

Procedures under the CEDAW and the Optional Protocol to CEDAW as good practice in the fight against violence against women in the Member States

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Distinguished Members of EP, Colleagues from NGOs,

Dear Guests,

I would like to thank the Committee on Women's Rights and Gender Equality(FEMM) for inviting me and giving me this opportunity to highlight the work of the CEDAW Committee on VAW in the year of its 40th Anniversary. The Convention on the Elimination of All Forms of Discrimination against Women/ CEDAW/ is the source of universal standards concerning women's rights to equality, women's identity, autonomy, economic independence and empowerment, including through clear obligations for States parties to adopt temporary special measures, and combat gender stereotyping to this end.

1. The implementation of the CEDAW Convention, currently ratified by 189 countries, contributed to a great extent to affirming globally the main principles for protection of women and girls against GBV, including in EU Member States. The monitoring of the compliance with the Convention through the **consideration of States' reports** and the **constructive dialogue with the governments, monitoring of the implementation of the concluding observations and recommendations** of the Committee, and **the follow- up procedure** are important tools for measuring progress achieved by States parties to combat violence against women. At the most recent 74th session of the Committee, it was assessed that implementation of recommendations concerning VAW were defined as priority issues for follow- up in over 36% of the cases, and in additional 5% the follow- up issues were related to elimination of harmful practices and gender stereotypes. The General recommendations issued by the Committee in interpretation of the provisions of the Convention are complementary to the international legal framework, and especially those concerning core obligations under the Convention, as well as **GR 33 on Women's Access to Justice/2015/ and GR 35 from 2017on GBV against Women updating GR 19.**

2. In addition, it is the legal practice developed under **the Optional Protocol to CEDAW**, in force since December 2000 and currently ratified by 113 countries, which contributed, along with the practice of other international mechanisms, to the evolving nowadays of the prohibition of GBV against women into a principle of international customary law. The OP comprises two procedures:

- a quasi- judicial procedure allowing submitting to the CEDAW Committee communications by or on behalf of individuals or groups of individuals, in cases of violations of rights protected under the Convention; and
- an inquiry procedure enabling the Committee to initiate inquiries into situations of grave or systematic violations of women's rights.

Namely, under the communications' procedure the CEDAW Committee will determine whether or not the State has failed to fulfil its obligations under CEDAW. If a violation is found, the Committee will issue its Views and provide recommendations to the State for actions that it may take to remedy the situation. This may include both remedies for the individual victim, in terms of recommending adequate compensation and reparation, as well

as structural or systemic changes that the State may implement to prevent the reoccurrence of these violations in the future.

The legal practice under the OP CEDAW so far comprises over 100 individual communications alleging violations of women's rights, and over half of the cases decided, are about violence against women and girls, like domestic violence, sexual violence and sexual harassment, forced sterilization, femicide.

Here are examples of cases of GBV against women under the OP, in which the Committee found violations and failure of MS of the EU and where the states undertook measures in compliance with the Committee's Views.

In the case of *Goekce v. Austria* - Communication No. 5/ 2005 the victim's husband repeatedly assaulted the victim, including by choking and threatening to kill her. Despite the temporary expulsion ordered by the police, threats continued but the prosecutor did not detain the aggressor. The latter fatally shot the victim in front of their children. She had called the police on the emergency call line a few hours before she was killed, but there was no reaction. As representatives of the descendants of the deceased, the Vienna Intervention Centre against Domestic Violence and another NGO, introduced a communication before the Committee and it found that the police and the prosecutor failed to exercise due diligence to protect the victim. As a follow- up to this case and another communication, Austria took measures for enhancing protection of women in criminal law and proceedings, incl. through psychosocial and legal court assistance for all victims of violent crimes by specialized support organizations.

