDAW finding violations on the subject matter, as well as on the main CEDAW recommendations regarding Bulgaria. Moreover, after providing a description of the Curious case of non-ratification of the Istanbul Convention, the thesis will elaborate on the Constitutional Court judgement deeming it unconstitutional and finally assess what ratification of the Convention would (or would have) possibly change(d) and how it would (or would have) affect(ed) the national system. The main argument ultimately is that while certainly Bulgaria is already bound by certain national legislation in the field, and applicable human rights standards (ECtHR and CEDAW) on domestic violence, the Istanbul Convention would indeed provide additional protection to victims of such violence.

INTRODUCTION

Violence against women is a serious issue for the population of Bulgaria. While the problem is addressed to a certain extent by national legislation, the regulations do not provide sufficient protection to victims of such violence. The significance of exploring the legal problem derives from the importance of the issue of domestic violence, especially present in Bulgaria - a post-Soviet State with a relative patriarchal approach to the problem, one of the recent members of the European Union which per data of the Gender Equality Index for the last available data of 2017, has the highest rate on domestic violence in the EU - 44.2 % as per 27.2% EU average¹. While it is a fact that there are several legal acts dealing with the issue of domestic violence, such as the Protection Against Domestic Violence Act, and certain provisions of the Criminal Code of the Republic of Bulgaria, the Thesis will argue that they are not sufficient to guard the protection of women from domestic violence, as they have their deficiencies. The Thesis at hand sets the goal to assess the legislation, as well as some decisions on ECtHR and CEDAW level, and find the gaps that are yet to be filled. Moreover, the work at hand would present the issue with the disinformation campaigns against women's rights (claiming to be 'for traditional family values') and link such processes to the outcome of the non-ratification of the Istanbul Convention and note the international reaction to this issue. The question that the Thesis sets to answer is whether the Istanbul Convention would have brought a higher standard to protection of women from domestic violence, in what way and is there another road to reach such standard, and would it be equal to an actual ratification?

¹ Gender Equality Index, European Institute for Gender Equality, data of 2017, <https://eige.europa.eu/gender-equality-index/2017/compare-countries/violence/bar>, also cited by Report of the Special Rapporteur on violence against women, its causes and its consequences, on her visit to Bulgaria, A/HRC/44/52/Add.1, available at: <https://undocs.org/A/HRC/44/52/Add.1>

CHAPTER I. INTRODUCTION, THE SITUATION ON DOMESTIC VIOLENCE AND GENDER IN BULGARIA, ALONG WITH THE ISSUES REGARDING THE ISTANBUL CONVENTION

1. The issue of domestic violence in Bulgarian context

To measure the scope of the issue, one has to look at relevant statistical data. However, currently Bulgaria does not maintain official statistics on the number of women having suffered from domestic violence². The lack of such persists despite the fact that the Committee on the Elimination of Discrimination (CEDAW) criticized it and recommended that the State must „create a database and systematically collect statistical data on all forms of gender-based violence, including domestic and sexual violence, disaggregated by sex, age, disability, nationality and the relationship between the victim and the perpetrator“ in its Concluding observations on the eighth periodic report of Bulgaria³. Recommendations for States to adopt measures of similar nature – to establish a system of “statistical data on the number of complaints about all forms of gender-based violence against women“ are also made in General recommendation No. 35 on gender-based violence against women⁴.

² The author has expressed similar views on the situation of domestic violence in Bulgaria as part of a Third party intervention submission on behalf of the National Network for Children (NNC) for the Third-party submission to the ECtHR in the case of A.S.E v. Bulgaria, available at author’s request, para.3

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

⁴ General Recommendation 35 (2017), para.49

Despite the lack of statistics on State level, unofficial data on domestic violence is gathered by a number of Bulgarian based NGOs⁵ – hotlines for domestic violence victims, as well as by the Bulgarian Helsinki Committee (hereinafter BHC) and Bulgarian Fund for Women. Nevertheless, it should be kept in mind that such information has its deficiencies as it might be incomplete. The BHC keeps statistics on the number of intentional murders of women by men, which is available at a website named ubita.org (translation of “ubita” from Bulgarian to English means “killed”)⁶. According to it, for the year 2021, 22 women have been murdered by men in Bulgaria, and as this number is solely based on media coverage of such crimes, therefore the official statistics would be much higher. The latest case which shocked the general public yet again involves a woman disappearing from her premises, and later found disposed of in a landfill in another town, having been beaten to death by her ex-partner⁷.

The annual report for 2020 of the Ombudsman of the Republic of Bulgaria⁸ quotes data from civil society organizations to state that domestic violence cases have increased during the pandemic of COVID-19⁹. An example of this phenomenon would be that it is reported that the hotline emergency calls on domestic violence have risen from 30% of all emergency calls to 60%¹⁰. It is a fact that „violence against women tends to increase during every type of emergency, including epidemics“¹¹, and Bulgaria is no exception from this observation. In a recent report on the Human Rights situation in Bulgaria, BHK examined data acquired by the

⁵ The author has expressed similar views on the situation of domestic violence in Bulgaria as part of a Third party intervention submission on behalf of the National Network for Children (NNC) for the Third-party submission to the ECtHR in the case of *A.S.E v. Bulgaria*, available at author’s request, para. 4

⁶ Statistics available at: <https://ubita.org/>

⁷ „The prosecutor’s office: Alena Sterk murdered with particular cruelty”, BTV news website, available at: <https://btvnovinite.bg/bulgaria/alena-shterk-e-ubita-po-zhestok-nachin.html>, 30.05.2022

⁸ Annual report of the Ombudsman of the Republic of Bulgaria for 2020,, available at: [https://www.ombudsman.bg/pictures/ANNUAL%20REPORT%202020\(1\).pdf](https://www.ombudsman.bg/pictures/ANNUAL%20REPORT%202020(1).pdf)

⁹ The author has expressed similar views on the situation of domestic violence in Bulgaria as part of a Third party intervention submission on behalf of the National Network for Children (NNC) for the Third-party submission to the ECtHR in the case of *A.S.E v. Bulgaria*, available at author’s request, para.4.

¹⁰ Annual report of the Ombudsman of the Republic of Bulgaria for 2020, available at: [https://www.ombudsman.bg/pictures/ANNUAL%20REPORT%202020\(1\).pdf](https://www.ombudsman.bg/pictures/ANNUAL%20REPORT%202020(1).pdf)

¹¹ Policy brief of World Health Organization, <https://www.who.int/publications/i/item/covid-19-and-violence-against-women>

Ministry of Interior (not publically available, obtained by them per request under the Access to Information Act) on the calls to the emergency line on domestic violence and for the protection measures proceedings, to conclude that the problem of domestic violence remains higher as to figures prior to the pandemic.¹² Moreover, in January 2022 the Minister of Justice Nadezhda Yordanova quoted data from the Ministry of Interior that 3244 protection orders were issued in 2021, but as they cover both the woman, and in some cases – her children, the number of affected people by violence can be much larger¹³.

Another issue that is present when it comes to domestic violence in Bulgaria is that there are only 13 crisis centres (from which 10 are domestic violence shelters and one of which is opened for men victims residing in a separate building, and 3 for women victims of trafficking)¹⁴ in the territory of Bulgaria, which means that there are whole municipalities lacking a shelter, moreover the places in the existing ones are insufficient to cover the needs by 82% as reported by a Women Against Violence in Europe¹⁵. The fact of the inadequate number of shelters has been criticized many times on international and European level, including by CEDAW¹⁶ and the Commissioner for Human rights of the Council of Europe Dunja Mijatovic¹⁷.

¹² Human Rights in Bulgaria in 2021, BHK, available at:

https://www.bghelsinki.org/web/files/reports/157/files/BHC-Human-Rights-in-Bulgaria-in-2021-bg_issn-2367-6930.pdf, p. 116

¹³ 3244 Protection orders were issues in Bulgaria in 2021, 21 January 2021, Boulevard Bulgaria Media, available at: <https://boulevardbulgaria.bg/articles/3244-ogranichitelni-zapovedi-za-domashno-nasilie-sa-bili-izdadani-u-nas-prez-2021-g>

¹⁴ Human Rights in Bulgaria in 2021, BHK, available at:

https://www.bghelsinki.org/web/files/reports/157/files/BHC-Human-Rights-in-Bulgaria-in-2021-bg_issn-2367-6930.pdf, p. 119

¹⁵ Women's Specialist Support Services in Europe and the impact of COVID-19 on their provision, WAVE Country report for 2021, https://wave-network.org/wp-content/uploads/WAVE_Country-Report.pdf, December 2021

¹⁶ ¹⁶ The Committee on the Elimination of Discrimination against Women adopted its latest Concluding observations on the eighth periodic report of Bulgaria (CEDAW/C/BGR/8) at its 1761st and 1762nd meetings (CEDAW/C/SR.1761 and CEDAW/C/SR.1762), held on 19 February 2020 at its seventy-fifth session, 10 March 2020, para.23 e), p.6

¹⁷ Commissioner for Human rights of the Council of Europe Dunja Mijatovic, Report following her visit to Bulgaria from 25 to 29 November 2019, <https://rm.coe.int/report-on-the-visit-to-bulgaria-from-25-to-29-%20november-2019-by-dunja-m/16809cde16>, 31 March 2020, p.22

Moreover, In its last Concluding observations to Bulgaria¹⁸, CEDAW expressed concerns that women and girls in Bulgaria, especially those facing intersecting forms of discrimination, “have limited access to justice owing to pervasive corruption, social stigma, the inaccessibility of the judicial system, gender bias among law enforcement officers, including the police”¹⁹. In addition, the Committee states that it “remains concerned by the high rates at which complaints by victims of gender-based violence are withdrawn”²⁰. An example of the gender bias and undermining the issue of domestic violence in practice is observed in a very recent case where a woman, survivor of domestic violence which left her abuser and was placed in a Domestic Violence Shelter, was taken by police escort from the town the shelter was in to the town where she used to reside, to help discourage her abuser from committing suicide by jumping off a tree since he required her being brought to him. The woman was reportedly instructed to say she loved him and convince him to not commit suicide, and afterwards was questioned as a witness by the police and a psychologist for the means of the case for hours²¹. This striking, and even ridiculous situation, which might be determined as a form of manipulation of the abuser and reason for exposing the whereabouts of the woman, shows how the police considers the damages of exposing a victim to an abuser, and the victim herself as less important than complying with the demands of the abuser and his wellbeing.

In its Concluding observations²², CEDAW stated that it is concerned by “the fact that all forms of gender-based violence, including physical, sexual, psychological and economic violence,

¹⁸ The Committee on the Elimination of Discrimination against Women adopted its latest Concluding observations on the eighth periodic report of Bulgaria (CEDAW/C/BGR/8) at its 1761st and 1762nd meetings (CEDAW/C/SR.1761 and CEDAW/C/SR.1762), held on 19 February 2020 at its seventy-fifth session, 10 March 2020.

¹⁹ Ibid, para. 11

²⁰ Ibid, para. 23 (c)

²¹ Grabcheva, Vasilena, “They took out a domestic violence victim from a Domestic Violence Shelter to save her abuser”, Nova News, available at: <https://nova.bg/news/view/2022/06/10/371848/изведоха-жертва-на-домашна-агресия-от-защитено-жилище-за-да-спаси-насилника-си/>

²² The Committee on the Elimination of Discrimination against Women Concluding observations on the eighth periodic report of Bulgaria (CEDAW/C/BGR/8)

against women and girls are not defined and criminalized in the current legislation, nor is there provision for *ex officio* prosecution of acts of gender-based violence against women“²³. In contrast to the words of Evan Stark that regardless of the criminalization of domestic violence, „almost none of those arrested go to jail“, neither is “there compelling evidence that BIPs significantly improve victim safety“²⁴, I support the belief that criminalization of offences as *ex officio*, removing the one-month time limit for complaints and striking out the need for systemic domestic violence can only be a step forward for protection of victims of domestic violence.

