



Convention on the Elimination of All Forms of Discrimination against Women

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Committee on the Elimination of Discrimination against Women

Decision adopted by the Committee under article 4 (2) (c) of the Optional Protocol, concerning communication No. 142/2019*,**

<i>Communication submitted by:</i>	G.D. (represented by counsel, Milena Kadieva)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Bulgaria
<i>Date of communication:</i>	5 March 2019 (initial submission)
<i>References:</i>	Transmitted to the State party on 24 May 2019 (not issued in document form)
<i>Date of adoption of decision:</i>	25 October 2021
<i>Subject matter:</i>	Domestic violence; discrimination against women; equality before the law
<i>Procedural issue:</i>	Insufficient substantiation
<i>Articles of the Convention:</i>	1, 2 (c), 5 (b), 15 and 16
<i>Article of the Optional Protocol:</i>	4 (2) (c)

* Adopted by the Committee at its eightieth session (18 October–12 November 2021).

** The following members of the Committee participated in the examination of the present communication: Gladys Acosta Vargas, Hiroko Akizuki, Tamader Al-Rammah, Nicole Ameline, Marion Bethel, Leticia Bonifaz Alfonzo, Louiza Chalal, Corinne Dettmeijer-Vermeulen, Naéla Gabr, Hilary Gbedemah, Nahla Haidar, Dalia Leinarte, Rosario G. Manalo, Aruna Devi Narain, Ana Peláez Narváez, Bandana Rana, Rhoda Reddock, Natasha Stott Despoja, Franceline Toé-Bouda, Lia Nadaraia and Elgun Safarov. In accordance with rule 60 (1) of the Committee's rules of procedure, Committee member Genoveva Tisheva did not participate in the examination of the communication.



1. The author is G.D., a Bulgarian national, born in 1976. The author and her ex-husband, V.Z., are parents of two minor children, D.Z. and M.Z., born in 2004 and 2008, respectively. Her complaint pertains to violations by Bulgaria of articles 2 (c), 5 (b), 15 and 16, read in conjunction with article 1, of the Convention. The author submits that the State party failed to provide her and her children with effective protection against domestic violence by treating her unequally before the law, as a result of which her custodial rights over her children were revoked and granted to the children's allegedly violent father. The author requests the Committee to require the State party to suspend the judicial proceedings initiated for the implementation of the final court decision placing her children with their father and to require the State party to ensure that the meetings between the children and their father take place in a safe environment, for example, with the supervision of a child specialist in a contact centre. The Optional Protocol entered into force for Bulgaria on 20 December 2006. The author is represented by counsel, Milena Kadieva.

Facts as submitted by the author

2.1 On 3 October 2012, the Sofia District Court affirmed the divorce proceedings agreement reached by the author and her husband, whereupon their marriage was dissolved and the custodial rights regarding their minor children were assigned to the mother. The father was granted visiting rights and was ordered to pay child maintenance on a monthly basis.

2.2 On an unspecified date, the author's ex-husband initiated court proceedings against the author for the custodial rights over their two minor children, and to oblige her to pay child maintenance for the children. He stated in his petition that the author had married and started living with another man right after their divorce, leaving no time for the children to adapt to the new situation. He alleged that the new husband was staying in the children's bedroom and that the couple forced the children to call the new husband "daddy". He added that the author was alienating their children from him and obstructing the regular meetings between him and the children. He also alleged that the daughter, M.Z., was subjected to "lewd actions" by her maternal grandfather.¹

2.3 On 28 April 2016, the author submitted her written pleadings to the court, in which she stated that, during her marriage to V.Z., she and the children had been subjected to physical and psychological abuse by her ex-husband, which was why she had filed for a divorce. The violence persisted following the divorce during the meetings between the children and their father,² in spite of which she continued to tell her children that it was important to stay in contact with their father. However, at a certain point, she no longer wanted to force her children to meet their father as they objected to the visits and always returned distressed. For these reasons, the author

¹ According to the first instance court decision of 1 June 2016, on 9 January 2015, an immediately enforceable protection order provisionally designated the children's place of residence with their father and the mother was assigned a regime of personal contact. On 22 January 2015, the father filed a petition for a nationwide search and the localization of the children. The author placed herself and her children in a resident house, where they remained from 17 January to 11 July 2015. The author was invited to return the children to their father, in accordance with the established regime of personal contact, and was further notified on 23 July 2015 that measures were to be taken with regard to the enforcement of the regime of personal contact between the father and the children.

