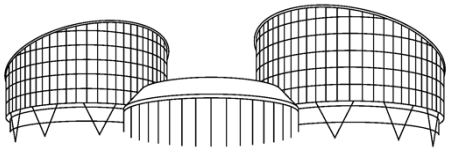

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF A.E. v. BULGARIA

(Application no. 53891/20)

JUDGMENT

Art 3 (substantive and procedural) • Positive obligations • Failure to provide adequate protection, in law and in practice, to a child victim of domestic violence • Failure to put in place an effective domestic legal framework punishing all forms of domestic violence and providing sufficient safeguards for victims • Ineffective investigation into allegations of serious violence • Applicable legal provisions incapable of adequately responding to violence inflicted on victims unable to initiate and pursue judicial proceedings as private prosecutors
Art 14 (+ Art 3) • Discrimination • Domestic authorities' failure to adequately address domestic violence against women

STRASBOURG

23 May 2023

FINAL

23/08/2023

This judgment has become final under Article 44 § 2 of the Convention.
It may be subject to editorial revision.

In the case of A.E. v. Bulgaria,

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:

Georgios A. Serghides*, President*,
Pere Pastor Vilanova,
Yonko Grozev,
Darian Pavli,
Peeter Roosma,
Ioannis Ktistakis,
Oddný Mjöll Arnardóttir*, judges*,
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 53891/20) against the Republic of Bulgaria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Bulgarian national, Ms A.E. ("the applicant"), on 26 November 2020;

the decision to give notice to the Bulgarian Government ("the Government") of the complaints concerning the allegedly inadequate legal framework and practical response of the authorities to the applicant's complaints that she had been the victim of domestic violence;

the decision not to have the applicant's name disclosed;

the observations submitted by the respondent Government and the observations in reply submitted by the applicant;

the comments submitted by the National Network for Children, which was granted leave to intervene by the President of the Section;

Having deliberated in private on 2 May 2023,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The case concerns complaints under Articles 3 and 14 of the Convention of the allegedly inadequate response of the authorities, both in law and in practice, to the applicant's complaints that she had been the victim of domestic violence.

THE FACTS

2. The applicant was born in 2004 and lives in Kostinbrod. She was represented by Ms N. Dobreva, a lawyer practising in Sofia.

3. The Government were represented by their Agent, Mrs V. Hristova, from the Ministry of Justice.

4. The facts of the case may be summarised as follows.

I. BACKGROUND

5. The applicant, who had a difficult relationship with her mother following the death of her father in 2018, had just turned fifteen when she started a relationship with a 23-year-old man, D.M. In April 2019 she moved in with D.M., into his house in a village; he provided for her upkeep and she kept some of her personal belongings there. According to the applicant, he beat her regularly.

II. BEATING ON 8 SEPTEMBER 2019

6. The applicant claims that D.M. beat her in the evening of 8 September 2019. It appears from the file that she ran away from him and was examined in an emergency room by a forensic doctor on the night of 8 to 9 September 2019.

III. MEDICAL REPORT ON THE APPLICANT'S INJURIES

7. The forensic medical report of 9 September 2019 recorded the following haematomas on the applicant's body: on the left side of the forehead (measuring 3.5 cm by 2.5 cm), on the lower left eyelid (measuring 2.5 cm by 0.8 cm), on the inner side of the left cheek (measuring 0.7 cm by 0.2 cm), on the lower right side of the jaw (measuring 2 cm by 1.5 cm), behind the left ear (measuring 2 cm by 0.6 cm), on the left side of the neck (two marks measuring 1.7 cm by 0.3 cm and 5 cm by 0.4 cm respectively, located about 1 cm apart), on the right side of the neck (measuring 1.5 cm by 0.3 cm), on the left armpit (two marks measuring 2 cm by 1cm and 1.5 cm by 1 cm respectively), on the left upper arm (measuring 2.5 cm by 1.5 cm), on the back of the right shoulder (measuring 4 cm by 2 cm) and on the inner right thigh (measuring 5 cm by 5 cm).