In the latest reported femicide in Bulgaria²⁵ that caused outrage in the public, the woman who was murdered by her ex-husband had alerted the police forces per the emergency telephone line since February until her murder in late May, that he is abusing her, but as she did not submit a claim at the prosecutor’s office, the authorities using that as an excuse on why they did not act and failed to prevent the murder²⁶. Interestingly enough, the head of the Interior Ministry's Investigations Department stated that "The main versions of the murder are jealousy and business interests, but the leading version is love"²⁷. This view that the reason for the murder often times is “jealousy” and even a misconception of “love” is a clear indicator of the spread of the existing stereotypes on domestic violence, and how it is perceived as normalized and part of relationships, be it a dark but common part. The fact that the woman did alert the authorities resembles the factual circumstances of the case *Y and Others against Bulgaria*²⁸,

²³ Ibid.

²⁴ Stark, Evan, “Re-presenting Battered Women: Coercive Control and the Defense of Liberty” Prepared for Violence Against Women: Complex Realities and New Issues in a Changing World, Les Presses de l’Université du Québec (2012), p. 5

²⁵ Noting that the term ‘femicide’ as such does not exist in Bulgarian legislation, solely ‘murder’ with an aggravating circumstance if it was committed in the situation of domestic violence.

²⁶ “The murder of Alena Sterk which shook Bulgaria all we know until this moment”, Darik News website, available at: <https://dariknews.bg/novini/bylgariia/ubijstvoto-na-alena-shterk-koeto-raztyrsi-bylgariia-vsichko-koeto-se-znae-do-momenta-obzor-2312205>, 31 may 2022

²⁷ Ibid.

²⁸ Case of Y and others v. Bulgaria, no. **Error! Hyperlink reference not valid.**, ECtHR, 22 March 2022, accessible at: <https://hudoc.echr.coe.int/eng?i=001-216360>

which will be thoroughly assessed in a following Chapter, where the Applicant also dealt with several emergency calls and received no protection (the difference there be that she did obtain a protection order, which in the end did not serve its purpose to save her life), and shows that there has been no substantial progress and change neither in legislation, nor in the perception of the authorities and the way they treat and view domestic violence cases.

A conclusion from the statistics and recent real-life examples can be drawn that the issue of domestic violence in Bulgaria is a grave problem which remains unaddressed sufficiently by the society, the authorities, the justice system and the police forces, and it is an issue that only deepens throughout the difficult times of pandemic and isolation with possible perpetrators.

2. The terms ‘gender based violence’ and “domestic violence”

For the means of the analysis of this thesis, the terms ‘gender based violence’ or ‘gender violence’ will be introduced and the term ‘domestic violence’ will be introduced as being part of gender-based violence, thus illustrating that currently there is an international consensus in literature, as well as human rights definitions, that domestic violence in fact a form of gender-based violence and a human rights violation.

Author Sally Merry Engle defines ‘gender violence’ as “violence whose meaning depends on the gendered identities of the parties”²⁹ and as ‘interpretation of violence through gender’. According to her, gender violence is “an umbrella term for a wide range of violations” and can be both “physical and sexual”³⁰. She elaborates on the fact that “activists in the battered women's movement have expanded the meaning of gender violence from hitting and wounding,

²⁹ Sally Merry Engle (2009) “Introduction” in Gender violence: a cultural perspective, Gender Violence: a Cultural Perspective. Wiley-Blackwell, p.3

³⁰ Ibid, p. 4

including rape and murder, to a far more varied set of injuries and degradations”³¹, including emotional and psychological dimensions of gender violence, recognizing that it includes insult, humiliation, name-calling... and myriad other insults.”³² The author notes that the issue is not new and is persistent in every society but it became visible as a social issue in the last 30 years³³ as it wasn’t until the 1990s when “gender violence was defined as an important human rights violation for the first time”³⁴. One can consider an important development of the understanding of its seriousness that the issue is currently “considered the centerpiece of women's human rights”³⁵.

The Council of Europe Convention on preventing and combating violence against women and domestic violence (‘The Istanbul Convention’) in its Art. 3, para. (a) defines ‘violence against women’ as a “violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life“.

The Committee on the Elimination of Discrimination against Women (‘CEDAW Committee’ or CEDAW)³⁶ issued its General Recommendation 19 on gender-based violence³⁷(GR 19), which interpreted CEDAW as „**prohibiting violence against women**, in both the public and private spheres”³⁸. GR 19 states that “**Gender-based violence** is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with

³¹ Ibid.

³² Ibid.

³³ Ibid.

³⁴ Ibid.

³⁵ Ibid.

³⁶ The CEDAW Committee is the monitoring body for the [Convention on the Elimination of All Forms of Discrimination against Women](https://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx), for additional information on CEDAW Committee: <https://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

³⁷ General Recommendation 19 (1992)

³⁸ Hilder, Sarah, Bettinson, Vanessa, ‘Domestic Violence, Interdisciplinary Perspectives on Protection, Prevention and Intervention’, London : Palgrave Macmillan UK : Imprint: Palgrave Macmillan, 2016. p.19

men³⁹. Furthermore, the recommendation uses the definition of discrimination in Art. 1, para. 1 CEDAW as to include ‘gender based violence’, understood as “violence that is directed against a woman because she is a woman or that affects women disproportionately”⁴⁰. As noted by academic authors, GR 19 served as “a crucial development in that it served to bring domestic violence and indeed other types of violence against women, within the scope of CEDAW, as a form of discrimination and human rights violation”⁴¹.

CEDAW’s General Recommendation 35 on gender-based violence against women, updating GR 19, brought explicitly domestic violence to the list of issues that constitute “gender-based violence”, noting that “Gender-based violence against women, may amount to torture or cruel, inhuman or degrading treatment in certain circumstances, including in cases of rape, domestic violence or harmful practices, among others”⁴².

In line with the terminology presented, this thesis will view Domestic violence as a form of gender-based violence, and ultimately – a human rights violation.

CHAPTER II. INTRODUCTION OF THE LEGAL FRAMEWORK PROTECTING AND/OR NOT PROTECTING WOMEN. VIOLATIONS IN RELATION TO DOMESTIC VIOLENCE (ECTHR STANDARDS; CEDAW CASES)

1. Introduction of the legal framework of protection from domestic violence

³⁹ General Recommendation 19 (1992), para. 1

⁴⁰ Ibid, para. 6

⁴¹ Hilder, Sarah, Bettinson, Vanessa, ‘Domestic Violence, Interdisciplinary Perspectives on Protection, Prevention and Intervention’, London : Palgrave Macmillan UK : Imprint: Palgrave Macmillan, 2016. p.19

⁴² General Recommendation 35 (2017), para. 16

The current Chapter of the Thesis will provide a critical overview of the legal framework regulating domestic violence in Bulgaria and assess their deficiencies through a critical perspective, noting what could be improved.

The main legislative Act regulating domestic violence in Bulgaria is the Protection Against Domestic Violence Act (hereinafter PADVA)⁴³. It was introduced as a draft law in 2003 and finally adopted in 2005 and has been amended a number of times, lastly in December 2019. In the reasons for adoption of the Act in question, the legislature referred to the European Convention of Human rights⁴⁴ to provide legal arguments in favour of the need for its introduction. It is not a criminal Act, and does not amend the Criminal Code, it constitutes a civil law providing a way of protection regulated by civil courts.

The first issue to note is the fact that the act in question is written in gender neutral terms – per the words of Albena Koycheva, a human rights attorney-at-law specializing in women’s rights issues, “the first problem with (the Act) since the introduction of the draft bill, ie. since 2003 is that it is gender neutral, this feature has been strongly insisted on at the political level...this insistence not to include the gender aspect on the basis of gender - characteristics, features, causes, consequences, not to introduce this discourse at all was and continues to be extremely strongly preserved and further developed”⁴⁵.

Domestic violence is defined in Art. 2 of the Act as “any act of physical, sexual, mental, emotional or economic violence, as well as the attempt for such violence, the forced restriction

⁴³ “Protection Against Domestic Violence”, or “Domestic Violence Act” as referred in this paper, Promulgated in State Gazette. No. 27 of March 29, 2005, lastly amended in State Gazette issue 101 of December 27, 2019, accessible at: <https://www.lex.bg/bg/laws/ldoc/2135501151>

⁴⁴ Again in a general, blanket way, not referring to a particular article of the Convention or case-law.

⁴⁵ Interview with Albena Koycheva, human rights attorney at law, conducted for the means of this Thesis, 21.04.2022, Sofia, on file with the author (translated from Bulgarian to English by the author)

of private life, personal freedom and personal rights committed against people **who are related, who are or have been in a family relationship or in de facto cohabitation**".

In 2018, provisions were introduced in the Criminal Code to regulate domestic violence. The Reasons for the adoption of the Law amending and supplementing the Criminal Code⁴⁶ admitted that "despite the constitutionally declared equal rights of women and men, **there is in fact discrimination against women**, which takes place through some types of violence that are difficult to identify and prove"⁴⁷. The aim of the amendments were to "ensure adequate and comprehensive criminal protection from **all acts of violence against women, including domestic violence**"⁴⁸ and identified it as a "**socially dangerous phenomenon**."⁴⁹

As a result, the Criminal Code introduced domestic violence as an aggravating circumstance in several criminal provisions, such as - Murder⁵⁰, Bodily injury⁵¹, Kidnapping⁵², Coercion⁵³. However, they failed to regulate domestic violence as a separate stand-alone offence in itself, thus in the Bulgarian legal system there is not one crime of domestic violence, but only crimes that if committed in domestic violence situation, would be punished more harshly. Moreover, if the case of bodily injury is a light one, it is upon the victim to bring a claim and substantiate it, if she withdraws, the prosecution stops (it is not an ex officio offence).

The definition of domestic violence as an aggravated circumstance is stipulated by Art. 93, para. 31 of the Criminal Code: "The crime is perpetrated "in a situation of domestic violence" if it is preceded by the **systematic exercise** of physical, sexual or psychological violence,

⁴⁶ Law amending and supplementing the Criminal Code 854-01-76 of 24 November 2018, voted on 7th February 2019, adopted on 14th February 2019, accessible at: <https://www.parliament.bg/bg/bills/ID/78257>

⁴⁷ Ibid, translation from Bulgarian to English provided by the author.

⁴⁸ Ibid.

⁴⁹ Ibid.

⁵⁰ Art. 116 a) of the Criminal Code

⁵¹ Art. 131, 5a of the Criminal Code

⁵² Art. 142, 5a of the Criminal Code, Article 142a of the Criminal Code

⁵³ Art 143, (3), Article 144 (1) of the Criminal Code

placing in financial dependence, forced restriction of the personal life, personal freedom and personal rights and is carried out against **a relative of ascending or descending line, a spouse or a divorced spouse, a person with whom he/she has a child, a person with whom he/she is or was in a de facto cohabitation or a person with whom he/she lives or lived in the same household.**“

This definition is problematic since it introduces the condition of “systematic exercise” in order for the offence to be considered as one committed in the presence of domestic violence and therefore prosecuted. According to the existing case-law⁵⁴– “systematic“ means having occurred during at least three separate occasions of violence. This creates “additional hardships for the victim of domestic violence“⁵⁵ to take legal action and receive protection since they would have to wait for a number of offences against their integrity to happen before the offence to be defined as one in a condition of domestic violence. Moreover, this understanding does not acknowledge that sometimes even the first act of violence can be fatal. In addition, BHK has criticized the fact that the definitions of what exactly constitutes economic and psychological violence are lacking, and this prevents perpetrators of these forms of domestic violence from being actually prosecuted and punished⁵⁶.

The Istanbul Convention proposes a definition of domestic violence in its Art. 3 b) describing domestic violence as “all acts of physical, sexual, psychological or economic violence that

⁵⁴ “It is obvious that the legislator did not intend to criminalize every act of domestic violence, but only the one that is characterized by a system from which an increased public danger of the act can be derived. According to the understanding established in legal theory and practice, in order for an act to be considered systematic, it must be performed at least three times.” - Judgement of Ihtiman Regional Court Dated 9th March 2020 in Case № 671/2019 as also cited by the author in a Report on behalf of the Legal Aid Network of the NNC to the CRC on the 92nd Session in relation to reporting country: Bulgaria.