² The violence manifested itself mainly in criticizing the mother in front of the children and sometimes in assaulting the children physically, especially if they talked about or wanted to contact their mother. The children, especially the son, D.Z., have allegedly given an account of experiencing insecurity, intimidation and anxiety during the visits with the father. D.Z. demonstrates the behaviour of a child who has suffered chronic domestic violence.

sought psychological support from the Animus Association Foundation to overcome the trauma allegedly caused by her ex-husband during and after their marriage.³

2.4 On 1 June 2016, the Sofia District Court ruled in favour of V.Z., granting him custody over the children and ordering the author to pay child maintenance. The court held that significant changes had occurred in the circumstances of the parties, necessitating the revision of the provisions of the initial judgment, dated 3 October 2012, in respect of the exercise of custodial rights. The court argued, in particular, that the author had not complied with the court order establishing the father's visiting rights, had alienated the children from their father and had entered into a new marriage and that the children's environment was unsafe because of the actions of their maternal grandfather.

2.5 On an unspecified date in 2016, the author filed an appeal with the Sofia City Court, claiming primarily that the court had selectively relied on evidence adduced only by her ex-husband. The author held that the first instance decision had ignored the statements of the children, which were backed up with psychological reports that they had been subjected to domestic violence by their father. She stated that she had always respected the visiting rights of the father. However, there had been periods when the father could not meet them because the children themselves refused to see their father owing to his violent behaviour towards them. She also added that the obstacles to communication between the father and the children stemmed from the father's behaviour and not her own. She claimed that there was a strong emotional bond between her and the children, which had been corroborated by experts. She submitted to the court that her ex-husband had taken legal action against her out of revenge as she had remarried and had a child with her new husband. Her ex-husband had also managed to have an immediate protection order⁴ issued against her on the suspicion of domestic violence committed against the children by the author and her new partner, under which the children should have been placed with their father. Being continuously exposed to false allegations, insults and domestic violence by her ex-husband, the author had sought shelter in a crisis centre for women and children, while the case against her and her new husband was pending.⁵ The protection order was subsequently revoked, however, the author's ex-husband continued to rely on it before various social institutions. Furthermore, she said that her father was delusional owing to childhood trauma and that, even though his guilt had not been proved, she had done everything to protect her children as soon as she had become aware of the alleged behaviour of her father and had separated the children from him.

2.6 Referring to her right to marry, which is guaranteed under article 12 of the European Convention on Human Rights and article 16 of the Convention, she challenged the finding of the first instance court that her new marriage had a negative impact on the life of the children. She also stated that the domestic court had failed to consider the best interests of the children, who wished to stay with her and would be traumatized if they were separated from her.

2.7 On 7 November 2017, the Sofia City Court upheld the judgment delivered by the Sofia District Court. The appellate court accepted the facts as they were presented by the first instance court and allegedly failed to assess the evidence presented by the author or to give due weight to the statement of D.Z. before the court regarding the domestic violence to which he and his sister had been subjected.⁶ The author appealed the decision on cassation.

³ No criminal action was initiated against V.Z. by the author specifically on the basis of his allegedly violent behaviour.

⁴ The date of issuance is unspecified.

⁵ The author and her children remained in a protection centre from 17 January to 11 July 2015.

⁶ The court stated that the child was repeating what had been said to him by his mother.

2.8 The closed session before the Supreme Court of Cassation was scheduled for 9 September 2018. At the request of V.Z., who claimed that the children were not safe with the author, the court session was rescheduled to 15 May 2018. The author was not notified about the request of V.Z. and thus was not given the opportunity to state her claims in that respect.⁷ On 7 June 2018, the Supreme Court dismissed the author's appeal. It held, *inter alia*, that, contrary to the author's arguments, the lower instance court had not departed from the Supreme Court's jurisprudence in assessing the possible alienation of the children from their father, the mother's alleged non-compliance with the decision establishing the father's visiting rights and in assessing the best interests of the child under the circumstances of the particular case.

