



## I. EXECUTIVE SUMMARY

1. Domestic violence is a widespread problem in Bulgaria. It is estimated that 25 percent of women in Bulgaria have experienced physical or verbal abuse,<sup>1</sup> and in 2012, seven women were murdered by their husbands.<sup>2</sup> Between July 2012 and June 2013, 393 victims sought an order for protection against their violent abusers.<sup>3</sup>
2. Domestic violence is a violation of human rights. Domestic violence violates a woman's rights to freedom from discrimination, equal protection before the law, liberty and security of person, equality before the courts and equality with men before the law, recognition as a person before the law, and freedom from torture. In addition, when a State fails to ensure that its criminal and civil laws adequately protect women and consistently hold abusers accountable, or that its agents—such as police and prosecutors—implement the laws that protect victims of domestic violence, that State has not acted with due diligence to prevent, investigate and punish violations of women's rights.
3. During **Bulgaria's First Universal Periodic Review in 2010**, delegations made recommendations relating to domestic violence, noting the need for a more comprehensive and robust effort to prevent, prosecute, and support the victims of domestic and gender-based violence. Bulgaria accepted all of these recommendations, which included, that it:
  - a. “[d]raw up concrete and effective strategies to fight against domestic violence.”<sup>4</sup>
  - b. “[t]ake concrete measures aimed at effectively fighting against gender-based violence, including social awareness-raising campaigns and training programmes targeting law enforcement officials.”<sup>5</sup>

<sup>1</sup> Country Reports on Human Rights Practices for 2013: Bulgaria, U.S. Dep't of State (2014).

<sup>2</sup> Bulgarian Alliance for Protection against Domestic Violence, Monitoring of the Legislation Related to Protection against Domestic Violence and Other Forms of Gender-based Violence, Conducted by the Organizations – Members of Alliance for Protection against Domestic Violence – Summary of the Main Highlights from the Monitoring from the Beginning of 2013 to the Beginning of 2014 (unofficial translation) (2014) (on file with authors), at 15.

<sup>3</sup> Country Reports on Human Rights Practices for 2013: Bulgaria, U.S. Dep't of State (2014).

<sup>4</sup> Republic of Bulgaria, *Bulgaria's First Universal Periodic Review Recommendations: Mid-Term Implementation Update 2011-2012* (2013), 32. Also available online at

<http://lib.ohchr.org/HRBodies/UPR/Documents/session9/BG/BulgariaImplementation.pdf>. See also recommendation 80.21 from Switzerland in Report of the Working Group on the Universal Periodic Review: Bulgaria, Human Rights Council, A/HRC/16/9, 4 January 2011, at 15.

<sup>5</sup> Republic of Bulgaria, *Bulgaria's First Universal Periodic Review Recommendations: Mid-Term Implementation Update 2011-2012* (2013), 32. Also available online at

<http://lib.ohchr.org/HRBodies/UPR/Documents/session9/BG/BulgariaImplementation.pdf>. See also recommendation 80.49 from Canada in Report of the Working Group on the Universal Periodic Review: Bulgaria, Human Rights Council, A/HRC/16/9, 4 January 2011, at 17.

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- c. “[m]ake further efforts for combating domestic violence, as the problem of domestic violence is still present.”<sup>6</sup>
  - d. “combat gender violence, conducting special monitoring of cases involving gender-based violence and studying the reasons why such cases are rarely reported to the authorities.”<sup>7</sup>
  - e. “[t]ake measures to guarantee effective access to justice, reparation and protection for women victims of gender-based violence.”<sup>8</sup>
4. According to its mid-term UPR update, Bulgaria has taken several concrete steps to implement the aforementioned recommendations. These steps have resulted in several services to provide protection for women. For example, a 24-hour national crisis hotline was set up and served almost 2,800 people—with approximately 2,300 calls on domestic violence—in 2011. A total of 15 “Crisis Centres” also operate throughout the country and provide shelter for, among others, women and children who are victims of domestic violence. Separate “Mother and Infant Units” have been set up to support victims of domestic violence who are pregnant or accompanied by a child under the age of three. If such victims are in imminent danger of physical harm, the Ministry of the Interior is to be notified accordingly. Finally, working in cooperation with Crisis Centres, 66 “Social Rehabilitation and Integration Centres” have also been established in order to assist with “rehabilitation, social and legal consulting, [and the] development and implementation of individual programmes for social inclusion...”<sup>9</sup>
5. More broadly, several notable steps have been taken to combat gender-based violence, as well. For instance, the Bulgarian government has begun to regularly conduct public awareness campaigns—in coordination with national human rights organs and relevant NGOs—designed to educate the public regarding the prevalence of gender-based violence, as well as the protective measures available to its victims. The government has likewise considered repealing a provision relating to Article 158 of the Criminal Code that prevents the prosecution of those who committed sexual abuse, besides rape, in the event that they

