

Bulgaria: women's efforts are big, government efforts are scarce

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Despite the overall positive trend, important gender equality issues related to the implementation of CEDAW persist in Bulgaria and are still waiting for legislative and policy solutions. These issues include the prevalence of formal equality versus substantive equality; the lack of appropriate temporary special measures; the absence of a special gender equality law and gender equality mechanisms at national and local levels; minimal mechanisms for the implementation of reproductive rights of women; and challenges in achieving equal participation in decision-making and violence against women.

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NGOs in Bulgaria have been submitting reports to the CEDAW Committee since 1998. In 2002, non-governmental organizations from Bulgaria and the Western Balkans (Macedonia, Bosnia and Herzegovina, Serbia, Albania, Croatia, and Montenegro) prepared a joint report on the implementation of CEDAW in the region. In the case of Bulgaria, the report was elaborated in the absence of a governmental periodic report and was focused on the level of compliance of the national law and practice with regards to the convention and, more specifically, with the recommendations made in 1998 by the Committee. The compilation was broadly disseminated in the Balkans and it was a worthwhile effort to produce "unsolicited" alternative CEDAW reports from civil society.

The implementation of CEDAW recommendations

In the 10 years that followed the consideration of the Bulgarian report, positive changes in the national legislation took place such as the adoption of the Protection against Discrimination Act in 2004, the passing of a Law on Combating Trafficking in Human Beings in 2004, and the Law on Protection against Domestic Violence in 2005 (LPADV), the criminalization of the non-implementation of the orders for protection issued under the LPADV, the adoption of some anti-discrimination provisions in the Labour Code, among others.

Women's NGOs have constantly insisted on the importance of mainstreaming the Convention and its Optional Protocol as well as giving CEDAW clearer status in national legislation. Despite their lobbying efforts before the relevant state institutions, however, mainstreaming did not take place. Consequently, domestic legislation contradicts the CEDAW standards.

The Law on Protection against Domestic Violence, which was enacted in March 2005, provides for administrative and policing measures in cases of domestic violence. In particular, the relevant court may issue injunctions to remove the perpetrator from the common home, ban him from approaching the victim's home, workplace or place of social contacts, temporarily remove the child from the

custody of the perpetrator and impose compulsory education programs.¹

The Law provides for a special urgent civil procedure of court administration in cases of domestic violence. It is a *sui generis* procedure although similar to the quick civil procedure.² The regulation also contains elements of the criminal procedure but remains within the framework of the civil procedure. The essence of the decree is centered on the regional court's ability to issue special orders for protection of victims of violence which contain restraining measures for the perpetrators. Under the LPADV, domestic violence is not recognized as a crime.

Since the Law on Protection against Domestic Violence was adopted its practice reveals that aside from the positive effect of the new legislation there are a number of problems arising within the established legal framework and in following the rules determined by the legislator. Women are still afraid to complain about domestic violence because of stigmatization and the generally negative reaction of society with regards to the discussion of "family matters" in public. This leads women, to more often than not, avoid seeking judicial protection. And in cases where women apply to the court for legal protection the latter does not offer them adequate safeguards due to the shortcomings of the Law and the inadequacy of some of its procedures.

In January 2008, due to the pressure from women's rights NGOs working in the area of domestic violence (mainly members of the Alliance against Domestic Violence) and the increase in cases of domestic violence over the years, the Ministry of Justice established a working group to prepare a draft law to amend the LPADV. The draft law was prepared in the summer of 2008. However, due to administrative obstacles and the lack of prioritization of the legislation by the Council of Ministers the draft regulation was only presented to the Prime minister in November of 2008. The draft act calls for: greater protection for victims of domestic violence during court proceedings; extension of the circle of persons eligible for protection under the act; greater protection for children and people with disabilities; as

well as the assignment to the Ministry of Labour and Social Policy of coordination functions and a special budget for the implementation of the act.

The Alliance of non-governmental organizations for protection against domestic violence advocated for an effective implementation of the LPADV and in particular the financing of the delivery of services to victims of domestic violence, as well as the incrimination of the violation of the judiciary protection orders.

Due to the lack of serious interest of the Government in VAW and its focus and use of Structural funds from the European Union for political and personal gain, the draft law was only voted on by the Council of Ministers in June 2009. Subsequently, Parliamentary elections took place (in July 2009) and prevented the implementation of any new law including the amendment to the LPADV. Today, the amendment awaits implementation and it is not clear when this will take place.

It should be noted however, that thanks to the efforts of women's human rights NGOs the Parliament adopted amendments in Article 296 (1) of the Penal Code on 10.04.2009 stipulating that non-implementation of the courts' protective orders under the LPADV constitutes a crime punishable with up to 3 years imprisonment or a fine of 5000 Bulgarian leva (2500 euros).³

Unfortunately, there are still norms in the Penal Code exempting certain types of assault, if committed by a family member, from State prosecution although the same act if committed by a stranger would be punishable by law. The State does not assist in prosecuting domestic assaults unless the woman was killed or permanently maimed. And even in cases where the woman is permanently injured the state does not always prosecute.