2.9 The author then filed a private appeal requesting that a cassation appeal be granted. That motion, however, was not considered by the court. On 22 October 2018, the author reiterated her request on the basis of the alleged risk of suicide by the children.⁸

2.10 On two occasions, V.Z. attempted to take the children away from the author, in compliance with the final court decision, however, the children refused to leave her.

Complaint

3.1 The author claims that the State party violated her rights under articles 2 (c), 5 (b), 15 and 16, read in conjunction with article 1, of the Convention, taking into consideration also the Committee's general recommendation No. 19 (1992) on violence against women, general recommendation No. 21 (1994) on equality in marriage and family relations, general recommendation No. 28 (2010) on the core obligations of States parties under article 2 of the Convention, general recommendation No. 33 (2015) on women's access to justice and general recommendation No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19. She contends that the State party breached its positive obligations under the Convention as it failed to provide her and her children with effective protection against domestic violence. She contends, in particular, that she was not treated equally before the law, as a result of which her custodial rights over her children were revoked and granted to the children's allegedly violent father.

3.2 The author requests the Committee to require the State party to suspend the judicial proceedings initiated for the implementation of the final court decision placing her children with their father and to ensure that the meetings between the children and their father take place in a safe environment, for example, with the supervision of a child specialist in a contact centre.

State party's observations on admissibility and the merits

4.1 The State party provided its observations in a note verbale dated 1 July 2019. It submits that, the Sofia City Regional Social Assistance Directorate was requested to conduct an investigation and provide information on the author's allegations of the domestic violence and violent behaviour perpetrated by her ex-husband. The bodies working on the two children's cases, the Child Protection Departments under the Lozenets Social Assistance Directorate and the Slatina Social Assistance Directorate have taken action to provide support, counselling and assistance, in accordance with their respective competences. Psychological and counselling services have been provided to the parents and the children through a social service provider.

⁷ The State party does not provide any information in this regard, nor does it contest the author's allegation that she was not able to challenge the change of date of the court session. The Supreme Court found the author's cassation appeal procedurally admissible, but upheld the decisions of the lower courts.

⁸ No further information has been submitted in this respect.

4.2 In response to the numerous complaints, requests for assistance and enquiries submitted by the author and her former husband, social workers have conducted the required investigation, subject to the provisions of article 14 of the Implementing Regulation of the Child Protection Act, by collecting information from a wide range of sources. They found no evidence indicating any violence by the father against the two children.

4.3 On 1 June 2016, the Sofia District Court awarded the rights of custody relating to the two children to their father.⁹ The Sofia City Court upheld the first instance judgment,¹⁰ subsequently appealed against by the author before the Supreme Court of Cassation. The Supreme Court of Cassation ruling of 7 June 2018¹¹ bars further appeal. The author has not honoured the judgment, as she fails to attend the Lozenets Child Protection Department and her correspondence with the social workers is limited to email only.

4.4 The court of first instance comprehensively substantiated its reasons for awarding the rights of custody concerning the children to their father, taking into consideration the interests of the children and all the evidence on the case collected during the first instance proceedings. In the appellate proceedings, two forensic psychological assessments were presented, which, together with the evidence collected in the first instance proceedings, confirmed that the judgment of 1 June 2016 was correct. The appellate court fully agreed with the expert witness's opinion that both parents should rethink their previous behaviour and make every effort to maintain sufficiently good communication with each other so as to fully allow the children to communicate with each of the parents, which is an important factor for their development as emotionally mature individuals.

4.5 The three courts held that it was reasonable to assume a change in circumstances and change the rights of custody relating to the children accordingly. This conclusion took account of the children's alienation from their father, the interrupted contact between them and his relatives¹² and the non-observance of the mode of contact for more than two years. At the same time, the father has the resources to meet the needs of his children, he has provided good living conditions in line with the children's preferences and interests, and does not infringe upon their personal space.