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<sup>6</sup> Republic of Bulgaria, *Bulgaria’s First Universal Periodic Review Recommendations: Mid-Term Implementation Update 2011-2012* (2013), 32. Also available online at <http://lib.ohchr.org/HRBodies/UPR/Documents/session9/BG/BulgariaImplementation.pdf>. See also recommendation 80.48 from Bosnia and Herzegovina in Report of the Working Group on the Universal Periodic Review: Bulgaria, Human Rights Council, A/HRC/16/9, 4 January 2011, at 17.

<sup>7</sup> Republic of Bulgaria, *Bulgaria’s First Universal Periodic Review Recommendations: Mid-Term Implementation Update 2011-2012* (2013), 32. Also available online at <http://lib.ohchr.org/HRBodies/UPR/Documents/session9/BG/BulgariaImplementation.pdf>. See also recommendation 80.35 from Spain in Report of the Working Group on the Universal Periodic Review: Bulgaria, Human Rights Council, A/HRC/16/9, 4 January 2011, at 16.

<sup>8</sup> Republic of Bulgaria, *Bulgaria’s First Universal Periodic Review Recommendations: Mid-Term Implementation Update 2011-2012* (2013), 32. Also available online at <http://lib.ohchr.org/HRBodies/UPR/Documents/session9/BG/BulgariaImplementation.pdf>. See also recommendation 80.68 from Brazil in Report of the Working Group on the Universal Periodic Review: Bulgaria, Human Rights Council, A/HRC/16/9, 4 January 2011, at 18.

<sup>9</sup> Republic of Bulgaria, *Bulgaria’s First Universal Periodic Review Recommendations: Mid-Term Implementation Update 2011-2012* (2013), 33. Also available online at <http://lib.ohchr.org/HRBodies/UPR/Documents/session9/BG/BulgariaImplementation.pdf>.

marry their victim.<sup>10</sup> Bulgaria's draft Criminal Code does not contain this provision,<sup>11</sup> but the draft code was strongly criticized by NGOs, institutions, and experts for other reasons and was not considered by the parliament. Thus, the provision remains in force.

6. This submission addresses Bulgaria's implementation of recommendations from its first UPR, as well as other developments in the context of domestic violence. In summary, it highlights *de jure* problems within the language of Bulgaria's civil and criminal laws, as well as problems in practice by police, judges, prosecutors, Directorates for Social Assistance, and child protection authorities. This submission concludes by making recommendations to the Government of Bulgaria.

## II. DOMESTIC LEGAL FRAMEWORK

7. On March 16, 2005, the Bulgarian Parliament adopted the Law on Protection against Domestic Violence (LPADV). The LPADV creates a civil remedy for victims of domestic violence in Bulgaria by allowing them to petition the regional court for protection.<sup>12</sup> It defines domestic violence as any act or attempted act of physical, mental or sexual violence, as well as the forcible restriction of individual freedom and privacy.<sup>13</sup> The court has authority to grant an emergency, as well as a longer-term order for protection that can include temporary child custody and five other forms of relief.<sup>14</sup>
8. Since the LPADV's adoption, the Bulgarian government has adopted amendments to the Criminal Code and LPADV.<sup>15</sup> Many of the 2009 amendments marked a positive step in addressing challenges for the effective implementation of the LPADV.
9. Since its last UPR in 2010, the Bulgarian ministries have promulgated various policies on violence against women that serve to implement the LPADV. In 2012, the Ministry of Interior issued new guidelines for police. The first programme for prevention and combating domestic violence was adopted in 2008, and the Council of Ministers has continued to adopt annual domestic violence programmes for the past three years, including 2014.