⁵⁵ The issue of the term “systematic exercise” has also been commented by the author in a Thematic Report on behalf of the Legal Aid Network of the NNC to the CRC on the 92nd Session in relation to reporting country: Bulgaria.

⁵⁶ Human Rights in Bulgaria in 2021, BHK, available at: https://www.bghelsinki.org/web/files/reports/157/files/BHC-Human-Rights-in-Bulgaria-in-2021-bg_issn-2367-6930.pdf , p. 116

occur within the family **or** domestic unit **or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim“.**

Per the standard set by the IC definition, it does not make a difference whether the partner is sharing a residence or not with the victim, and it covers any partner, therefore the definitions of domestic violence per Bulgarian law both in the PADVA and in the Criminal Code, are not in line with the one of the Istanbul Convention. The Bulgarian resolutions are narrower in scope; given that they consider as perpetrators only partners who are ex-spouses, spouses or people with whom the victim has a child or with whom they have lived. Therefore a partner with whom the victim has an intimate relationship but simply does not share a dwelling, and who for example beats her severely, would not be covered by the definition as inflicting a crime in a situation of domestic violence and will not receive a stronger penalty, or will not receive a restraining order. Moreover, as noted, the definition per the Criminal Code requires systemically inflicting harming the victim, which is contrary to the IC as it covers every act of violence.

Having elaborated on the definition, I will turn to assessing on the substantive parts of the Acts and the protection that they entail. Regarding the Protection Against Domestic Violence Act, there are two avenues for protection of the victims of domestic violence per Art. 4 of the PADVA: the right to turn to the court for protection (so-called protection order proceedings), and the opportunity to request for police protection in cases where there is evidence of danger to life or the health of the injured person.

Moreover, the protection proceedings may end with a protection order or an interim protection order „if the application contains indications of a direct and immediate risk to the victim’s life

or health“⁵⁷. As part of the procedure the court must issue the interim protection order in 24 hours, without prior notice to the perpetrator. The interim protection order „is not amenable to appeal and remains in effect for the duration of the main proceedings“⁵⁸.

The measures for protection against domestic violence imposed by the Court are regulated by Art. 5 of the PADVA. These are: 1. Obligation of the perpetrator to refrain from committing domestic violence, 2. Removal of the perpetrator from the jointly inhabited dwelling for the term determined by the court; 3. Prohibition of the perpetrator to approach the injured person, the home, the place of work and the places for social contacts and rest of the injured person under conditions and term determined by the court; 4. Temporary determination of the child's place of residence with the injured parent or with the parent who has not committed the violence, under conditions and term determined by the court, if this does not contradict the interests of the child; 5. Obligation of the perpetrator to attend specialized programs; 6. Referral of the injured persons to rehabilitation programs. The first of them – strictly obliging the perpetrator to refrain from harming the victim seems to not grant any specific protection for the victim of abuse since it is a general principle of law – to not inflict harm upon others.

Moreover, according to Art. 10 the complaint for protection under the PADVA to the Court should be submitted within **one month** of the act of domestic violence. This time limit is preclusive meaning that if it has passed, the Applicant has no right to acquire such protection. This provision is particularly harmful for victims of domestic violence who might not be aware of the time limit. Moreover, it is quite short in nature and easy to pass before a victim reaches out for help, hires a lawyer and lodges a complaint. CEDAW has also noted the one-month

⁵⁷ Case of Y and others v. Bulgaria, no. **Error! Hyperlink reference not valid.**, ECtHR, 22 March 2022, accessible at: <https://hudoc.echr.coe.int/eng?i=001-216360>, para. 50

⁵⁸ Ibid.

limit and remains concerned by it calling for the State “to remove the one-month time limit for filing protection order“⁵⁹.

Moreover, the anti-Convention and anti-gender rhetoric, as will be noted in sections of this Thesis, affected not only the adoption of the Convention itself, but continue to influence the topic of domestic violence as a whole. The deficiencies of the PADVA Act, alongside the gruesome femicides being committed on a regular basis, many of which even after the victim has sought help from the authorities, has served as a reason for activists in the field of human rights, and in particular – women’s rights, to call for urgent amendments to the Act. Despite the fact that a Draft Law on Amending the Protection against Domestic Violence Act⁶⁰ with some favourable provisions, such as raising the time to submit a claim for domestic violence from 1 month to 3 months, and even 6 months from the act of violence when objective reasons required the postponement was introduced in January 2021, as of June 2022, it still remains on a draft level. The reason for this halt of the adoption of the Act is the fact that once again in 2021, there were public reactions that such an Act would be against the traditional family values, similar claims that have been persistent since the anti-ratification of the IC discourse. Therefore, it is safe to state that the effects of the non-ratification are still persistent – despite the fact that the newly formed Government of the Republic of Bulgaria, and the Minister of Justice, supported in this endeavor by the Ombusman and human rights civil society organisations, renewed the process by conducting a few Work meetings part of the Working group to discuss the Draft Act in January 2022⁶¹, in June 2022 it is still not being deposited for

⁵⁹ The Committee on the Elimination of Discrimination against Women Concluding observations on the eighth periodic report of Bulgaria which date? Check citations of such reports. (CEDAW/C/BGR/8), para. 24.

⁶⁰ Draft Law on Amending the Protection Against Domestic Violence Act, available at: <https://www.strategy.bg/PublicConsultations/View.aspx?lang=bg-BG&Id=5774>

⁶¹ Members of parliament and experts discussed the changes in the Protection Against Domestic Violence Act, Nova News, 22 January 2022, available at: <https://nova.bg/news/view/2022/01/21/353954/депутати-и-експерти-обсъдиха-промени-в-закона-за-защита-от-домашно-насилие/>

voting in Parliament, perhaps for fear that the same disinformation waves would cause a political stir to this ‘sensitive’ topic once again. The Bulgarian prime minister Mr Kiril Petkov announced in January of 2022 that a figure of a vice-prime minister on domestic violence shall be created to act upon the issue. However, no such vice-prime minister has been created and the statement remained as a political promise.

Regarding the provisions of the Criminal Code, apart from domestic violence as an aggravated circumstances provision, since 2019 it regulates stalking in its harsh forms – in Art. 144a of the Criminal Code incriminates systematically stalking which incites justified fear for the person’s death, life or health or the life or health of their next of kin, where ‘systemically stalking is defined as: “any threatening behaviour against a particular person, which may involve persecuting the other person, demonstrating the other person that he/she is being watched, entering into unwanted communication with him/her by any means of communication”⁶².

The offence as defined as such therefore makes receiving protection for the victims quite hard, as it would be burdensome to prove that the actions by the perpetrator endanger their life, and it might quickly become too late for them while waiting for the persecution to reach a serious enough degree to be addressed. In its Annual Report on the state of Human rights for Bulgaria for 2021, BHC recommends that “Incrimination of persecution, which could arouse a well-founded fear for the freedom, sexual integrity and honor of the victim, and not just fear for the life or health of the victim”⁶³.

⁶² Art. 144a, para. 2 of the Criminal Code

⁶³ Human Rights in Bulgaria in 2021, BHK, available at:

https://www.bghelsinki.org/web/files/reports/157/files/BHC-Human-Rights-in-Bulgaria-in-2021-bg_issn-2367-6930.pdf, p. 116

2. Bulgarian Domestic Violence legislation through the eyes of the European Court of Human Rights (ECtHR)

The chapter at hand will analytically examine a crucial judgement in the field of domestic violence part of the case-law of the ECtHR – that of *Bevacqua and S. v Bulgaria*⁶⁴, and elaborate on the most recent case regarding domestic violence in Bulgaria – that of *Y and others v. Bulgaria*⁶⁵. The thesis will continue to assess individual applications on CEDAW level, and will focus on the cases *Jallow v. Bulgaria*, and case of *V.K. v Bulgaria*, dealing with the issues of domestic violence.

2.1. Case of *Bevacqua and S. v. Bulgaria*⁶⁶

The Applicants of the case are Mrs Valentina Bevacqua and her son (S.). The mother was a victim of domestic violence by the father (Mr. N.), deciding to file for divorce and seek an interim custody order⁶⁷. While these proceedings were in place for a time of more than 2 years, there were several beatings on behalf of Mr. N to the Applicant, and accounts where he either did not return the child back to his mother, or he took him from her apartment (therefore abducted him). At one point, Mrs Bevacqua took her son from kindergarten and found shelter in a domestic violence institution, to which N. responded by complaining to the local Juveniles Pedagogic Unit that she had abducted their son, as a result that they had to split the care of their child on a month-by-month each basis.

⁶⁴ *Case of Bevacqua and S v. Bulgaria*, no. **Error! Hyperlink reference not valid.**, ECtHR, 12 June 2008, accessible at: <https://hudoc.echr.coe.int/eng?i=001-86875>

⁶⁵ *Case of Y and others v. Bulgaria*, no. **Error! Hyperlink reference not valid.**, ECtHR, 22 March 2022, accessible at: <https://hudoc.echr.coe.int/eng?i=001-216360>

⁶⁶ *Bevacqua and S v. Bulgaria*, no. **Error! Hyperlink reference not valid.**, ECtHR, 12 June 2008

⁶⁷ *Ibid*, para.7

The Applicant had filed complaints to the prosecution authorities, pedagogic unit, and for the inaction of the police – to the Ministry of Interior. However, the replies she received were that “the matter had been examined and that no unlawful conduct on the part of police officers had been noted” and that they acted to the extent they could as “the remaining issues concerned a private dispute.”⁶⁸

Regarding the interim measure proceedings, as they were frequently postponed or delayed, the Applicant withdrew the request and focused on the divorce proceedings. The District court ruled that the ‘fault’ for the divorce is of both of the spouses, that „both parties had been good parents“⁶⁹, the custody of the boy was given to the mother and Mr. N received visiting rights.

When collecting her belongings, the first Applicant suffered another beating. She lodged a complaint to the prosecution, which ended in refusal to institute criminal proceedings for reasons that the injuries were characterized as light bodily harm and therefore private proceedings had to be issued by her.

The Applicants claimed violations of Articles 3, 8, 13 and 14 (prohibition of discrimination)⁷⁰, complaining that “the authorities failed to take the necessary measures to secure respect for their family life and failed to protect the first Applicant against the violent behavior of her former husband”⁷¹. The Court, however, decided to examine the complaint solely under Article 8⁷². In my opinion, the fact that it did not dwell into the case through the perspective of sex discrimination is a loss since it would have introduced a more gender-sensitive understanding of the issue of domestic violence as gender-based violence. Moreover, by not examining the

⁶⁸ Ibid, para.24

⁶⁹ Ibid, para. 34

⁷⁰ They also maintained a violation of Art. 6, para. 1 regarding “the length of the custody proceedings”, Para. 85, However this part of the claim will not be elaborated on, the Court found no violation of Art. 6. Para. 1

⁷¹ Case of Bevacqua and S v. Bulgaria, para. 54

⁷² The case is included in the Factsheet on domestic violence, European Court of Human rights, February 2022, p. 9, accessible at: https://www.echr.coe.int/Documents/FS_Domestic_violence_ENG.pdf

issue under Art.3, the Court not only avoids to define domestic violence as one of the three forms of ill-treatment and to give reasons under which category it falls, but it demonstrates that it does not matter “to any great extent on which specific article this finding was held to be based”⁷³. However, such a distinction does make a difference since it sends the message to the State for the gravity of the conduct and therefore – the necessity of measures needed to fight it to prevent a violation.