4.6 In the vast majority of custody trials, when there is no prior agreement between the parents, custody is given to the mother, as was the case after the divorce of the author and V.Z. The subsequent transfer of the custodial rights to the father was an objective decision given the fact that the mother had continuously disrespected the court judgments. The allegations of unequal treatment of women and men before the law overlook the evidence that the author's behaviour has been deemed to be unhealthy and harmful for the children by both the social services and the psychologists, as well as her constant breaching of court-mandated provisions.

4.7 The State party pays special attention to equality before the law and has a long-standing tradition in the field of equality between women and men. Core legislation warrants full parity between women and men and treats them equally in all spheres of life. Priority is always given to women, girls and mothers. However, the State

⁹ Judgment No. 7569 of 1 June 2016 on civil case No. 11745 on the 2015 docket of the Sofia District Court, Third Civil Chamber.

¹⁰ Judgment of 7 November 2017 on civil case No. 12502 on the 2016 docket of the Sofia City Court. In the appellate instance, the author, her ex-husband and their child D.Z. were heard, reports were admitted from the Social Assistance Directorates and the conclusions of two forensic psychological experts were heard.

¹¹ Ruling No. 451 of 7 June 2018 by the Supreme Court of Cassation.

¹² Notably the paternal grandmother and uncle.

party's commitment to uphold the best interests of the child has primacy, as demonstrated in the courts' rulings in this case.

4.8 The work of the social officers and the court is subject to control and audit, and no violations of legislation or procedures have been found.

4.9 With regard to the merits of the communication, the State party submits that promoting equality between women and men, as well as non-discrimination, are key objectives included in the Government's executive programme on sustainable development. The State party is deeply invested in the common European Union work on gender equality, human rights, the empowerment of women and girls and the eradication of gender-based violence. Following a long tradition in the promotion of gender equality and in conformity with the highest norms and standards of the European Union, the State party is constantly upgrading the national legislation. In this regard, a new, specialized Gender Equality Act has been adopted. The new law ensures that a gender perspective is mainstreamed into all policies, strategies and programmes, which is another important precondition for the full realization of the human rights of women and girls.

4.10 According to the World Bank, in its report *Women, Business and the Law 2019*, the State party is among the best performing countries in the world with a score of 93.75 points out of a maximum of 100. In addition, it is the first in the world on the indicator related to the legal and institutional frameworks that shape the economic opportunities of women and lead to improving gender equality.

4.11 The same priority is given to upholding and protecting the rights of children. The State party strongly promotes the principle that the family is the best environment for child development, but always after careful, impartial and professional consideration of the best interests of the child.

4.12 The author's family has been subject to the services of the child protection system since 2013. The body that initially worked on the two children's cases was the Child Protection Department under the Serdika Social Assistance Directorate. The child protection system took up the cases of the children following an alert by the Animus Association Foundation after the author reported that she and the children had been subjected to physical and psychological violence by her ex-husband during the marriage, as well as following its dissolution. The author's ex-husband in turn also reported that the children had been subjected to psychological violence by their mother. For some time, the author and the children stayed at a crisis centre for child victims of violence by virtue of self-referral.

4.13 Since 11 July 2015, the cases have been referred to the Child Protection Department under the Lozenets Social Assistance Directorate. On 30 July 2015, a meeting with D.Z., M.Z., the author, her current husband and their newborn child was held at the Child Protection Department under the Lozenets Social Assistance Directorate. The author, D.Z. and M.Z. stated that they wanted to continue to use the social services provided by the Animus Association Foundation, and she submitted an application to that effect. V.Z. used a social service at the Social Support Centre under the Social Activities and Practice Institute and did not want the Animus Association Foundation to work with him or his children. A social service order was issued to the author for her and her children to avail themselves of the social assistance of the Child Protection Department, but was subsequently cancelled by a decision of the Sofia City Administrative Court of 28 February 2018 after she appealed against it. The Slatina Social Assistance Directorate appealed against the decision to the Supreme Administrative Court but an inquiry by the Sofia City Regional Social Assistance Directorate has shown that no decision has been issued yet. The author and her ex-husband are currently not using any social services owing to their failure to reach an agreement on the matter.