## III. COMPLIANCE WITH INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

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<sup>10</sup> Republic of Bulgaria, *Bulgaria's First Universal Periodic Review Recommendations: Mid-Term Implementation Update 2011-2012* (2013), 33. Also available online at

<http://lib.ohchr.org/HRBodies/UPR/Documents/session9/BG/BulgariaImplementation.pdf>.

<sup>11</sup> Bulgaria Draft Criminal Code (2014, available at <https://mjs.bg>).

<sup>12</sup> Protection Against Domestic Violence Act [hereinafter LPADV], State Gazette [SG] 2005, No. 27, § 1. Also, courts hearing cases between the victim and respondent under the Family Code or Child Protection Act have authority to issue a protection order. *Id.* § 7(2).

<sup>13</sup> *Id.* § 2.

<sup>14</sup> *Id.* § 5(1).

<sup>15</sup> Genoveva Tisheva, Bulgarian Gender Research Foundation, An Important Victory (April 13, 2009), <http://bgrf.org/en/?news&article=56> (last visited Apr. 1, 2010); Bulgarian Ministers Approve Draft Amendments to Law on Protection against Domestic Violence, The Advocates for Human Rights, June 23, 2009, [http://stopvaw.org/Bulgarian\\_Ministers\\_Approve\\_Draft\\_Amendments\\_to\\_Law\\_on\\_Protection\\_against\\_Domestic\\_Violence.html](http://stopvaw.org/Bulgarian_Ministers_Approve_Draft_Amendments_to_Law_on_Protection_against_Domestic_Violence.html); Important Victory on Domestic Violence Legal Reform in Bulgaria, The Advocates for Human Rights, April 22, 2009, [http://stopvaw.org/Important\\_Victory\\_on\\_Domestic\\_Violence\\_Legal\\_Reform\\_in\\_Bulgaria2.html](http://stopvaw.org/Important_Victory_on_Domestic_Violence_Legal_Reform_in_Bulgaria2.html).

10. While Bulgaria has made progress by amending the LPADV and promulgating corresponding policies, challenges still remain. In particular, **the LPADV must be amended to allow the issuance of protection orders for violence committed prior to the 30-day timeline.** Currently, a victim must apply for an order for protection within 30 days of an act of violence; after 30 days, she is time-barred and must experience a new act of violence before seeking protection.<sup>16</sup> In its follow-up report to Committee on the Elimination of Discrimination against Women (CEDAW), Bulgaria stated that its Ministry of Justice will establish an interagency working group for developing legal amendments to meet CEDAW's recommendation to remove the one-month time limit in the second half of 2014. The process is expected to continue after parliamentary elections in October 2014.<sup>17</sup>
11. **New Ministry of the Interior guidelines (2012) state that police have no authority under Article 4(2) of the LPADV to transmit an application to the court on behalf of the victim.**<sup>18</sup> These guidelines have scaled back police responsibility for obtaining orders for protection, and in practice, police now tend to rely more on warnings and administrative measures for low-level domestic violence instead of the LPADV.<sup>19</sup> In combination with Bulgaria's Criminal Code, which requires private prosecution for light injuries and medium injuries inflicted by a relative, the curtailment of police authority under the civil LPADV means that both prosecutors and police undertake effective responses to domestic violence in only the most severe cases under both Bulgaria's penal and civil systems.<sup>20</sup>
12. Police still need to improve their execution of orders for protection, enforcement of weapon confiscation, and provision of evidence. The Ministry of the Interior guidelines have created a notifications procedure when police execute a protection order; this has led to confusion by police and delays in the immediate execution of the protection order.<sup>21</sup> Although there has been some improvement, **police are not consistently monitoring and enforcing provisions of the Arms and Ammunition Act,** which prohibits the possession of weapons by individuals with protection orders against them in the past three years.<sup>22</sup> Also, **the LPADV requires Ministry of the Interior bodies to issue certified copies of evidence of domestic**

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<sup>16</sup> LPADV, Art. 10(1).