8. In addition, the report recorded a bruise measuring 2.5 cm by 0.2 cm on the front of the right lower leg, which was covered by a reddish-brown scab. It further indicated that the applicant had declined a gynaecological examination.

9. The report concluded that the traumatic injuries had been caused by blows and pressure applied with or over hard objects, some of which were blunt and some of which had edges. The report stated that the injuries could have been caused in the manner and at the time described, and had caused the applicant pain and suffering.

IV. NOTICE OF BEATING GIVEN TO THE PROSECUTION

10. On 10 September 2019 the applicant's mother informed social services about the incident of 8 September 2019, during which her daughter had been physically assaulted by D.M. (see paragraph 6 above).

11. On 26 September 2019 the director of the local directorate for social assistance gave the prosecution service notice that a crime had been committed against a minor, and requested that pre-trial criminal proceedings be opened in this regard. The notice specified that since March 2019 the applicant, a 15-year old minor, had been in an intimate relationship with D.M., who was 23-year old, and lived with him in his house (see paragraph 5 above). The document gave written descriptions of several beatings of the applicant by D.M. which had reportedly taken place in the preceding months. Most frequently he would push her to the ground and kick her while she lay there. On one occasion he had pushed her rolling down a hill into bushes; her mother had seen her with scratches all over her body. A yet more serious beating had taken place at the end of August 2019, but – as with the previous incidents – the applicant had refused to be examined by a doctor. D.M.'s former girlfriend as well as his own sister had also been victims of physical violence on his part.

12. The notice to the prosecution service specified that during one of the beatings, on 8 September 2019, D.M. had slapped the applicant in the face, applied pressure to her neck using his hands, pushed her to the ground, hit her head against the floor, and kicked her while she had been on the ground. The applicant had felt pain in her head, jaw, chest and abdominal area, and had been seriously frightened.

13. The notice stated that the applicant had been the victim of several offences allegedly perpetrated by D.M. on 8 September 2019: in the first place, attempted murder under Article 115 in conjunction with Article 18 of the Criminal Code ("the CC"), given that the marks on her neck indicated that pressure had been applied to her carotid artery. Such an act, according to the notice, generally led to life-threatening consequences, as it stopped blood flow to the brain and caused loss of consciousness and death within a few seconds. Furthermore, the same act also represented minor bodily harm under Article 130 of the CC, defined by the forensic doctor as "pain and suffering" and subsumed by the more serious offence under Article 115 of the CC.

14. In addition, the attack on the applicant represented ill-treatment of a minor under Article 187 of the CC, as she lived with D.M. and was in his care. Aside from the beating on 8 September 2019, D.M. was also guilty of living unlawfully with a minor as her husband without being married to her, an offence under Article 191 of the CC.

15. All of the above represented "sufficient data pointing to a crime having been committed" within the meaning of Article 211 of the Code of Criminal Procedure ("the CCP"). The notice specifically asked the prosecutor to investigate the minor bodily harm which the applicant had suffered, an offence subject to private prosecution, as an offence subject to public prosecution instead, on the basis of a prerogative which the prosecutor had under Article 49 of the CCP (see paragraph 44 below). It also suggested that the prosecution service question the applicant's mother, as well as the alleged

aggressor's own sister and former girlfriend, who could testify about his character.

V. SOCIAL SERVICES REPORT ON THE APPLICANT

16. On 7 October 2019 social services prepared a report on the applicant's situation. The report recorded the following. Social services had been dealing with her case since January 2019, when her mother had contacted the authorities after the applicant had run away from home. The applicant had been temporarily placed in a psychiatric clinic for minors at the beginning of 2019. Having established that she had been at risk of becoming a victim of human trafficking or sexual exploitation, staff from the local social services office had explored possibilities for placing the applicant in a crisis centre for minors anywhere on the territory of the country, without success, due to lack of places. Thereafter, social services had provided psychological support to both the applicant and her mother. According to the applicant's teacher, she continued to display provocative behaviour at school.