4.14 In relation to the court proceedings (on civil case No. 11745/2015 on the docket of the Sofia District Court and civil case No. 12502/2016 on the docket of the Sofia City Court), the inquiry conducted has shown that the Lozenets and Slatina Social Assistance Directorates were called upon to issue social reports, as required under article 15 of the Child Protection Act.

4.15 The social report on civil case No. 11745/2015 was issued by the Lozenets Social Assistance Directorate and was based on meetings and interviews conducted with the author and the children. In it, the Directorate concludes that: “the mother is able to adequately respond to the children’s interests and needs while respecting their individual and personality characteristics; the children are emotionally attached to the mother; contacts between the children and the father have been discontinued”. In the social report, it is noted that both the mother and the father state their willingness and capacity to provide adequate care for the children, and that the parents do not realize that their behaviour puts the children’s mental and emotional development at risk. The report contains the opinion that the broken parent-child relationship and the separation of the children from one of their parents is contrary to the children’s interests, and that the parents need to be referred to mediation.

4.16 In relation to civil case No. 12502/2016 on the docket of the Sofia City Court, the Lozenets Social Assistance Directorate issued a social report based on information on the children dating from April 2017, as prior to that date the children had resided in Slatina. The social report reflects information collected from meetings with the children and with the parents, as well as visits to the home where they were raised. The report includes complete information concerning the cases of D.Z. and M.Z., describes their emotional attachment to their mother and her second husband and states that communication with V.Z. and the extended family on the father’s side has been discontinued. In that social report, it is also stated that the mode of contact between the father and the children ordered to the mother is to be respected by her, and that it is contrary to the children’s interest to involve them in the parents’ conflict. The author and her ex-husband were notified of the report, as evidenced by their signatures. V.Z. indicated that the report failed to sufficiently reflect the “manipulation and the children’s alienation”. The author noted that “the children regularly meet their father in accordance with the ordered mode of contact. During such meetings, conflict situations provoked by V.Z. arise”.

4.17 A ruling under civil case No. 11745/2015 ordered three separate meetings of two and a half hours between the father and each of the two children (i.e. six meetings in total) in the presence of a third party. The meetings were described in a social report drafted by the Slatina Social Assistance Directorate under civil case No. 12502/2016. In that report, it is stated that it is within the court’s competence to issue a judgment on the rights of custody, the mode of contact between the parents and the children and the child maintenance. It is also stated that “the mother firmly denies having prevented observance of the mode of contact”. In the report, the meetings between the father and the children ordered by the court are described. It is stated that the father showed tenderness and a fatherly attitude to the children; and that no verbal or non-verbal acts on the part of the father during the meetings could be interpreted as a risk to the children. The report concludes that the children seemed to be calm during the meetings and took the opportunity to communicate with their father normally.

4.18 The State party further submits that, at the time of submission of its observations, the author continues to disrespect the court judgment and does not cooperate with the social workers. The State party underlines that, in separation cases, the parents should not involve their children in their conflict and should not misrepresent the other parent’s personality to the children. In such situations, it is the State’s responsibility to support the children and the family in order to prevent aggravation of the problem or indeed to solve it, and the best interests of the child

should underpin every action. Supporting children and their parents in order to safeguard optimal conditions for the former to be raised in a family environment is one of the key tasks of child protection bodies, and the efforts of the competent authorities are focused on upholding children's rights.

4.19 The officers involved in the cases of M.Z. and D.Z. have taken support, counselling and assistance measures for the parents and the children concerned, employing the resources of the social service provider. In the process of working with the parents, the latter have been advised on issues relating to the upbringing of the children, parental responsibility and the children's right to keep in touch with the non-custodial parent. In all their enquiries, the officers of the Child Protection Departments under the Lozenets and the Slatina Social Assistance Directorates, respectively, have taken action to provide support, counselling and assistance to the children, the author and the father of the children. The actions of both the officers of the Social Assistance Directorates and the judiciary focused on the children's comprehensive interests, in view of the need to find a reasonable balance and to give priority to the children's right and natural need to communicate with both parents.