<sup>17</sup> Information about the Measures Taken by the Republic of Bulgaria in Implementing the Recommendations Referred to in Paragraph 16 (Strengthening of Institutional Mechanisms) and Paragraph 26 (Protection against Domestic Violence): The Recommendations of the UN Committee on the Elimination of Discrimination against Women (CEDAW) in Connection with the Examination of the IV-VII Consolidated Periodic Report of Bulgaria (12 July 2012), Aug. 14, 2014, U.N. Doc. CEDAW/C/BGR/CO/4-7/Add.1, para 26(b).

<sup>18</sup> Personal Communication from Genoveva Tisheva to Rosalyn Park, Sofia, Bulgaria, Oct. 14, 2013 (on file with authors).

<sup>19</sup> Personal Communication from Genoveva Tisheva to Rosalyn Park, Sofia, Bulgaria, Oct. 14, 2013 (on file with authors).

<sup>20</sup> Personal Communication from Genoveva Tisheva to Rosalyn Park, Sofia, Bulgaria, Oct. 14, 2013 (on file with authors).

<sup>21</sup> Bulgarian Alliance for Protection against Domestic Violence, Monitoring of the Legislation Related to Protection against Domestic Violence and Other Forms of Gender-based Violence, Conducted by the Organizations – Members of Alliance for Protection against Domestic Violence – Summary of the Main Highlights from the Monitoring from the Beginning of 2013 to the Beginning of 2014 (unofficial translation) (2014) (on file with authors), at 4-5.

<sup>22</sup> Bulgarian Alliance for Protection against Domestic Violence, Monitoring of the Legislation Related to Protection against Domestic Violence and Other Forms of Gender-based Violence, Conducted by the Organizations – Members of Alliance for Protection against Domestic Violence – Summary of the Main Highlights from the Monitoring from the Beginning of 2013 to the Beginning of 2014 (unofficial translation) (2014) (on file with authors), at 5.

**violence** upon the victim, victim’s representative, or court’s request.<sup>23</sup> This provision has been communicated to operating police staff, but they do not consistently comply with this requirement.<sup>24</sup>

- 13. Few procedures for violations of orders for protection have been initiated, and ineffective police responses to these violations mean that most cases do not reach the prosecutor.**<sup>25</sup> An NGO estimated that approximately 50-60 procedures have been initiated for violations under Article 296 of the Criminal Code, but only about 10 have reached the prosecutor.<sup>26</sup> In addition, police do not pursue action under Article 296(1) for violations they perceive to be mild infractions, such as when the perpetrator approaches a victim.<sup>27</sup> In one case, a woman received an order for protection prohibiting her sons’ father from committing violence against her. Each time she attempted to visit her sons, the father blocked the doorway, pushed the door against her violently, and refused to allow her to see her children. When she notified the police, the officers explained they needed to witness the violence for a case to proceed under Article 296. A police officer who did witness part of the incident stated there was “no violence.” According to an NGO, “[police] don’t believe the victim.”<sup>28</sup> This failure to respond is exacerbated when perpetrators who violate the order for protection claim they never received the order; victims must then shoulder an additional burden to prove the perpetrator did receive it.<sup>29</sup> When violations do actually reach the prosecution stage, probation or an alternative sanction typically replaces the envisioned prison sentence or fine.<sup>30</sup>
- 14. The 2009 criminalization of a violation of an order for protection does not specify if it applies to an emergency order for protection, a long-term order for protection issued via a court decision, or both.**<sup>31</sup> According to an NGO, the law must clarify that Article 296(1) applies to both a long-term and an emergency order for protection, because state actors are reluctant to apply this provision without a court decision on emergency orders.<sup>32</sup> Thus, in practice, perpetrators may not be held accountable for violating an emergency order

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<sup>23</sup> LPADV, Art. 14(1).

<sup>24</sup> Bulgarian Alliance for Protection against Domestic Violence, Monitoring of the Legislation Related to Protection against Domestic Violence and Other Forms of Gender-based Violence, Conducted by the Organizations – Members of Alliance for Protection against Domestic Violence – Summary of the Main Highlights from the Monitoring from the Beginning of 2013 to the Beginning of 2014 (unofficial translation) (2014) (on file with authors), at 5.

<sup>25</sup> Personal Communication from Genoveva Tisheva to Rosalyn Park, Sofia, Bulgaria, Oct. 14, 2013 (on file with authors).