The Court reinforces the importance of Art. 8 containing the positive obligations of the State of “effective “respect” for private and family life”⁷⁴ and further elaborates that the respect of private life of Art. 8 includes “a parent’s right to the taking of measures with a view to his or her being reunited with his or her child and an obligation – albeit not absolute – on the national authorities to take such action”.⁷⁵

Regarding the respect for private life, the Court states that the „authorities’ positive obligations may include... a duty to maintain and apply in practice an adequate legal framework affording protection against acts of violence by private individuals“.⁷⁶ The Court emphasizes that the positive obligation arises not solely under Art. 2 or 3, but under Art. 8 in conjunction with them, and most importantly – even when Art. 8 is being applied alone⁷⁷. In my opinion, this approach is a step forward since there is no need for substantiating a violation of other articles, apart from Art. 8, which can sometimes be hard for the victims or even impossible based on the facts of the case (i.e. when the treatment complained of does not reach the minimum level of severity or there is no deprivation of life or an imminent risk of that), in order for the obligation of the State to arise. Moreover, I find important that the Court notes

⁷³ McQuigg, Ronagh, Domestic Abuse as Torture? Recent Jurisprudence of the European Court of Human Rights, accessible at: <http://qpol.qub.ac.uk/domestic-abuse-as-torture-recent-jurisprudence-of-the-european-court-of-human-rights/>

⁷⁴ Case of Bevacqua and S v. Bulgaria, no. **Error! Hyperlink reference not valid.**, ECtHR, 12 June 2008, para. 64

⁷⁵ Ibid, para.65

⁷⁶ Ibid, para.65

⁷⁷ Which, however, is not a new approach by the Court as it has been already established in the Case of X and Y v. the Netherlands, no. 8978/80, ECtHR, 26 March 1985.

“the particular vulnerability of the victims of domestic violence”⁷⁸ and calls for “the need for active State involvement in their protection”⁷⁹.

The Court evaluated the conduct of the state under the positive obligation to protect under Art. 8 while assessing both the interim measures requested by the first Applicant and the complaints of ill-treatment on behalf of N. to the authorities. By noting that the national court ignored the claim for interim measures for the first 6 months, and continued to adjourn the hearings, per the words of the ECtHR “for reasons so far removed from the substance of the dispute”⁸⁰, along with the fact that the second Applicant was affected and it was against his best interest as a child to be in a situation where there was no agreement for his custody, the Court concluded that this attitude on behalf of the State is “difficult to reconcile with the authorities’ duty to secure respect for the Applicants’ private and family life.”⁸¹ When examining the complaints under Article 8 regarding the aggressive behaviour of Mr.N, the Court assessed the inadequacy of the authorities’ reaction, and stated that they also concern the child’s respect of private life⁸².

The Court turned to the ‘margin of appreciation’ doctrine stemming from the principle of subsidiarity to once again establish that “the choice of the means to secure compliance with Article 8”⁸³ is left to the State. Nevertheless, to stem away from leaving it to the discretion of the State (and thus possibly not find a violation due to the large margin in such cases), the Court used the argument that it is under the ECtHR’s prerogative to examine the facts of the case before it⁸⁴, and concluded that “the measures taken by the police and prosecuting authorities on the basis of their general powers did not prove effective”⁸⁵.

⁷⁸ Case of Bevacqua and S v. Bulgaria, no. **Error! Hyperlink reference not valid.**, ECtHR, 12 June 2008, para.65

⁷⁹ Ibid, para.65

⁸⁰ Ibid, para. 74

⁸¹ Ibid, para.76

⁸² Ibid, para.79

⁸³ Ibid, para.82

⁸⁴ Ibid.

⁸⁵ Ibid, para.83

Moreover, the Court stated that private prosecution proceedings and civil damages were not sufficient as they “required time and could not serve to prevent recurrence of the incidents complained of”⁸⁶. In the Court’s opinion, the authorities’ failure to impose measures to stop Mr.N from harming the Applicant was critical and “amounted to a refusal to provide the immediate assistance the Applicants needed”⁸⁷.

Therefore, as a result of the combination of both the ineffectiveness of the interim measures proceedings and the inaction of the authorities regarding the claims of physical violence, the court, very rightfully in my opinion, found a violation of Art. 8. Moreover, the Court stressed on the incompatibleness of the belief that domestic violence was a “private matter” and thus no act on behalf of the State is needed with the “positive obligations to secure the enjoyment of the Applicants’ Article 8 rights.”⁸⁸ In the author’s opinion, this is a progressive decision for the protection of domestic violence victims and clearly shows that such an outdated understanding of domestic violence that the Government presented, as simply a matter between individuals, is intolerable.

2.2. Case of Y and Others v. Bulgaria⁸⁹

In the latest judgement of the ECtHR on domestic violence, the case of *Y and Others v. Bulgaria*⁹⁰, the Applicants are the mother and daughters of a woman (Mrs V.) killed by her husband (Mr. V) with whom they had been de facto separated, in broad daylight in a café in Sofia, the capital of Bulgaria. The victim had been harassed by the defendant for several months, and for each threat, insult or act of violence she had alerted the police, which can be

⁸⁶ Ibid.

⁸⁷ Ibid.

⁸⁸ Ibid.

⁸⁹ Case of Y and others v. Bulgaria, no. **Error! Hyperlink reference not valid.**, ECtHR, 22 March 2022, accessible at: <https://hudoc.echr.coe.int/eng?i=001-216360>

⁹⁰ Ibid.

seen as her being ‘the perfect victim’. Her complaints lead to no charges being brought against the abuser by the prosecutor authorities. Nevertheless, Mrs V managed to obtain interim protection order against him, the court ordering him “to refrain from acts of domestic violence against Mrs V., and barring him from coming within one hundred metres of her and her home and places of leisure for one year”⁹¹ and imposing the minimum possible fine: 200 Bulgarian levs (equivalent to 102 euros)⁹² since it defined the violence as „purely psychological“⁹³. Mr. V breached the protection order several times by driving behind her car, after each of which Mrs V. made a call to the national emergency number, and lodged a written complaint to the prosecutor’s office, stating that she fears for her life and that her husband owns a gun. After lodging her complaint at noon, she and the friend who accompanied her as a witness, went to a café. The defendant saw them sitting on the terrace, and in breach of his protection order demanded they speak. After Mrs V told him she will call the police if he doesn’t leave, he went to his car, took his illegally owned gun and shot her dead with five bullets to her head and torso. Mr V. surrendered to the police and was later sentenced for aggravated murder and the unlawful possession of a firearm, and the Court “took the harassment to which he had subjected Mrs V. during the months before her murder and his death threats against her as an aggravating factor”⁹⁴. The police opened an internal investigation “to assess whether the operating procedures in domestic-violence cases had been properly followed in Mrs V.’s case”⁹⁵ and provided recommendations, including disciplinary actions for 10 police officers.

The Applicants in the case submitted the claim that had the authorities investigated and taken the violation seriously, they could have taken actions as a reaction to his breach of the interim protection order, that could have prevented Mrs V’s death. The Government, on their side, put

⁹¹ Ibid, para. 22

⁹² Ibid, para. 22

⁹³ Ibid.

⁹⁴ Ibid, para. 39

⁹⁵ Ibid, para. 42

the blame on Mrs V for not providing sufficient information on the violence so that it could be taken seriously by the authorities, she had just one witness that was a close friend of her (Government hinting towards a lack of credibility, however the question to be asked is, regarding the difficulty of domestic violence being witnessed to begin with, who apart from closest friends and family, are likely to see and hear it?) and the shootings happened “just a few hours”⁹⁶ after her last complaint, and Sofia was a large and difficult city to police - however, per the standards set down in the case of *Kurt v. Austria*⁹⁷, “the authorities must respond immediately to allegations of domestic violence”⁹⁸ and such excuses as the size of a city should not be acceptable in my opinion. Moreover, the Government submitted that “Mrs V. had brought the protection-order proceedings to secure the successful outcome of possible divorce proceedings rather than to shield herself from any immediate threat”⁹⁹. The last statement is a wide-spread opinion¹⁰⁰, amongst legal professionals¹⁰¹, which in my view is based on sexism and prejudice towards women and on undermining the problem of domestic violence in Bulgaria, and it is peculiar that the Government is reproducing it before the ECtHR, as it is speculation-based and not a legal-based argument and clearly shows how deeply rooted the bias is and the extend it has reached.

In its analysis the Court found faults with the carrying out of the protection order and what it entails by the authorities. The Court noted that in contrast to the *Bevaqua and S. V. Bulgaria* case, the national court “issued an interim protection order in favour of Mrs V. one day after

⁹⁶ Ibid, para.86

⁹⁷ *Kurt v. Austria* ([GC], no. **Error! Hyperlink reference not valid.**, §§ 157-89, 15 June 2021

⁹⁸ Ibid, para. 190

⁹⁹ *Case of Y and others v. Bulgaria*, no. **Error! Hyperlink reference not valid.**, ECtHR, 22 March 2022, accessible at: <https://hudoc.echr.coe.int/eng?i=001-216360>, para. 84

¹⁰⁰ The existence of such a bias is noted also in the *case of Isatou Jallow v. Bulgaria*, CEDAW/C/52/D/32/2011, 23 July 2012, where the Applicant submits that: “In public discussions, some concerns have been expressed about the possible misuse of the Protection against Domestic Violence Act by women against men, but never the reverse.”, para.3.5.

¹⁰¹ In an Interview for this Thesis, the human rights attorney at law Natasha Dobрева commented “I have heard that some civil judges comment on it (the protection order proceedings) as the first phase of the divorce, that they (the victims) are setting up the next stage of separation.”, 18.04.2022, Sofia, on file with the author (translated from Bulgarian to English by the author)

she brought protection-order proceedings against Mr V”¹⁰² and “that a final protection order followed in due course”¹⁰³, therefore it did not find a problem with the speed of issuance. However, the court criticized the time it took for the court to send copies of the protection order to the police, and for them to arrive¹⁰⁴. Moreover, the ECtHR criticized how the competent police department solely put on file the protection order “and took no steps with a view to ensuring that Mr V. would comply with it”¹⁰⁵, and more importantly – the final protection order was “not even brought to the attention of the police”¹⁰⁶.

The Court found a violation of Art. 2 for the State failing to prevent the death of the woman, noting the measures they could have taken such as confiscating the gun in illegal possession, arresting the perpetrator for breach of the protection orders, and placing him in police protection. The ECtHR nevertheless concluded that “the Bulgarian authorities had in their arsenal sufficient tools to take operational measures designed to counter the risk to Mrs V.’s life¹⁰⁷. Unfortunately, as the Applicants stated some deficiencies of legislation at the time such as lack of criminalization of stalking, or threats of domestic violence as publicly prosecutable (*ex officio*), the Court ruled that “it is superfluous to inquire whether the absence at the relevant time of provisions...was also a factor in the authorities’ failure to take such measures.”¹⁰⁸

Unfortunately, the Court did not find a violation of Art. 14 in conjunction with Art. 2 of the Convention due to the fact that the Applicants in the Court’s view did not succeed in substantiating “a prima facie case of a general and discriminatory passivity on the part of the Bulgarian authorities with respect to domestic violence directed against women”¹⁰⁹. When

¹⁰² Ibid, para. 94

¹⁰³ Ibid.

¹⁰⁴ Ibid.

¹⁰⁵ Ibid.

¹⁰⁶ Ibid.

¹⁰⁷ Ibid, para. 110

¹⁰⁸ Ibid.

¹⁰⁹ *Case of Y and others v. Bulgaria*, no. **Error! Hyperlink reference not valid.**, ECtHR, 22 March 2022, accessible at: <https://hudoc.echr.coe.int/eng?i=001-216360>, para. 131

assessing the claims of violation, the Court limited itself into noting that it is not for it „to examine here whether the amendments to Bulgaria’s criminal legislation introduced about a year and a half after the events in issue in this case were phrased in a way which failed to provide sufficient protection to victims of domestic violence“¹¹⁰. In the author’s opinion, it is a missed opportunity for the Court to dwell into the issue of discrimination of women in light of domestic violence, and comparing the situation of discrimination towards women with other countries (such as Moldova or Romania) in which it is more widespread, or more serious, is a dangerous approach, since it can be subjective and not take into account that discrimination is persistent in every country and thus minimize it.