Authors' comments on the State party's observations on admissibility and the merits

5.1 On 16 March 2020, the author provided her comments. In general, she notes that the State party did not refute any of her claims, namely the claim that she has been a victim of violations of her rights under articles 2 (c), 5 (b), 15 and 16, read in conjunction with article 1, of the Convention, taking into consideration also the Committee's general recommendations Nos. 19, 21, 28, 33 and 35, owing to the State party's failure to provide her and her children with effective protection against domestic violence by treating her unequally before the law, as well as owing to the State party's neglect of its positive obligations under the Convention. The author maintains that the State party supported the continuation of a situation in which she and her children were being subjected to domestic violence.

5.2 The author makes several clarifications and encloses documents as evidence. She challenges the State party assessment that "the investigations performed found no documents indicating any violence by the father against the two children" as false. All psychological opinions about the author as a mother and her two children, issued by the psychologists who worked with them from 2013 to 2018 in Serdika Child Protection Department, Slatina Child Protection Department, Lozenets Child Protection Department, Plovdiv Child Protection Department, the Animus Association Foundation and the Crisis Centre for Victims of Domestic Violence in the town of Plovdiv corroborate and prove the domestic violence committed by her ex-husband.

5.3 The Child Protection Departments issued several instructions for psychological support to address the two children's trauma caused by the domestic violence to which they were subjected, namely "Psychological counselling of child victims of violence and their families"; however, they did not provide the courts with the written opinions of the psychologists.

5.4 The social service provider sent regular interim reports to the Child Protection Departments informing them of the progress made regarding the children's cases. However, the Child Protection Departments concealed the information, thus tolerating the domestic violence perpetrated against the children by their father. The social service provider also sent notice letters to the Sofia City Court and the Supreme Court of Cassation, but the courts ignored the reports of domestic violence and treated the case outside the context of domestic violence, presenting it as parental alienation.

5.5 The author presented to the courts all the documents about the domestic violence perpetrated by the father against his two children. She argues that these documents were completely ignored by the courts.

5.6 The author further refutes the State party's assertion that she "has not honoured the judgments, as she fails to attend the Lozenets Child Protection Department and her correspondence with the social workers is limited to emails only" and asserts that all the documents support her claims: social workers regularly contact her and both children and make visits to their home. Such visits are reflected in the relevant visit protocols and minutes, as well as in documents sent to different institutions.

5.7 The author challenges the State party's claim that she is guilty of the "children's alienation from their father, the interrupted contact between them and their relatives, and the non-observance of the mode of contact for more than two years" as not supported by any evidence. She explains that, on the contrary, the children and their father observe the dates of meetings and contact on a regular basis and that she does not attend these meetings. However, at every meeting, the father strikes the children, threatens them with death, insults them, criticizes their mother and then leaves. Every time, the author immediately reports to the inspection institutions, and their checks prove that the meetings between the children and their father take place and that the father threatens, strikes and insults them.

5.8 The author notes that it is documented that the father was repeatedly offered a social service to meet with his two children in a contact centre. He has refused the service, stating that the contact he had with his children completely satisfied him. This negates the State party's claim that she obstructs contact and alienates the children. The author is struggling to improve the children's contact with their father and has requested that the father be directed to a social service to deal with his aggression and to have his meetings with the children in a specialist-mediated contact centre.

5.9 The author challenges the State party's allegation that her behaviour has been considered as "unhealthy and harmful to the children". Such an allegation is not borne out by the opinions of the children's psychologists, the investigations of the police and the Prosecutor's Office or the expert opinions on her parental capacity, which prove that the children are being raised in a wonderful environment and that she provides adequate care. The well-being of the children is further evidenced by their success in school and their participation in extracurricular activities, and has been confirmed by the investigations of the social workers. The social reports indicate that she has excellent parenting capacity and that the children are being raised with great care and dedication.