<sup>26</sup> Personal Communication from Genoveva Tisheva to Rosalyn Park, Sofia, Bulgaria, Oct. 14, 2013 (on file with authors).

<sup>27</sup> Personal Communication from Genoveva Tisheva to Rosalyn Park, Sofia, Bulgaria, Oct. 14, 2013 (on file with authors).

<sup>28</sup> Personal Communication from Genoveva Tisheva to Rosalyn Park, Sofia, Bulgaria, Oct. 14, 2013 (on file with authors).

<sup>29</sup> Personal Communication from Genoveva Tisheva to Rosalyn Park, Sofia, Bulgaria, Oct. 14, 2013 (on file with authors).

<sup>30</sup> Personal Communication from Genoveva Tisheva to Rosalyn Park, Sofia, Bulgaria, Oct. 14, 2013 (on file with authors).

<sup>31</sup> Personal Communication from Genoveva Tisheva to Rosalyn Park, Sofia, Bulgaria, Oct. 14, 2013 (on file with authors).

<sup>32</sup> Personal Communication from Genoveva Tisheva to Rosalyn Park, Sofia, Bulgaria, Oct. 14, 2013 (on file with authors).

for protection, leaving victims with less protection despite the exigent circumstances that compelled their need for “emergency” protection in the first place. In addition, the language of Article 296 is vague and does not differentiate between different levels of or repeated violations.<sup>33</sup>

- 15. While the LPADV provides an important civil remedy, it offers no criminal prosecution except where the offender violates the order for protection.** In those cases, the offender is publicly prosecuted for obstructing a judgment, but not for the violence itself.<sup>34</sup> Most victims resort to the civil system’s order for protection, and criminal prosecution and punishment of perpetrators remains severely underutilized in Bulgaria largely due to the language of the Criminal Code, as described below.<sup>35</sup>
- 16. Provisions in the Criminal Code continue to hinder victims of domestic violence from obtaining justice.** Article 161(1) of the Criminal Code requires that where a victim of domestic violence suffers a trivial- or middle-level injury inflicted upon them by a spouse, brother or sister, or another relative, the penal prosecution must be instituted on the basis of a complaint by the victim.<sup>36</sup>
- 17. Thus, where a victim of domestic violence has suffered a trivial-level injury, she must file a complaint and proceed through the criminal justice system alone.** Also, victims who sustain medium-level injuries from a relative must proceed through the criminal justice system without the help of a prosecutor.<sup>37</sup> These victims may prosecute their cases on their own, but they must locate and call their own witnesses and present their own evidence in court. Without a state prosecutor to institute penal prosecution, one attorney stated that a perpetrator of such an injury, knowing that he is subject only to a private prosecution, could easily influence a victim not to prosecute, given their close relationship and the power and control over victims exercised by the perpetrator.<sup>38</sup>

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<sup>33</sup> Personal Communication from Genoveva Tisheva to Rosalyn Park, Sofia, Bulgaria, Oct. 14, 2013 (on file with authors).

<sup>34</sup> LPADV, art. 21(2); Criminal Code, art. 161(1).

<sup>35</sup> Bulgarian Alliance for Protection against Domestic Violence, Monitoring of the Legislation Related to Protection against Domestic Violence and Other Forms of Gender-based Violence, Conducted by the Organizations – Members of Alliance for Protection against Domestic Violence – Summary of the Main Highlights from the Monitoring from the Beginning of 2013 to the Beginning of 2014 (unofficial translation) (2014) (on file with authors), at 11.

<sup>36</sup> (1) For trivial bodily injury under Article 130 and 131, paragraph (1), sub-paragraphs 3 - 5, for trivial and medium bodily injury under Article 132, for the crimes under Article 144, paragraph (1), Articles 145, 146 - 148a, as well as for bodily injury under Articles 129, 132, 133 and 134, inflicted on a relative of ascending and descending line, a spouse, brother or sister, the penal prosecution shall be instituted on the basis of complaint by the victim. Criminal Code, Art. 161(1)(Bulg.).