In *V.K. v. Bulgaria* case/ Communication No. 20/ 2008/ , the court refused to issue a permanent order for protection of the victim, who had been a persistent victim of domestic abuse at the hands of her husband, based on its interpretation of national law that no act of domestic violence had taken place in the month prior to filing the complaint. The denial of the court was based on judicial stereotyping and this was assessed by the CEDAW as a violation of the Convention in itself. The Committee affirmed that the state failed to protect the victim of domestic violence and that “..... *States Parties are accountable for judicial stereotyping that violates CEDAW...../*”

Bulgaria took measures for enforcing the Views of the Committee, by providing *ad hoc* compensation to the victim, along with compensation in two other cases of violations of women's rights under the CEDAW OP. It was the main reason for adopting since the beginning of 2015 a legal mechanism for financial compensations under the recommendations of the UN Treaty Bodies on individual complaints, which functions within the established in 2013 National Coordination Mechanism on Human Rights. The general measures recommended by the Committee in the V.K case, namely for amendments in the legislation in direction of further shift of the burden of proof and extension of the period within which the victim can lodge a complaint against DV, have not yet been implemented. A recent decision of the CEDAW Committee under communication *Lazarova v. Bulgaria* can be considered as a follow- up in that respect as the Committee recommends, besides an adequate compensation, also amendments for taking into account the model of violence and the extension of the period mentioned. Currently, a WG at the Ministry of Justice is considering suggestions for strengthening protection of women through amendments in the Law on Protection from DV. In 2014 Bulgaria provided compensation also to a girl victim of sexual violence whose rights for protection and compensation were infringed- the CEDAW case of *V.P.P. v. Bulgaria* - Communication No. 31/2011.

The changes in legislation recommended by the Committee for providing compensation by the state for moral damages for crime victims were considered but not yet taken into account and implemented.

In the case *González Carreño v. Spain*, an extreme case of domestic violence and murder of a girl child by her father- Communication No. 47/ 2012 the Supreme Court of Spain reaffirmed in 2018 that Spanish law must incorporate the rights and freedoms enshrined in human rights treaties.

Ten years ago, when her daughter was three years old, Ms. Carreno left her husband after he threatened her with a knife. Over a number of years, she brought complaints against him to the Spanish legal system, seeking to protect her daughter from having visitation time with her father, as ordered by the courts. After a judicial hearing on the matter, Ms. González Carreño's husband allegedly approached her and told her that he was going to "take away what mattered most to her". Later that day, he shot his daughter and then committed suicide.

In 2012, Ms. González Carreño took her case to CEDAW with allegations for GB discrimination and failed protection by the police, administrative and judicial authorities. In 2014, CEDAW found that Spain had violated her human rights under the Convention and recommended the state to pay Ms. González Carreño compensation, and to take measures to ensure that past incidents of domestic violence are taken into consideration when determining custody and visitation rights regarding children.

In 2018, the Supreme Court of Spain enforced compliance with the Committee's recommendations, and recognized the violation of her rights, ordering the Government to pay 600,000 Euros as compensation for the moral damages she had suffered. The Supreme Court acknowledged that the provisions of international treaties to which Spain is a party, form part of its law and **that the recommendations of CEDAW are binding in nature.**

These examples of cases on VAW against Member States show that the practice under the OP CEDAW can promote important changes in legislation and practice , in view of saving lives of women and children, and to encourage women to break the silence and the nightmare of the cycle of violence.

The CEDAW Committee emphasizes the importance of guaranteeing access to justice, and timely justice for all women and vulnerable groups of women, in the first place in their own country and on the territory, as well as the role of specialization for lawyers and the judiciary.

In this spirit, my colleagues from the Bulgarian Gender Research Foundation and myself, as part of the independent civil society, we started 15 years ago the international programme Women's Human Rights Training Institute which trains HR lawyers from Eastern Europe, Europe more broadly, and with participation of lawyers from Africa and Asia, on how to better protect women through the European and universal mechanisms, including through the OP CEDAW. We are partnering in this initiative with European and American colleagues, and also with colleagues from EWLA. Over 120 lawyers were trained and legal cases were brought by them before the ECtHR and under the OP CEDAW.

Last but not least, the CEDAW Committee recommends in all relevant cases to the State parties to ratify and implement the Istanbul Convention. It cooperates with the Platform of

UN and regional independent mechanisms on violence against women and women's rights, including the UN SR VAW Ms. D. Simonovic and GREVIO.

The interaction of the CEDAW with the European standards and mechanisms, with the work of the European Parliament, and with case law of the EctHR and of the Court of Justice of the EU is crucially important in the field of GBV against women.