5.10 Concerning the State party's assertion that "the separation of the children from one of their parents is contrary to the children's interests, and the parents need to be referred to meditation", the author notes that she has been insisting on such mediated meetings to help the father of the children to deal with his aggression since the beginning of the court proceedings. Her ex-husband is the one who refuses any meetings in a protected space and any mediation by a specialist. He does not want to improve the contact with his children or work on his aggression problem. The author is surprised that the State party's institutions ignore this fact and blame her for the children's being afraid of their father and unwilling to live with him.

5.11 The author also rejects as untrue the State party's submission that the children's parents are currently not using any social services. From 2013 to date, the author has been constantly using a social service for psychological counselling. She uses this service through referral from the Child Protection Department. However, her ex-husband refuses to work on dealing with his aggression and does not want to accept any psychological help.

5.12 The author objects to the State party's assessment that the father has the resources to meet the needs of the children, has provided good living conditions in the line with the children's preferences and interests, and does not infringe upon their personal space and considers that assessment "absolutely wrong". Her ex-husband stated in the courtroom in the proceedings for custodial rights that he did not have the living conditions necessary to raise the children, but once he took them, only then he would consider how to provide them with a room. Thus, he admitted that, seven years after the divorce, he had not yet provided personal space for the two children. The children are teenagers,¹³ and need their space, and it is unacceptable for them to share a bed with their father. He lives in his mother's apartment with her and his older brother (55 years old). The apartment has two bedrooms, occupied by his mother and his brother, respectively. He does not have his own room; he sleeps on the couch in the living room, where the family has its meals. During the children's visits to their father, they are forced to sleep in a bed with their grandmother or on the couch with their father.

5.13 The claim that the author's ex-husband used a social service at the Social Activities and Practice Institute is false. In fact, it conceals the truth that the father had seen a psychologist only at the Animus Association Foundation, who stated that the father had very low parenting capacity and recommended that he continue to work with a psychologist to improve it.

5.14 According to the author, it is not true that the six appointments scheduled by the court were held in a room at the Social Activities and Practice Institute and that "the children seemed to be calm during the meetings and took the opportunity to communicate with their father normally". After the first six meetings terminated prematurely because the children were upset by their father's aggression, the father refused to comply with the court order and refused to carry out the remaining six meetings with his children in a protected environment, as ordered by the court.

5.15 The author considers the State party's statement that it "pays special attention to equality before the law ... Priority is always given to women, girls and mothers" to be cynical and completely at odds with the reality in the State party. In that regard, she refers to the Committee's concluding observations on the eighth periodic report of Bulgaria ([CEDAW/C/BGR/CO/8](#)).

Issues and proceedings before the Committee

Consideration of admissibility

6.1 In accordance with rule 64 of its rules of procedure, the Committee must decide whether the communication is admissible under the Optional Protocol. Pursuant to rule 72 (4) of the Committee's rules of procedure, it is to do so before considering the merits of the communication.

6.2 The Committee recalls that, under article 4 (1) of the Optional Protocol, it is precluded from considering a communication unless it has ascertained that all available domestic remedies have been exhausted or that the application of such remedies is unreasonably prolonged or unlikely to bring effective relief.¹⁴ In that connection, the Committee notes the author's contention that she has exhausted all available domestic remedies. While considering that legal condition to be an essential requirement for the admissibility of a communication, it also notes that the State party has not brought any argument to the contrary and has not challenged the admissibility of the communication on any grounds. The Committee considers that, in the particular

¹³ Almost 16 years old and almost 12 years old at the time of the submission.

¹⁴ *E.S. and S.C. v. United Republic of Tanzania* ([CEDAW/C/60/D/48/2013](#)), para. 6.3; and *L.R. v. Republic of Moldova* ([CEDAW/C/66/D/58/2013](#)), para. 12.2.

context of the author's case, the available domestic remedies have been exhausted. Accordingly, in the present case, it is not precluded by the requirements of article 4 (1) of the Optional Protocol from considering the present communication.