<sup>37</sup> For trivial bodily injury under Article 130 and 131, paragraph (1), sub-paragraphs 3 - 5, for trivial and medium bodily injury under Article 132, for the crimes under Article 144, paragraph (1), Articles 145, 146 - 148a, as well as for bodily injury under Articles 129, 132, 133 and 134, inflicted on a relative of ascending and descending line, a spouse, brother or sister, the penal prosecution shall be instituted on the basis of complaint by the victim. Criminal Code, art. 161(1); see also: MINNESOTA ADVOCATES FOR HUMAN RIGHTS, DOMESTIC VIOLENCE IN BULGARIA 10 (1996).

<sup>38</sup> The Advocates for Human Rights, et al., *Implementation of the Bulgarian Law on Protection against Domestic Violence* (2008), at 40.

18. **Article 161(1) of the Criminal Code denies victims of domestic violence equal and effective access to the criminal justice system, equal protection before the law, and does not provide an effective remedy for harm they have suffered.** Responsibility for prosecuting violence against women should lie with public prosecution authorities and not with victims, regardless of the level or type of injury. Without providing for state-initiated prosecution, Bulgaria's current criminal law does not fulfill its international obligations to prosecute perpetrators of these crimes.
19. The criminal code lacks other provisions, as well. **Bulgaria's Criminal Code does not explicitly prohibit marital rape, nor is there a specific offense for strangulation.**<sup>39</sup> Other crimes, including domestic violence and murder of domestic violence victims, are not classified as aggravated crimes under the law.<sup>40</sup>
20. In its follow-up report to the CEDAW Committee, Bulgaria stated that **it is developing a new Criminal Code and preparing amendments to the Criminal Procedure Code.** The draft Criminal Code was approved by the Council of Ministers (Decision No. 50) and submitted to the National Assembly on January 31, 2014. The government states that the draft law creates specific offenses of domestic violence and spousal rape, and it allows for *ex officio* prosecution for both crimes.<sup>41</sup> However, NGOs have criticized the current draft Criminal Code as it fails to effectively resolve these problems. As mentioned above in paragraph 5, Parliament is not considering the draft code and passage is currently blocked. Nevertheless, until amendments are adopted, private prosecution for low- and medium-level domestic violence remains the only way to hold offenders accountable for these offenses.
21. A 2009 amendment to the LPADV changing court jurisdiction under the LPADV has created confusion and the potential for conflicting decisions. Under Article 5(4) of the LPADV, the court hearing an application for an order for protection normally has the authority to grant temporary custody of the child to the non-violent parent. **But where there is a corollary pending case concerning parental rights, the LPADV amendment removes that authority from the court hearing the application.**<sup>42</sup> Instead, the court determining parental rights<sup>43</sup> decides on the sole remedy of temporary child custody under Article 5(4), while the original court retains authority for deciding the all other remaining remedies for an order for

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<sup>39</sup> Bulgarian Alliance for Protection against Domestic Violence, Monitoring of the Legislation Related to Protection against Domestic Violence and Other Forms of Gender-based Violence, Conducted by the Organizations – Members of Alliance for Protection against Domestic Violence – Summary of the Main Highlights from the Monitoring from the Beginning of 2013 to the Beginning of 2014 (unofficial translation) (2014) (on file with authors), at 15.

<sup>40</sup> Bulgarian Alliance for Protection against Domestic Violence, Monitoring of the Legislation Related to Protection against Domestic Violence and Other Forms of Gender-based Violence, Conducted by the Organizations – Members of Alliance for Protection against Domestic Violence – Summary of the Main Highlights from the Monitoring from the Beginning of 2013 to the Beginning of 2014 (unofficial translation) (2014) (on file with authors), at 15.

<sup>41</sup> Information about the Measures Taken by the Republic of Bulgaria in Implementing the Recommendations Referred to in Paragraph 16 (Strengthening of Institutional Mechanisms) and Paragraph 26 (Protection against Domestic Violence): The Recommendations of the UN Committee on the Elimination of Discrimination against Women (CEDAW) in Connection with the Examination of the IV-VII Consolidated Periodic Report of Bulgaria (12 July 2012), Aug. 14, 2014, U.N. Doc. CEDAW/C/BGR/CO/4-7/Add.1, para. 26(a).