Underrepresentation of women in decisionmaking

The issue of gender equality in political participation is a basis and guarantee for equality of women in all other spheres, and, *vice versa*, the inequality of women in other areas reflects on inequality in political participation.

Historically unequal treatment of women in the realm of political participation was "justified" by their reproductive functions and subordinated role in the

1 See Article 5 of the Law.

2 In instances where the life or health of the victim is in imminent danger, the victim may apply for an emergency order. The emergency order can also be applied for via the nearest police department. (Article 18 and Article 4 paragraph 2 of the Law)

3 State Gazette No27/10.04.2009 paragraph 58.

family and society. These stereotypes are still alive today when the electoral laws and party systems consolidate men's power within a hypocritical framework of formal equality.

In political participation, the discourse in favor of affirmative action and the introduction of a quota system for encouraging women's participation is particularly relevant for Bulgaria for there is no quota system for enhancing women's political participation in the country and the general requirements of the Constitution and the relevant laws (the Law on the election of members of parliament, Law for the local elections) do not contain such provisions ensuring real women's participation in politics on equal footing with men.

Discrimination against women and affirmative action

At the end of 2003, a Law on Protection against Discrimination was adopted by the Bulgarian Parliament. According to the Law, the prohibition of discrimination shall be binding upon all, in exercising and protecting the rights and freedoms set by the Constitution and the laws of the Republic of Bulgaria. Aside from this general and broad scope of protection, the law provides for special rules for protection against discrimination in the exercise of the right to work, the right to education and training, etc. However, according to the law, discrimination based on gender is just one of the grounds enlisted and there is no national mechanism for dealing with this type of gendered discrimination and no affirmative actions provided.

It should be noted that it is the EU accession process and the constant women's NGOs efforts which motivated the Government to adopt a special anti-discrimination law. In the period 2000-2003 – the Bulgarian Gender Research Foundation (BGRF), for instance, worked on draft legislation related to

women's rights in Bulgaria and participated in the working groups on the elaboration of a Draft Act on Equal Opportunities and a Draft Act on Protection against Discrimination (in force since 2004).

Non-existence of an institutional mechanism for gender equality and women's rights

Up until now and despite human rights NGOs efforts, there is no specific legislation on gender equality adopted by the Bulgarian Parliament.

Three national assemblies witnessed attempts to promote such a law but without success. The main debates developed around two main issues: whether such a law is needed if Bulgaria already has a comprehensive anti-discrimination law (in existence since the 1 January 2004), as well as the debate regarding the most appropriate mechanism for gender equality for Bulgaria and the related considerations regarding budgetary restrictions. This debate occurred despite existing proposals to create the position of a specialized ombudsperson and an agency for gender equality... The results of these debates are the numerous efforts to produce a better law. About six drafts have been elaborated so far and none of them adopted. The most recent draft was introduced in the National Assembly at the end of November 2008.

Although there is an Advisory Council on Gender Equality to the Council of Ministers, which is chaired by the Minister of Labour and Social Policy and a small unit within the ministry, existing institutional mechanisms are insufficient for ensuring a continuous policy on gender equality:

The Government claims that the equality body, the Commission for Protection against Discrimination has the functions of a mechanism for ensuring gender equality but this is not the case. There is lack of dissemination of the Convention and the obligation to report periodically as well as lack of

training and education on how to implement the Convention.

There is no special focus on CEDAW in the educational system in Bulgaria, and, more specifically the way lawyer's are educated. As a whole, the compliance with CEDAW is not given priority in government policy. One of the reasons for that is the high priority placed on implementing EU standards in the process of transition for the country and EU accession. EU standards which are often lower than the standards set by CEDAW are used as a basis for legislative and policy changes in the field of gender equality in Bulgaria.

Moreover, in spheres where the EU has no binding requirements, such as affirmative actions for women's participation in decision-making, the lower EU standard on positive action is applied instead of the broader possibilities for temporary special measures envisioned in Art. 4 of CEDAW. Despite the decision to implement the EUs lower standards it's important to highlight that some positive progress was made due to the harmonization of these standards.

Since 2004, BGRF, for instance, is the convener and main organizer of the Women's Human Rights Training Institute (WHRTI) for young lawyers from Eastern Europe focused on building litigation skills on three main issues: employment discrimination, violence against women and reproductive rights, with special focus on multiple discriminations. This training institute is focused on preparing young lawyers on how to use CEDAW successfully (and related documents) in national-level advocacy and litigation work towards eliminating gender discrimination and achieving equality.⁴ Progress in legislation and practice on gender issues is a result of this type of processes along with a combination of the factors mentioned above and the active campaigning and lobbying of Bulgarian women's NGOs. ■

4 <www.institute.bgrf.org>