3. Domestic violence cases regarding Bulgaria at CEDAW level

3.1. Case of *Isatou Jallow v. Bulgaria*¹¹¹

The case of *Isatou Jallow v. Bulgaria* deals with the issues of an illiterate Gambian national – the Applicant in question, who speaks her native language and English on a medium level. She married and had a child with a Bulgarian national. The Applicant alleged that she suffered domestic violence on behalf of the defendant, who used both psychical violence in the form of beating her, but also psychological and economic one by calling her racial slurs and threatening to put her in a mental institution or get her deported using her dependency on him as a woman in a vulnerable position of a third country national. Moreover, he took pornographic photographs and placed them around their apartment, and tried to force her into participating in pornography. The Applicant alleged that he ‘trained’ their daughter to touch his penis, and

¹¹⁰ Ibid, para. 129

¹¹¹ Case of *Isatou Jallow v. Bulgaria*, CEDAW/C/52/D/32/2011, Communication No. 32/2011, 23 July 2012, available at: https://www2.ohchr.org/english/law/docs/CEDAW-C-52-D-32-2011_en.pdf

played pornography in her presence.

Upon a call to the Child Protective services made by the husband on allegations that the woman does not feed her child right, the authorities saw the photographs and learned about the violence, and they called the prosecutor's office. The Applicant went to a shelter but later returned to her husband. The Prosecutor's office did not question the Applicant and did not continue with investigation due to the fact that "the evidence collected was insufficient to presume the existence of an offence"¹¹². The Applicant suggested to her husband to get a divorce, to which he refused, but later filed an application for a protection order, claiming he and his daughter were victims of domestic violence on behalf of the Applicant. The Court issued an emergency protection order containing „the removal of the author from the family home, a ban on her being near the home and the temporary relocation of their daughter with the husband“¹¹³. No translation was provided for her, she was not informed about the whereabouts of her daughter and the police did not assist her to take her belongings. After a hearing, the Court dismissed the husband's application for a permanent protection order for lack of evidence. The husband started divorce proceedings seeking custody of their daughter, and the Applicant filed a request for interim measures regarding the custody as well. The husband beat her upon a visit, but she could not obtain a medical certificate for financial reasons. The Applicant agreed to a divorce on mutual agreement, despite it being unfavorable for her.

The Applicant submits a claim under articles 1, 2, 3, 5 and 16, paragraphs 1 (c), (d), (f) and (g), of the Convention for the violation on behalf of the State party "as a result of the discriminatory treatment that she and her daughter, as women, received from its authorities, and its failure to

¹¹² Ibid, para. 2.4.

¹¹³ Ibid, para. 2.8.

protect them from domestic gender-based violence and to sanction the perpetrator“¹¹⁴. The CEDAW upheld all of the Applicant’s claims, finding that “the State party’s authorities failed to act with due diligence, to provide her with effective protection and to take into account her vulnerable position, as an illiterate migrant woman with a small daughter without a command of Bulgarian or relatives in the State party“¹¹⁵. Most importantly, CEDAW noted that the proceedings under the Protection Against Domestic Violence Act, „in particular the delays and the issuance of the permanent protection order“¹¹⁶ were unnecessary prolonged and discriminatory due to the fact that the issuance was „without hearing both parties or the possibility of appealing against it“¹¹⁷. Moreover, the Committee stated that the domestic violence allegations „were not followed by a suitable and timely investigation, either at that moment or within the context of the domestic violence proceedings instituted by her husband.“¹¹⁸

The Committee issued several general recommendations to Bulgaria – to ensure that victims of domestic violence, especially migrant women, „have effective access to services related to protection against domestic violence and to justice, including interpretation or translation of documents“¹¹⁹., and that the manner in which domestic courts apply the law is consistent with the State party’s obligations under the Convention; to make sure that violence is taken into account „in the determination of custody and visitation rights of children“¹²⁰; to provide training on the matters of the Convention to judges, prosecutors and other state agents.

¹¹⁴ Ibid, para. 3.1.

¹¹⁵ Ibid, para. 8.2.

¹¹⁶ Ibid.

¹¹⁷ Ibid.

¹¹⁸ Ibid, para. 8.4.

¹¹⁹ Ibid, para. 8.8

¹²⁰ Ibid.

3.2. Case of *V.K v. Bulgaria*¹²¹

The Applicant of the case *V.K. v. Bulgaria* is a woman, Bulgarian national who shares two children with her abuser, her former husband. She had been subject to „psychological, emotional and economic abuse“¹²² and upon the family moving to Poland, also to physical violence in acts such as pushing her against a wall, and stopping the financial maintenance for her and her children, locking them in a room, shouting at her, hitting her and trying to suffocate her with a pillow, beating her and kicking her. She “filed an application with the Warsaw District Court, asking for protective measures as well as for an order for financial maintenance from her husband“¹²³, and was later informed that her husband lodged divorce proceedings in Bulgaria. She went to a women’s shelter but only managed to take one of her children with her, and with their help filed a criminal complaint. After going to take her other child from kindergarten with representative from the Women’s center, her husband hit both her and the representative and the police officers called to the scene “had to restrain him in a police car“¹²⁴. The Applicant moved with her children to Bulgaria and was assisted by organizations for battered women and she filed a complaint for an immediate protection order. The Court issued the order and commanded the husband „to restrain himself from exercising domestic violence against the author and from approaching the dwelling of the author and her children, as well as places of social contact and recreation, until the end of the proceedings“¹²⁵ and issued the temporary residence of the children with the Applicant. However, in its final decision on the matter, the Court rejected it due to the fact that per the court’s interpretation of Art. 10, para. 1 PADVA, “a request for a protection order must be submitted within one month of the date on

¹²¹ *Case of V.K. v. Bulgaria*, CEDAW/C/49/D/20/2008, Communication No. 20/2008, 15 October 2008, available at: https://www2.ohchr.org/english/law/docs/CEDAW-C-49-D-20-2008_en.pdf

¹²² *Ibid*, para. 2.2

¹²³ *Ibid*, para. 2.7.

¹²⁴ *Ibid*, para. 2.13

¹²⁵ *Ibid*, para. 2. 16

which the act of domestic violence occurred“ and in that period no domestic violence was committed. Additionally, the Court found that “no immediate danger to the life and health of the author and her children“¹²⁶ existed. The Applicant appealed the decision, stating that the court ignored her declaration and written statement by the Warsaw Centre on an incident that took place in that period, and that “her husband’s threats and violence against her were not a single isolated incident but rather a systematic pattern of aggression“¹²⁷. The court, however, dismissed the appeal, and she was left with no State protection while the divorce proceedings were still continuing, and her husband kept seeing the children and demanded access to their apartment before the Court.

The Applicant alleged violations of articles 1, 2 (a)-(c) and (e)-(g), 5 (a) and 16 (1) (c), (g) and (h) of the Convention, read in the light of the Committee’s general recommendation No. 19 on violence against women, due to „the failure of the State party to provide her with effective protection against domestic violence“¹²⁸. The Applicant claims that the State failed in its positive obligations under the Convention and that it “supported the continuation of a situation of domestic violence against her“¹²⁹, that the courts do not take domestic violence seriously and the protection of women and their human rights are hindered by it. Moreover, V.K. points out issues such as “the lack of a special law on equality between women and men,...of recognition of violence against women as a form of discrimination, and lack of positive measures in favour of women victims of domestic violence“¹³⁰ that result in inequality and denial of enjoyment of the Applicant’s human rights. The Applicant notes that problems such as lack of shelters, and lack of approach on behalf of the State to combat traditional stereotyping, contribute to the situation.

¹²⁶ Ibid, para. 2. 18

¹²⁷ Ibid, para. 2.19

¹²⁸ Ibid, para. 3.1

¹²⁹ Ibid, para. 3.2

¹³⁰ Ibid, para.3.4

CEDAW found that the one-month period for application of protection order should encourage urgency, and not be strictly interpreted as to „police the cohabitation of partners“¹³¹, and be taken as a personal sphere between partners that should not be interfered with, and not focus only on physical violence. The Committee concluded that the decision not to issue a protection order “was based on stereotyped, preconceived and thus discriminatory notions of what constitutes domestic violence“¹³². Furthermore, the CEDAW criticizes the unavailability of shelters in Bulgaria, and concludes that the Applicant suffered “moral and pecuniary damage and prejudice“¹³³ and revictimization due to the Court decision that was based on gender stereotypes. As a result of the reasoning, the Committee finds violation „under article 2 (c), (d), (e) and (f), in conjunction with article 1, and article 5 (a), in conjunction with article 16, paragraph 1, of the Convention, as well as general recommendation No. 19“¹³⁴. As part of the general measures in its Decision, CEDAW recommends to the State to remove the one-month time limit to in article 10 (1) of the Law on Protection against Domestic Violence, which unfortunately in 2022 has still not been amended and still contains the requirement which sets a burden to the victims, making it hard to submit a claim in such a short time. Moreover, the Committee recommends amending the Law in such a way as to “ease the burden of proof in favour of the victim by amending the Law accordingly“¹³⁵, which again has not been implemented. The Committee lastly recommends to the State to ensure enough places in shelters are available, and provide training for judges and other professionals.

¹³¹ Ibid, para. 9.12

¹³² Ibid.

¹³³ Ibid, para. 9.14

¹³⁴ Ibid, para 9.15

¹³⁵ Ibid, para 9.16

4. Implementations of the judgements as part of the case-law on national level

The Committee of Ministers concluded that the State has implemented the judgment of *Bevacqua and S. v. Bulgaria*¹³⁶ since the PADVA was adopted afterwards and it „provides for administrative and policing measures in cases of physical, psychological or sexual violence in the home“¹³⁷. The Committee cites the Government in their claims that „since the Act’s adoption the measures provided therein have often been sought and applied by the national courts, which have developed significant jurisprudence in that regard.“¹³⁸ The question, however, remains what these judgements actually amount to and are they in line with the ECtHR jurisprudence?

When conducting research using the key word of the family name of the *Bevacqua case*¹³⁹ in the open system of case-law under the High Judicial Council¹⁴⁰, only two judgements appear as results. One is, strangely enough, a case of the Lovech Regional Court¹⁴¹ concerning non-pecuniary and pecuniary damages for illegal accusation in pre-trial proceedings by the Prosecution, in which the Applicant claims that his rights under Article 8, item 1 of the ECHR have been violated, in the sense in which this right is interpreted by the ECHR as guaranteeing the physical and psychological integrity of the person from unlawful encroachments “as

¹³⁶ Resolution CM/ResDH(2012)162[1] *Bevacqua against Bulgaria*, Execution of the judgment of the European Court of Human Rights, (Application No. **Error! Hyperlink reference not valid.**, judgment of 12 June 2008, final on 12 September 2008), available at: [https://hudoc.exec.coe.int/eng#{%22EXECIdentifier%22:\[%22001-116504%22\]}](https://hudoc.exec.coe.int/eng#{%22EXECIdentifier%22:[%22001-116504%22]})

¹³⁷ Ibid.

¹³⁸ Ibid.

¹³⁹ ‘Bevacqua’ in Bulgarian ‘Беваква’

¹⁴⁰ System of case-law under the High Judicial Council, accessible at: <https://legalacts.justice.bg/?KeyWord=vmLMMJ9FzGoTUjJx2tE0mg%3D%3D&ShowConnected=False&IsLuceneInUse=True&ShowResults=True&IsAdvanced=False>. The system has a disclaimer that it contains only those acts that have been published by courts (therefore, there are acts that are non-published that are not available in the system meaning it is not exhaustive).