<sup>42</sup> LPADV, Art. 5(4); Personal Communication from Genoveva Tisheva to Rosalyn Park, Sofia, Bulgaria, Oct. 14, 2013 (on file with authors).

<sup>43</sup> The court determining parental rights also includes courts deciding on the child's residence and divorce cases.

protection. This splitting of decisions can result in contradictory decisions that do not promote victims' safety and could place her in danger. In other words, the court hearing the application may find the perpetrator violent and issue an order for protection against him, while the court deciding parental rights may order the children to live with the perpetrator.<sup>44</sup> This places the victim at greater danger, as perpetrators may use children to continue exerting power and control over the victim and use child visitation or exchange as an opportunity to further harm the victim. The case mentioned above (para. 14) illustrates the problem this amendment causes: although the woman received an order for protection from a court finding her husband to be violent and prohibiting him from committing further violence, another court awarded custody of her two sons to her abusive husband.<sup>45</sup> Thus, she was forced to confront her abuser and place herself at further risk of harm each time she attempted to see her children.

22. This legal provision reflects a broader problem of protecting victim safety in child custody and visitation decisions in Bulgaria. **State actors tend to treat both parents as equal in their parental rights without regard to other factors, including neglect or violence toward the child.** Monitoring has shown that the state prioritizes the rights of fathers to visitation over the rights of mothers and their children to be safe from violence.<sup>46</sup> Child protection authorities aggravate the situation by pressuring victims to cooperate with the father on child visitation and even undergo mediation—at times without her consent. In other words, “[c]hild contacts are always a *right* of the father and a *responsibility* of the mother” [emphasis added].<sup>47</sup> Authorities do not consistently seek an expert opinion in child custody cases, even when children have demonstrated fear of contact with an abusive parent.<sup>48</sup>
23. **Trainings for all actors on domestic violence are needed.** Police in Bulgaria continue to be the most supportive state sector for domestic violence victims, but they need trainings on risk assessment and investigation. The current police response focuses primarily on injuries, but investigations need to expand beyond physical injuries to identify aggressive and dangerous behavior.<sup>49</sup> Judges continue to exhibit misperceptions about domestic violence. Although judges are issuing evictions under the LPADV, they still expressed concerns over the

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<sup>44</sup> Personal Communication from Genoveva Tisheva to Rosalyn Park, Sofia, Bulgaria, Oct. 14, 2013 (on file with authors).

<sup>45</sup> Personal Communication from Genoveva Tisheva to Rosalyn Park, Sofia, Bulgaria, Oct. 14, 2013 (on file with authors).

<sup>46</sup> Bulgarian Alliance for Protection against Domestic Violence, Monitoring of the Legislation Related to Protection against Domestic Violence and Other Forms of Gender-based Violence, Conducted by the Organizations – Members of Alliance for Protection against Domestic Violence – Summary of the Main Highlights from the Monitoring from the Beginning of 2013 to the Beginning of 2014 (unofficial translation) (2014) (on file with authors), at 8.

<sup>47</sup> Bulgarian Alliance for Protection against Domestic Violence, Monitoring of the Legislation Related to Protection against Domestic Violence and Other Forms of Gender-based Violence, Conducted by the Organizations – Members of Alliance for Protection against Domestic Violence – Summary of the Main Highlights from the Monitoring from the Beginning of 2013 to the Beginning of 2014 (unofficial translation) (2014) (on file with authors), at 9.

<sup>48</sup> Bulgarian Alliance for Protection against Domestic Violence, Monitoring of the Legislation Related to Protection against Domestic Violence and Other Forms of Gender-based Violence, Conducted by the Organizations – Members of Alliance for Protection against Domestic Violence – Summary of the Main Highlights from the Monitoring from the Beginning of 2013 to the Beginning of 2014 (unofficial translation) (2014) (on file with authors), at 9.