6.3 In accordance with article 4 (2) (a) of the Optional Protocol, the Committee is satisfied that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

6.4 The Committee notes that the author claims that she and her children were discriminated against by the State party when it failed to provide her and her children with effective protection against domestic violence by treating her unequally before the law, as a result of which her custodial rights over her children were revoked and granted to the children's allegedly violent father. The Committee also notes the State party's contention that, in response to the numerous complaints, requests for assistance and enquiries submitted by the author and her former husband, social workers had conducted the required investigation, subject to the provisions of article 14 of the Implementing Regulation of the Child Protection Act, by collecting information from a wide range of sources and had found no evidence indicating any violence by the father against the two children. The Committee further notes that the author has not initiated any criminal action, either during or after the marriage, against the father of the children on the basis of his allegedly violent behaviour. The Committee takes note of the State party's argument that the author's claims of physical and psychological domestic violence against the children were taken into consideration by the courts, but were not established during the proceedings. The Committee also notes that an emergency protection order was issued against the author and her new husband, under which the children should have been placed with their father, and that between 17 January 2015 and 11 July 2015 the author took refuge with the children in a protection centre for six months, during which period the father was not able to see them. The Committee considers that the evidence and circumstances invoked by the author have not adduced sufficient grounds for the Committee to conclude that the State party failed in its due diligence obligation to protect her and the children from domestic violence.

6.5 The Committee recalls that it does not replace the national authorities in the assessment of the facts and evidence, unless the assessment was clearly arbitrary or amounted to a denial of justice.¹⁵

6.6 The Committee also notes the author's claim that she was subjected to gender-based discrimination during the custody proceedings, as she was treated unequally before the law by the judiciary. In that regard, the Committee observes that, on 3 October 2012, the Sofia District Court awarded custody of the children to the author and granted the father visiting rights and ordered him to pay child maintenance. The Committee also observes that, on 1 June 2016, the Sofia District Court altered its earlier decision owing to a change in circumstances and ruled in favour of the author's ex-husband, granting him custody of the children, on the grounds of: safeguarding the access of the children to both parents, as the author had obstructed the regime of personal relations between the children and the father by not complying with the court decision or the emergency protection order and had alienated the children from their father; and the children's supportive environment being assessed as risky in the person of their maternal grandfather. The court also ordered the author to pay child maintenance. On 7 November 2017, the first instance court decision was upheld by the Sofia City Court. The Supreme Court of Cassation upheld that decision on 7 June 2018.

¹⁵ See, for example, *R.P.B. v. Philippines* (CEDAW/C/57/D/34/2011), para. 7.5, and *T.N. v. Denmark* (CEDAW/C/59/D/37/2012), para. 12.7.

6.7 The Committee notes the appellate court and the Supreme Court assessment that the custodial parent impeding personal contact between the children and the other parent and limiting the children's relations with the latter are circumstances that have a negative impact and that parental qualities have been assessed in the context of parental rivalry and the children's loyalty conflict so as to assign custody in the best interests of the children. The Committee also notes that, although the first instance court put an emphasis on, among other things, the fact that the author had remarried, the higher courts did not follow that reasoning. The Committee notes, in particular, that the higher courts did not interpret to the detriment of the author's right to remarry or her right to family life as they had not censured her having entered into a new marriage but had deemed reproachable the impeding of the regime of personal relations between the father and the children and their alienation from him and had considered the supportive environment to be risky in the light of the suspicions of lewd actions perpetrated by the maternal grandfather against M.Z. The Committee further observes that the courts relied extensively on psychological expertise in the assessment of the best interests of the children. While it is true that, in the present case, custody has been granted to the father, the Committee considers that, in the light of all the information provided, for the purposes of admissibility, the author has failed to substantiate her claims of gender-based discrimination and unequal treatment before the law in the custody proceedings.

7. The Committee therefore considers that, for the purposes of admissibility, the author has failed to substantiate her claims under articles 1, 2, 5, 15 and 16 of the Convention and that the communication should therefore be declared inadmissible under article 4 (2) (c) of the Optional Protocol as not sufficiently substantiated.

8. The Committee therefore decides:

(a) That the communication is inadmissible under article 4 (2) (c) of the Optional Protocol;

(b) That the present decision shall be communicated to the State party and to the author.