¹⁴¹ Case of Lovech Regional Court 260057/2020, 09.10.2020r. , ECLI:BG:RC431:2020:20200100506.001, available at: <https://legalacts.justice.bg/Search/GetActContentByActId?actId=G4W0mW6Q9QA%3D>

provided by the case of *Bevacqua and S. v. Bulgaria*, para 65”¹⁴². It is obvious that the aim of the Applicant was to strengthen his claim for both pecuniary and non-pecuniary damage and to claim it is a violation of Art. 8. However, this demonstrates a blanket use of the case-law of the ECtHR and the lack of proper understanding of the way to substantiate a case on behalf of both the lawyer of the Applicant, and the Court for repeating such a reasoning since neither the facts of the case, nor the reasoning in para. 65 is de facto applicable to the case at hand.

The other national court judgement citing the *Bevacqua* case is an appellate decision of the Sliven District Court¹⁴³ regarding a restraining order in favour of a mother and her children against the father, appealed by him¹⁴⁴. The appellate court cited the *Bevacqua* case stating that “although issued before the introduction of the Law on Domestic Violence, the decision sets the main objectives of protecting victims of domestic violence and explicitly states that the implementation of criminal responsibility of the perpetrator is not a fast enough and effective measure to protect the Applicant from acts of violence”¹⁴⁵. The national court refers to the emphasis on the particular vulnerability of victims of domestic violence and the need for adequate protection and active participation of the state in it, including to preventing new “incidents”. However, the Court uses this reasoning to compliment its conclusions that “the only requirement that must be met for a protection order is that the same act of violence must not be re-examined as a ground for issuing another protection order.” Despite this seemingly favourable interpretation of the case law, the Appellate court reaches the verdict that the

¹⁴² Ibid.

¹⁴³ Case of Sliven District Court 225/2018, 02.08.2018r., ECLI:BG:DC220:2018:20180500333.001, available at: <https://legalacts.justice.bg/Search/Details?actId=BxSNXht4bhQ%3D>

¹⁴⁴ The facts of the case are as follows: the man and the woman are separated, there is a previous restraining order to the mother for ‘abstinence from domestic violence’ and ordering the defendant to not approach her due to physical violence, whereas the restraining order at hand is one granted due to the fact that the father took the children against their will to the town where he lives. The first instance court granted the protection to both the children and mother.

¹⁴⁵ Case of Sliven District Court 225/2018, 02.08.2018r., ECLI:BG:DC220:2018:20180500333.001, available at: <https://legalacts.justice.bg/Search/Details?actId=BxSNXht4bhQ%3D>

domestic violence protection order should have been issued for the children only, and not their mother, using reasoning such as that since the previous order with a measure “to abstain from domestic violence” has proven ineffective, then a second one would not change this ineffectiveness. Moreover, the court shortens the restraining order regarding the children from a period of 18 to 10 months and to justify it uses as an argument the blanket statement that: “Undoubtedly, in the practice of the Supreme Court and in unison with the case-law of the ECtHR¹⁴⁶, it is accepted that it is in the interest of children to communicate with both their parents and grandparents”. Unfortunately, this is an example of referring to the case-law of the ECtHR, this time factually relatable, but not leading to the conclusions that are intended by the spirit of the case-law of the Court.

As the judgement of case of Y and others v Bulgaria has been issued by the ECtHR in April of the current year, there is no case-law in the system referring to the judgement so far. Unfortunately, both the CEDAW cases are also absent as a search outcome of the system, a possible reason might be that as they are CEDAW cases, and only a small number of attorneys, ones with a human rights and violence against women’s profile and possibly a smaller number of judges are familiar with its case-law, therefore cases such as Jallow v Bulgaria and

V.K. v Bulgaria are rarely referred to. Moreover, as CEDAW Recommendations and case-law are not legally binding for the State (although as stipulated by Art. 7, para. 4 of the Optional Protocol, the State should give “due consideration”¹⁴⁷ to the views and recommendations of the Committee and should submit a written response on actions taken in 6 months) perhaps

¹⁴⁶ No particular case-law is cited in the judgement, simply ‘the case-law of the EctHR’.

¹⁴⁷ Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, 06 October 1999, resolution A/RES/54/4 at the fifty-fourth session of the General Assembly of the United Nations, available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-convention-elimination-all-forms>

attorneys prefer other sources to substantiate their claims, that would make a higher impression on the national Court.

In conclusion, per this assessment, however limited in nature, the outcome is that the Bulgarian courts do not cite the case-law of the ECtHR on domestic violence sufficiently and in a manner that would benefit the victims of the violence in the way intended by the Court and improvement in this direction is needed.

CHAPTER III. BULGARIA'S FAILED RATIFICATION OF THE ISTANBUL CONVENTION

1. The issue of the ratification of the Istanbul Convention

After assessing the thoroughly described problem of domestic violence, I will turn to the issue of non-ratification of the Istanbul Convention and the changes it inflicted on the topic. The domestic violence issue unfortunately is not being solved, but on the contrary – it suffered from the mass hysteria surrounding the issue of ratification Istanbul Convention in 2018 and has still not recovered. In my opinion, the lack of ratification and the outrage surrounding it served harm as it undermined the problem of domestic violence and lead the discourse in another direction, vilifying the term ‘gender’, which lead to the Constitutional Court deeming the Convention unconstitutional. Many of the amendments to the Criminal Code in 2019, insufficient per my opinion, were created as a reaction to the non-ratification in an attempt for the Government to prove that the State can grant sufficient protection for domestic violence victims without ratifying the Treaty. However, these changes were limited in nature and scope

and did not cover all the spectrum of the protection of the Istanbul Convention, therefore did not achieve the said goal.

The Istanbul Convention¹⁴⁸ which is an emanation of the protection from domestic violence in Europe, entered into force on 01.08.2014¹⁴⁹ and was open to signing and ratification. Bulgaria signed the Convention on 21.04.2016¹⁵⁰ without any presence of public dissatisfaction nor a contradiction regarding it in Parliament. However, what followed after the Draft law on Ratification of the Istanbul Convention¹⁵¹ was proposed in Parliament in 2018, was a massive opposition and what was considered as major public dissatisfaction and polarization of opinions in the Bulgarian society.

It is discussed that the debates around the Istanbul Convention were started as a deliberate disinformation¹⁵² campaign by a non-formal group of far-right supporters hidden behind the idea of family traditional values and their protection. The discourse revolved around the used term “gender” as according to these ‘provocateurs’, ratification of the Convention would lead to the introduction of a third gender and conversion of children. While playing with people’s fears and using the ‘family’ as a weapon against the Convention, such groups managed to gather thousands of followers online. Moreover, the focus on the de facto issue of the

¹⁴⁸Council of Europe Convention on preventing and combating violence against women and domestic violence, official website of the Council of Europe, accessible at: <https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treatynum=210>

¹⁴⁹Ibid.

¹⁵⁰ Chart of signatures and ratifications of the Convention on preventing and combating violence against women and domestic violence, official website of the Council of Europe, <https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatynum=210>

¹⁵¹ Draft law on Ratification of the Istanbul Convention 802-02-2, 12.01.2018, Available at: <https://parliament.bg/bg/bills/ID/77944>

¹⁵² Disinformation being ““verifiably false or misleading information” which, cumulatively, (a) “Is created, presented and disseminated for economic gain or to intentionally deceive the public”; and (b) “May cause public harm”, intended as “threats to democratic political and policymaking processes as well as public goods such as the protection of EU citizens’ health, the environment or security”“, Code of Practice on Disinformation, European Parliament, available at: <https://digital-strategy.ec.europa.eu/en/policies/code-practice-disinformation>

Convention – that of protection of women from violence, was altered and redirected. After a while, the general public, as well as politicians and legal professionals, were drawn into the dynamics and per the fake news disseminated by media, made to believe that ‘the third gender’ is in fact the meaning behind the Convention.

However, this is not a problem solely observed in Bulgaria as such „anti-gender groups have proliferated around Europe and beyond“¹⁵³. Authors have stated that the term of “gender ideology” that such group advocate against is in fact “an umbrella term used to legitimize attacks on gender equality, women’s rights, particularly sexual and reproductive rights, LGBT+ rights, and comprehensive sexuality education“¹⁵⁴ and is in reality an empty “catch-all term, which allows diverse actors from even contradictory ideologies to form coalitions¹⁵⁵. What is common between states (as the issue is observed in Romania and other Eastern-European countries as well) is that the unifying factor is the “support for measures that are perceived to be protecting “traditional values”¹⁵⁶.

Moreover, it is exactly this issue, the „promotion of a concept of traditional family values that confines women solely to the role of mothers with domestic responsibilities“¹⁵⁷ that is noted by CEDAW in its latest Recommendations towards Bulgaria. Such a patriarchal understanding of gender roles in society in my opinion not only contributed to further discrimination of women, but through that – and to the negative outcomes regarding their protection against violence.

¹⁵³ Brodeală, Elena and Epure, Georgiana, “Nature v. Nurture: “Sex” and “Gender” before the Romanian Constitutional Court: A Critical Analysis of Decision 907/2020 on the Unconstitutionality of Banning Gender Perspectives in Education and Research”, p. 1;

¹⁵⁴ Ibid.

¹⁵⁵ Ibid.

¹⁵⁶ Ibid.

¹⁵⁷ The Committee on the Elimination of Discrimination against Women adopted its latest Concluding observations on the eighth periodic report of Bulgaria (CEDAW/C/BGR/8), para. 21 (b)

Moreover, the European Parliament¹⁵⁸ stated a deep concern due to the the „persistent negative and misrepresentative public discourse regarding the Convention, which has been shaped by a widespread disinformation and smear campaign following negative coverage on the topic by several media outlets with alleged links to government and opposition parties, made all the more worrisome by the participation of politicians and political parties represented in the Bulgarian Parliament“¹⁵⁹. It expressed concern that the „the persistent negative attitude towards the Convention further contributes to the stigmatisation of vulnerable groups at risk of gender-based violence“¹⁶⁰ and “further emboldens and inculcates a feeling of impunity among the perpetrators of gender-based crimes“¹⁶¹. In a more recent Resolution, the Parliament once again condemned „the campaign against the Istanbul Convention that targets violence against women and the deliberate campaign to discredit it“¹⁶².

As a result of the heated debate and disinformation campaign, the matter of possible ratification was taken to the Constitutional Court in February 2018 per initiative of 45 members of Parliament (from the ruling political party GERB, even though they were the ones who presented the draft law on ratification in Parliament). The idea behind such a claim to the Constitutional Court was to redirect the decision to the Court which would settle the ongoing dispute in one way or another since the ratification of the Convention was opposed by major political parties such as the Patriotic ones (VMRO and Ataka, as well as the Bulgarian Socialist party which turned its opinion, since it was firstly in favour of the protection of women via the ratification of the Convention). Moreover, a month after the claim to the Constitutional Court,

¹⁵⁸ the European Parliament Resolution on the rule of law and fundamental rights in Bulgaria (2020/2793(RSP)), available at: https://www.europarl.europa.eu/doceo/document/B-9-2020-0309_EN.html

¹⁵⁹ Ibid, para. 17

¹⁶⁰ Ibid.

¹⁶¹ Ibid.

¹⁶² European Parliament resolution of 21 January 2021 on the EU Strategy for Gender Equality (2019/2169(INI)), 21 January 2021, Available at: https://www.europarl.europa.eu/doceo/document/TA-9-2021-0025_EN.html

the draft law on the ratification was withdrawn (in March of the same year), just two months after its introduction in Parliament – the reasoning being that awaiting for the Decision of the Constitutional Court is needed before proceeding with the legislation.