<sup>49</sup> Personal Communication from Genoveva Tisheva to Rosalyn Park, Sofia, Bulgaria, Oct. 14, 2013 (on file with authors).

perpetrator's welfare and lack of a home.<sup>50</sup> There is also a lack of judicial familiarity and oversight over the LPADV's remedies of perpetrator programs and victim recovery programs.<sup>51</sup> Even when judges order these remedies, there is no control over the execution of these programs.<sup>52</sup> Public prosecutors have not undergone any specialized training on using Article 296(1) of the Criminal Code for violations of an order for protection, although it is needed. Officers of the Directorate for Social Assistance (DSA) exhibit stereotypes that do not promote victim safety. Specifically, when DSA staff rely on their personal beliefs, instead of the law, to respond to domestic violence victims, they underestimate the risk to victims and fail to refer victims to appropriate bodies for further protection and assistance. This can lead to further violence and loss of victims' trust in the system. In addition, a lack of knowledge by DSA staff about actors' responsibilities in domestic violence cases impedes interdisciplinary coordination and delays intervention.<sup>53</sup> Finally, child protection authorities' use of mediation and prioritization of fathers' rights over mothers' safety further underscores their need for training.

#### IV. RECOMMENDATIONS

- Amend the LPADV to reassign authority to determine temporary child custody in domestic violence cases to the court hearing applications under the LPADV.
- Amend the LPADV to allow the issuance of orders for protection for violence committed prior to the 30-day timeline.
- Support and fund NGOs to continue providing services for victims of domestic violence and to continue specialized training on women's human rights, domestic violence and implementation of the LPADV. Such trainings should be mandatory, regular and country-wide for police, prosecutors, judges, DSA and child protection authorities.
- Continue working to increase the coordinated community response among NGOs, police, courts, the DSA, health care providers and the media.
- Amend the Criminal Code as follows:
  - Allow state prosecution in cases of low and medium-level assaults when the victim and perpetrator are related;

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<sup>50</sup> Bulgarian Alliance for Protection against Domestic Violence, Monitoring of the Legislation Related to Protection against Domestic Violence and Other Forms of Gender-based Violence, Conducted by the Organizations – Members of Alliance for Protection against Domestic Violence – Summary of the Main Highlights from the Monitoring from the Beginning of 2013 to the Beginning of 2014 (unofficial translation) (2014) (on file with authors), at 3.

<sup>51</sup> LPADV, Art. 5(5), (6); Bulgarian Alliance for Protection against Domestic Violence, Monitoring of the Legislation Related to Protection against Domestic Violence and Other Forms of Gender-based Violence, Conducted by the Organizations – Members of Alliance for Protection against Domestic Violence – Summary of the Main Highlights from the Monitoring from the Beginning of 2013 to the Beginning of 2014 (unofficial translation) (2014) (on file with authors), at 13.

<sup>52</sup> Bulgarian Alliance for Protection against Domestic Violence, Monitoring of the Legislation Related to Protection against Domestic Violence and Other Forms of Gender-based Violence, Conducted by the Organizations – Members of Alliance for Protection against Domestic Violence – Summary of the Main Highlights from the Monitoring from the Beginning of 2013 to the Beginning of 2014 (unofficial translation) (2014) (on file with authors), at 13.

<sup>53</sup> Bulgarian Alliance for Protection against Domestic Violence, Monitoring of the Legislation Related to Protection against Domestic Violence and Other Forms of Gender-based Violence, Conducted by the Organizations – Members of Alliance for Protection against Domestic Violence – Summary of the Main Highlights from the Monitoring from the Beginning of 2013 to the Beginning of 2014 (unofficial translation) (2014) (on file with authors), at 7.

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- Criminalize marital rape and provide appropriate sanctions commensurate with the severity of the offense;
  - Criminalize the offense of strangulation, to be added to Articles 122(2) or 123(2) of the draft Criminal Code;
  - Amend the provision on bodily injury between related persons to become an aggravated offense subject to severe punishment under Article 125 of the draft Criminal Code and add a subparagraph (4) to Article 125(1)(3) that states “...another person from the range of the protected persons pursuant to Article 3 of the LPADV;”
  - Amend the provision on murder to classify the homicide of a protected person under the LPADV to constitute an aggravated offense subject to severe punishment under Article 110 of the draft Criminal Code;
  - Amend Article 296(1) to provide differentiated punishments for repeated violations of an order for protection and different levels of a violation;
  - Strengthen criminal responsibility for failure to execute an order for protection with increased penalties for repeated offenses under Article 367(2) of the draft Criminal Code.
- Promote policies that recognize the importance of maintaining the custody of children with non-violent parents.