2. Constitutional Court Case 3/2018 on the ratification of the Istanbul Convention

The Istanbul Convention was declared unconstitutional in Decision of the Constitutional Court of Bulgaria 13 on Case 3/2018¹⁶³. The Court began its reasoning stating that the purposes of the Convention, as stated in its Art.1, para. 1 such as the protection of women against all forms of violence, the prevention, prosecution and elimination of violence against women and domestic violence, are in line with the basic constitutional principles of the Constitution of the Republic of Bulgaria. However, it was quick to conclude that despite its „indisputable positive aspects“¹⁶⁴, the Convention is „internally contradictory“¹⁶⁵ and this contradiction creates a two-layered nature in it. Thus, in the Court’s opinion the content of some of the provisions of the Convention goes beyond the declared objectives of it and its title. In making this conclusion, it noted all the articles using the terms ‘sex’ as a strictly biological sex of a person and ‘gender’ as the social construct, and concluded these legal notions were separate and had autonomous meanings¹⁶⁶. Thus, the Convention separated the biological and social dimensions of gender and went beyond the view of the gender binary of the human species and that the term gender became a basic, core concept that defined the meaning of other terms used in the Convention based on it (for example, terms such as ‘gender identity’, ‘gender equality’ and ‘gender-based

¹⁶³Decision of the Constitutional Court of the Republic of Bulgaria 13/2018 on Constitutional Court case № 3/2018, 27.07.2018, available at: <http://www.constcourt.bg/bg/Acts/GetHtmlContent/f278a156-9d25-412d-a064-6ffd6f997310>

¹⁶⁴ Ibid.

¹⁶⁵ Ibid.

¹⁶⁶ A similar approach and reasoning was taken by the Romanian Constitutional Court in its Decision 907/2020 on the Unconstitutionality of Banning Gender Perspectives in Education and Research, “holding, *inter alia*, that “sex” and “gender” are distinct concepts“, Brodeală, Elena and Epure, Georgiana, “Nature v. Nurture: “Sex” and “Gender” before the Romanian Constitutional Court: A Critical Analysis of Decision 907/2020 on the Unconstitutionality of Banning Gender Perspectives in Education and Research”, p. 1

violence'). According to the Constitutional Court these expressions, **depending on the interpretation**, could lead to **different and contradictory understandings**¹⁶⁷ of the philosophy of the Convention. Moreover, the Court goes so far as stating that this was the first international treaty signed by the Republic of Bulgaria to give such a definition of the term "gender" (as per Article 3, letter "c" of the Convention). This conclusion is not true – terms such as 'gender equality' have already been used in the national legislation, for example the Law on Equality between Women and Men in para. 1, line 1 of its Transitional and final provisions¹⁶⁸ uses the expression „the social roles“ of the gender (or sex, as it is the same word in Bulgarian) to define what gender equality is. Moreover, the Resolution adopted by the General Assembly of the UN on Further actions and initiatives to implement the Beijing Declaration and Platform for Action¹⁶⁹ uses the term 'gender equality' several times¹⁷⁰.

The court held that the provisions of Article 3, b. "c" and Article 4, paragraph 3 of the Convention contradict Article 6, paragraph 2 - the equality provision of the Constitution. The Court stated that equality does not mean equal treatment of both sexes, but requires consideration of biological characteristics and differences between them. Furthermore, it states that the Constitution and the entire Bulgarian legislation, as well as the „traditional human society“¹⁷¹ is built on the understanding of the „binary existence of the human species“¹⁷² giving examples such as the fact that marriage in Bulgaria is constitutionally defined as a union between a man and a woman. In the Court's view the requirements of Art. 4, § 3 of the

¹⁶⁷ Ibid.

¹⁶⁸ Also noted in the dissenting opinion of the Constitutional Court judge Konstantin Penchev

¹⁶⁹ Resolution adopted by the General Assembly on the report of the Ad Hoc Committee of the Whole of the Twenty-third Special Session of the General Assembly (A/S-23/10/Rev.1), S-23/3. Further actions and initiatives to implement the Beijing Declaration and Platform for Action, A/RES/S-23/3, Twenty-third special session, United Nations, 10 June 2000, available at: <https://www.un.org/womenwatch/daw/followup/ress233e.pdf>

¹⁷⁰ Also noted in the joint dissenting opinion of the Constitutional Court judges Rumen Nenkov and Georgi Angelov

¹⁷¹ Decision of the Constitutional Court of the Republic of Bulgaria 13/2018, 27.07.2018, available at: <http://www.constcourt.bg/bg/Acts/GetHtmlContent/f278a156-9d25-412d-a064-6ffd6f997310>

¹⁷² Ibid

Convention would require the Republic of Bulgaria to establish procedures ensuring legal recognition of sex other than biological, contrary to the Constitution. In my opinion, this conclusion is incorrect – there is nothing in the Convention hinting at the fact that States would be ‘forced’ to recognize same-sex marriage. The Court goes as far as stating that the Convention, by defining "gender" as a social construct, actually relativizes the boundaries of both sexes, male and female, as biologically determined. The Court makes the bold statement, to which I disagree, that ever „if society loses the ability to distinguish between women and men, the fight against violence against women remains a formal but unenforceable commitment“¹⁷³. In my opinion, on the contrary, it is exactly the vulnerable position of being a woman that should be taken into account when providing protection and accommodating measures to secure equality does not equal discrimination towards the opposite gender.

Lastly, the Court concluded that the Convention is in contradiction to the rule of law as a constitutional principle, as it required that the content of legal concepts be clear and unambiguous. The order of legal certainty and predictability precludes the existence of two parallel and mutually exclusive notions of "sex", which the Court claimed are the terms „sex“ and „gender“. Therefore, the ratification of the Convention would lead to the introduction into the national legal order of a concept that is contrary to the constitutionally established. As reservations are inadmissible under the provisions of Article 3, b. "c" and Article 4, paragraph 3 of the Convention, per Article 78 of the IC, the Court concludes that the entire Convention is incompatible with the Constitution.

There are many critical views of the decision¹⁷⁴, to which I agree, that the confusion of the difference of the terms stems from linguistics and translation - in Bulgaria the terms ‘sex’ and

¹⁷³ Ibid

¹⁷⁴ The dissenting opinions of the Constitutional Court judges Filip Dimitrov, and joint dissenting opinion of judges Rumen Nenkov and Georgi Angelov to the Decision

‘gender’ are usually both translated by one word „пол“, but in the Convention ‘gender’ was translated as ‘social’ “пол“ (social sex/gender), but before the controversy, the usage of the terms involving gender were never questioned and perceived as usage of the term ‘sex’. This problem has also been noted by the Special Rapporteur on violence against women, noting that “By doing this, the concept of gender-based violence was misinterpreted and portrayed as a “new foreign concept”¹⁷⁵. The reasoning used by the Court – that the term ‘gender’ is something different, new and a term that contradicts the goals of the Convention itself and the meaning of the biological sex in general, as if there is some secret meaning that the Convention is trying to slyly pass to the signatories, is an indication that the Court has perhaps been influenced by the disinformation campaigns stating the same main points.

The decision was upheld by 8 of the 12 Constitutional Court judges, where each of the female judges of the Constitutional Court was in favour of the decision deeming the Convention on protecting of women from domestic violence unconstitutional. Four judges, all of whom male, dissented with three separate opinions in favour of the ratification of the Istanbul Convention. Two of the judges stated that „The public debate on the ratification of the Convention... developed as a dishonest, manipulative political project to attract the electorate against the background of ostentatious protection of traditional morals and national traditions of Bulgarians“¹⁷⁶. They hinted that the Constitutional Court was influenced by stating that they „can only guess at the real reasons for refusing to join the majority of civilized and democratic European countries in the search for a cure for violence as the most severe form of humiliation of human dignity“¹⁷⁷. Moreover, their conclusion that through this decision „The Constitutional Court ruling is a "favor" for political parties of all colors - it prevents possible conflict in the

¹⁷⁵ Report of the Special Rapporteur on violence against women, its causes and its consequences, on her visit to Bulgaria, A/HRC/44/52/Add.1, available at: <https://undocs.org/A/HRC/44/52/Add.1>, 19 May 2020, para.10

¹⁷⁶ Separate joint dissenting opinion of the Constitutional Court judges Rumen Nenkov and Georgi Angelov.

¹⁷⁷ Ibid

ruling coalition and coincides with the position of most of the parliamentary and extra-parliamentary opposition“¹⁷⁸is also correct and in line with my views on the political and fake news issues causing the stir. I agree with the dissenting judges in their conclusion that although the decision is in conformity with the public opinion at the moment, or should I say, an influenced part of it, only time would tell whether it entails the impartiality and courage, part of an independent judiciary.

The Court continued this ‘gender’ line of reasoning in a more recent decision¹⁷⁹. The Constitutional Court request for interpretation was submitted by the Supreme Court of Cassation due to an interpretative case before it on the matters whether legal gender reassignment is permissible for established transsexual people under national law, as the case-law was conflicting (the Supreme Court of Cassation is yet to issue its decision on this matter). Two of questions which were referred to the Constitutional Court were: 1) what is the definition of the term "sex" adopted by the Constitution, and does it have an independent psychological or social expression other than biological, 2) does the right to private life, as defined by the EU Charter of Fundamental Rights and the European Convention on Human Rights, take precedence over the definition of ‘sex’ as established by the Constitutional Court? The Constitutional Court¹⁸⁰ stated that it would proceed with a decision only on the first question and ruled that the other two are impermissible, since the other was not in the competences of the Constitutional Court as the judgement whether or not a Treaty is in conformity with the Constitution is only acceptable before its ratification. In my opinion, as the questions are difficult and put the Constitutional Court in the position to admit that its line of reasoning is in

¹⁷⁸ Ibid.

¹⁷⁹ Decision of the Constitutional Court of the Republic of Bulgaria 15/2021 on Constitutional Court Case № 6/2021, 26. 10.2021, available at: <https://www.constcourt.bg/bg/Acts/GetHtmlContent/5aca41e4-659e-42dc-80a5-c3f31746898b>

¹⁸⁰ Ordinance of the Constitutional Court № 2/2021, 29 April 2021, available at: <https://www.constcourt.bg/bg/Acts/GetHtmlContent/8ac59c4c-a24e-46ff-9a62-2fc5102ad088>

fact against Art. 8 ECHR, it was more convenient to decide to not deal with the question at all. In its dissenting opinion, judge Filip Dimitrov stated that he does not agree with the fact that the questions are considered impermissible and that the Court should “take on the responsibility that its questions give the impression that he is trying to avoid”¹⁸¹. Unsurprisingly the Court concluded that the term „sex“ should be understood strictly in its biological sense. We are yet to see whether this decision would affect the Supreme Court of Cassation to issue a judgement that would prohibit the already existing practice of legal change of gender by the lower courts, which would be a step back for rights of transgender people. This case is another demonstration how the possible influence of the disinformation campaign on the Constitutional Court is ongoing and persistent and it is continuing in its recent judgements, and how the dangers to cause an avalanche of judgements with reasonings in the same line by other Courts is a major setback and endangers already established rights.

Although academic authors claim that “the direct applicability of the provisions of the Convention is indisputable”¹⁸² and that “the Constitutional Court has had ample reason to uphold this understanding in a number of its judgments”¹⁸³, it is disappointing to witness the Constitutional Court failing to do that in the decisions presented.

The reactions to the negative outcome of the Constitutional Court case and non-ratification on European and International level have been clear – the European Parliament called on Bulgaria, among other Member States who have not yet ratified the Istanbul Convention, to ratify it

¹⁸¹ Dissenting opinion of the Constitutional court judge Filip Dimitrov tot he Ordinance of the Constitutional Court № 2/2021, available at: <https://www.constcourt.bg/bg/Acts/GetHtmlContent/1b7d7cdf-f737-4903-9f58-82f7f51f8bf2>

¹⁸² Zaharova, Galina, The Influence of the Judgment of the European Court of Human Rights in the Case of Tsonyo Tsonev v. Bulgaria, The Application of the ne bis in idem Principle in Bulgaria in Cases of Administrative and Criminal Proceedings for the Same Illegal Act, eucrim 2020 / 4, The European Criminal law Associations’ Forum,, <https://doi.org/10.30709/eucrim-2020-030/>

¹⁸³ Ibid

“without delay”¹⁸⁴. Recently, it repeated these urges that the Government of Bulgaria should „do what is necessary to allow for the ratification of the Istanbul Convention“¹⁸⁵ noting that it „regrets the fact that the Decision of the Constitutional Court „prevents Bulgaria from ratifying the Convention“¹⁸⁶. In addition, in a joint statement commemorating the tenth year anniversary of the Istanbul Convention, the German Federal Minister for Family Affairs and Council of Europe Secretary General urged all 12 states which have signed the Convention but not ratified to join the 34 States which it already binds¹⁸⁷. Moreover, the expressed views of the impact of the disinformation effect on the discourse can be supported by the statements of CEDAW¹⁸⁸ stating that it is particularly concerned by the increase of „cases of anti-gender discourse in the public domain, public backlash in the perception of gender equality and misogynistic statements in the media, including by high-ranking politicians¹⁸⁹.

In conclusion, I believe that the ongoing anti-gender fake news campaign managed to reach the politicians (some of them, possibly part of it), even the Constitutional Court manifesting itself in two anti-gender decisions, and contributed to the non-ratification of the Convention greatly. The lack of ratification was criticized greatly on a European and International level, but to no avail.

¹⁸⁴ Resolution on the EU’s accession to the Istanbul Convention and other measures to combat gender-based violence, 28 November 2019 (P9_TA(2019)0080), the European Parliament, point 2

¹⁸⁵ the European Parliament resolution on the rule of law and fundamental rights in Bulgaria (2020/2793(RSP)), available at: https://www.europarl.europa.eu/doceo/document/B-9-2020-0309_EN.html, para. 17

¹⁸⁶ Ibid.

¹⁸⁷ „Istanbul Convention at 10 years: leading the way to life free from violence“, joint Statement for UN International Women's Day by German Federal Minister for Family Affairs, Senior Citizens, Women and Youth Franziska Giffey and Council of Europe Secretary General Marija Pejčinović Burić, 8 March 2021, available at: <https://rm.coe.int/final-version-8-march-joint-statement/1680a1a5dc>

¹⁸⁸ The Committee on the Elimination of Discrimination against Women adopted its latest Concluding observations on the eighth periodic report of Bulgaria (CEDAW/C/BGR/8)

¹⁸⁹ Ibid. para. 21 (a)

CHAPTER IV. WHETHER THE RATIFICATION OF THE ISTANBUL CONVENTION WOULD BRING CHANGES TO THE ISSUE OF DOMESTIC VIOLENCE?

In the case of *Y and others V. Bulgaria*, the ECHR noted regarding the non-ratification of the Istanbul Convention, that it „is mindful of that Convention’s importance for raising the standard in the field of protection of women from domestic violence and thus also for the realisation of *de iure* and *de facto* equality between women and men“¹⁹⁰. According to the Court, „the refusal to ratify the Istanbul Convention **could thus be seen as lack of sufficient regard for the need to provide women with effective protection against domestic violence.**“¹⁹¹ Despite this favourable observation, however, the Court stated that it is not prepared **in the particular case** „to draw conclusions from Bulgaria’s refusal to ratify that Convention“¹⁹². The Court concluded that the refusal to ratify „was based on considerations which the Court finds unrelated to a reluctance to provide women with proper legal protection against domestic violence.“ Moreover, the Court stated that it was not for it “to pronounce, directly or indirectly, on whether a Contracting State should ratify an international treaty, which is an eminently political decision“. ¹⁹³ In my opinion, this is a disappointing conclusion, not taking into account the way the ratification could lead to improvement in the faulty system for protection of domestic violence, in order to prevent future cases like the one at hand. While it is true that the Court should assess the individual case and issue a judgement on it, it should not turn a blind eye to the pressing issues such as the ratification of the Convention, especially when it comes to problems as serious as domestic violence.

¹⁹⁰ Case of Y and others v. Bulgaria, para. 130

¹⁹¹ Ibid

¹⁹² Ibid

¹⁹³ Ibid.

As discussed in a previous chapter, Bulgaria introduced national legislation which at a certain extent covers the domestic violence related issues, its deficiencies thoroughly noted. Moreover, it is a fact that Bulgaria is bound by certain Treaties that set standards from which the Country ideally should not differ from – such as the European Convention on Human Rights and CEDAW. Moreover, as Bulgaria is a Member State of the European Union, the joint efforts in the field by the sui generis entity also apply to the Republic. In fact, there is an ongoing initiative for the accession of the EU as an entity to the Convention started by the European Parliament as of 2014¹⁹⁴, which, if succeeds, would make the Convention binding for Bulgaria. The process of EU ratification has its set backs, the EP needed to refer the issue of the scope and procedure of accession for an opinion to the European Court of Justice in which the ECJ found that **“the Treaties do not prohibit the Council of the European Union...from waiting”**¹⁹⁵ for a ‘common accord’ before adopting the IC on behalf of the EU. However, the Court finds that **“the Treaties do prohibit the Council from adding a further step to the conclusion procedure laid down in that article by making the adoption of the decision concluding that convention contingent on the prior establishment of such a ‘common accord’”**¹⁹⁶. However, the accession is currently at a pause, the European Parliament nevertheless noting that it “supports the Commission’s plan to continue pushing for the EU-wide ratification of the Istanbul Convention”¹⁹⁷ but in the meantime supports the implementation of other measures needed „to achieve the objectives of the Istanbul Convention if the EU’s accession remains blocked”¹⁹⁸. One such measure is the proposal for a joint draft

¹⁹⁴ European Parliament resolution of 25 February 2014 with recommendations to the Commission on combating Violence Against Women ([2013/2004\(INL\)](https://www.europarl.europa.eu/doceo/document/TA-7-2014-0126_EN.html)), available at: https://www.europarl.europa.eu/doceo/document/TA-7-2014-0126_EN.html

¹⁹⁵ Opinion 1/19 of the CJUE (Grand Chamber), 6 October 2021, available at: <https://curia.europa.eu/juris/document/document.jsf?text=&docid=247081&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=21739395>

¹⁹⁶ Ibid.

¹⁹⁷ European Parliament resolution of 21 January 2021 on the EU Strategy for Gender Equality ([2019/2169\(INI\)](https://www.europarl.europa.eu/doceo/document/TA-9-2021-0025_EN.html)), 21 January 2021, Available at: https://www.europarl.europa.eu/doceo/document/TA-9-2021-0025_EN.html

¹⁹⁸ Ibid

Directive of the European Parliament and of the Council on Combating violence against women and domestic violence¹⁹⁹ also known as „EU-wide rules to combat violence against women and domestic violence“²⁰⁰ which was introduced for the International Women’s Day, on 8th March 2022 by the European Commission. In my opinion, the Directive would be a step forward, but not as large of a step as the accession to the Convention as a whole, however we are yet to witness whether it would be adopted and how it would be implemented.

The question, which is often time also raised by groups in opposition of the IC, remains – if there is national legislation and binding International Treaties and standards, would the ratification of the Istanbul Convention make a difference? In my opinion, the answer would be in the affirmative. Yes, the ratification would make a difference since the national legislation does not protect women victims of domestic violence to a sufficient extent, and as we read in the gruesome cases before the tribunals of the ECtHR and CEDAW Committee, there are grave violations happening due to both the persistent stigma and patriarchal approach to the issue, but also lack of training of the authorities which are responsible to deal with the manner urgently. A separate specified gender-sensitive Treaty, the first pan-european binding document on the matters of domestic violence in particular with which codifies a large number of the non-legally binding obligations under CEDAW and introduces a wider coverage of domestic violence related issues, as well as gender equality issues²⁰¹, and setting more obligations to the State, one with a separate reporting body – the GREVIO Committee, would undoubtedly serve as a better protection from domestic violence for the victims in Bulgaria. A

¹⁹⁹ Proposal for a Directive of the European Parliament and of the Council on Combating Violence against Women and Domestic Violence, Strasbourg, 8.3.2022, 2022/0066(COD), available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022PC0105>

²⁰⁰ International Women's Day 2022: Commission proposes EU-wide rules to combat violence against women and domestic violence, Official website of the European Commission, available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_22_1533

²⁰¹ The Istanbul Convention and the CEDAW framework: A comparison of measures to prevent and combat violence against women, Council of Europe, <https://rm.coe.int/168059aa28>, p. 2

ratification of it is a sign of a serious commitment on behalf of the State before the International Community, to combat domestic violence. As the drafters based some of the provisions on jurisprudence, the IC reflects the cases the M.C. v. Bulgaria and Bevacqua v. Bulgaria²⁰². Therefore, its ratification would contribute to the proper and full implementations of these judgements, and many others standard-setting ones from other countries.

Concretely, the differences which the Istanbul Convention would bring to the national context, are the following: the Istanbul Convention proposes a whole set of definitions on domestic violence – such as those of psychological violence (Article 33) stalking (Article 34) physical violence (Article 35), sexual harassment (Article 40) for which would solve the problems noted with non-existent definitions in national legislation or those who are problematic as the definition per the IC on violence against women “goes further by including “economic harm” and explicitly establishing such violence as a human rights violation“²⁰³.

Moreover, the Convention envisions a statistical data obligation in its Art.11 that would also solve the issue of the non-existing data collection system. In addition, it stipulates the establishment of support services per Art. 22, and “shelters in sufficient numbers to provide safe accommodation for and to reach out pro-actively to victims, especially women and their childre“ as per Art. 23 which would serve as a legally binding obligation for the Country with solely 13 active domestic violence shelter, and would put an end to the excuses used for not establishing more, such as the lack of finances of the Government.

²⁰² Ibid.

²⁰³ Ibid,

Moreover, the Convention regulates the creation of a Co-ordinating body (and cooperation between agencies) that would make the reaction towards domestic violence faster, and would constitute a well-rounded and not fragmented approach to the issue, and such change is much needed. In addition, under Art. 16 there is an obligation the set-up of preventive interventions support programmes for perpetrators which might turn helpful for the problem of re-occurrence of violence. Moreover, the Convention stipulates for the regulation of all intentional physical violence as ex officio provisions (Art. 35 in conjunction with Art. 35). This undoubtedly would solve the noted issue of the withdrawal of complaints for minor bodily injuries in cases of domestic violence, where the prosecution stops as they are dependent on the victim's claim.

Last but not least, art. 68 regulates the reporting procedure towards the Secretary General of the Council of Europe for consideration of GREVIO Committee, which as an independent monitoring body monitors the proper implementation of the Convention and has the prerogative to initiate a special inquiry procedure. Therefore, the State would be even more pressed to follow its established obligations.

In conclusion, had the Convention been ratified, or should it be ratified in the future, the Government would be bound by legislation forcing it to implement various favourable measures that otherwise would hardly find the political will, or the desire to direct financial resources to the topic and for example build shelters without a pressing obligation holding the State accountable for non-compliance. Moreover, If the Convention is ratified, therefore the PADVA Act would be amended accordingly and there will be a direct national and international way to protect victims. I remain skeptical that the Bulgarian legislation will soon reach a point where it grants sufficient protection without such standards. While it is some truth in the fact that perhaps an EU-wide ratification of the Convention would solve this issue, or the new Directive with a wide scope of protection for domestic violence victims would be

sufficient, I remain convinced that the higher standard of protection and a stronger stand would be the actual ratification of the Treaty by Bulgaria, despite the fact that the chances of that are highly unlikely in the current political atmosphere.

CONCLUSION

In conclusion, as it has been demonstrated, the issue of Domestic violence in the Republic of Bulgaria is a serious problem. While there is existing legislation, it is still not to the standard required to protect the victims to the highest standard. There are many deficiencies noted by ECtHR and CEDAW, as well as noted by the European Parliament. The fake-news and disinformation campaigns served harm to the topic, and lead to the non-ratification of the Istanbul Convention. If the Government ratifies the Convention, it would put an end to the speculations on gender-based hate rhetoric and stop the avalanche of limitations on human's rights that can only follow if the same anti-gender discourse continues to be supported by the public, the courts and far-right political parties who might have a bigger influence on the Government with the uncertain political situation Bulgaria is facing. As the road to the ratification at this moment seems blocked, one can only hope for a EU-wide ratification, or an adequate Directive that would introduce similar provisions to the Standards of the IC, or for the national legislation to reach the standards as stipulated in the IC in order for there to be progress in the protection of women from domestic violence in Bulgaria.

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