17. According to her mother, since August 2019 the applicant had been living in an intimate relationship with D.M., who was an adult. She had rarely gone home and he had been repeatedly subjecting her to physical abuse.

18. On 10 September 2019 the applicant's mother had informed social services about an incident of 8 September 2019, during which her daughter had been physically assaulted by D.M. (see paragraph 10 above). Social services had written to the prosecutor about it (see paragraph 11 above).

19. In a telephone conversation between the mother and social-services staff on 1 October 2019, she had stated that D.M. had again beaten her daughter. Specifically, he had torn her clothes apart, she had a haematoma behind one of her ears and complained that she could not hear. The applicant's mother had managed to speak to D.M. on the phone and he had attempted to explain the incident away. On 2 October 2019, the mother had informed social services that she had managed to convince the applicant to complain to the police about the abuse she had suffered.

20. As of 7 October 2019, the relationship between the applicant and D.M. was not over.

21. Given that the applicant's mother was unable to exercise parental control over her daughter's conduct, in order to ensure the applicant's health and safety, social services issued an order on 8 October 2019 placing her outside her family, a protection measure under the Child Protection Act.

VI. FOLLOW-UP BY THE PROSECUTORS ON THE NOTICE BY SOCIAL SERVICES OF 26 SEPTEMBER 2019

22. The Kostinbrod district prosecutor ordered a preliminary check, to be carried out by the police. The prosecutor directed that the following be done

in that context: the applicant and her mother be interviewed, so that it could be established where and with whom the applicant lived, whether she attended school and who took care of her; the circumstances in which she had sustained the harm recorded in the medical certificate be established; social services be invited to draw up a report on the applicant's case; D.M. be interviewed in relation to the allegations in the notice brought to the attention of the prosecutors, and he be warned in accordance with the Ministry of the Interior Act, including as regards his criminal responsibility in the event of causing moderate or grievous bodily harm, threatening with murder or making threats in the context of domestic violence; any other steps necessary for clarifying the situation be pursued.

23. According to the police report produced at the end of that inquiry, the police had met with and questioned the applicant. She had told them that her boyfriend, D.M., had inflicted the injuries recorded in the medical certificate (see paragraphs 7 to 9 above), but she had not wished to go into detail about this. She had stated that she and D.M. were "no longer as close to each other" and had asked to withdraw her complaint because he no longer bothered her.

24. The applicant's mother had also been questioned. She had stated that her daughter had been in a relationship with D.M. since mid-august 2019. She (her daughter) would be absent from home for days at a time, only returning to do her laundry and shower, and leaving again without saying where she was going or for how long. She frequently called her mother in the middle of the night to go and collect her from the village where D.M. lived, but then would either not pick her phone up or switch it off, so she could not be reached. For about a week preceding the questioning, the applicant had been living at her mother's home. The mother also described how on 8 September 2019 she had collected her daughter from the village where D.M. lived, after the applicant had run away from him because he had beaten her (see paragraph 6 above); the applicant had then told her mother that she was hurting all over, as D.M. had kicked her in the stomach area and on the legs, had shoved her against a wardrobe and had tried to strangle her. The mother had taken the applicant to hospital that same night (see paragraph 6 above) where lesions over her whole body were found and recorded (see paragraphs 7 to 9 above).

25. The police had also collected a report from social services (see paragraphs 16 to 21 above), from which it could be seen that on 8 October 2019 the applicant had been temporarily placed in a crisis centre for child victims of trafficking or other violence.

26. When interviewed by the police in the context of the inquiry, D.M. had denied beating or psychologically abusing the applicant, and had stated that they had been friends for about a month. The police had handed him a written warning in accordance with section 65 of the Ministry of the Interior Act (see paragraph 42 below), clarifying his criminal responsibility in the

event of his committing the offences described at the end of paragraph 22 above.

27. On 19 November 2019 the Kostinbrod district prosecutor refused to open criminal proceedings. The prosecutor found that only an offence subject to private prosecution, namely minor bodily harm, had been committed and that the conditions under Article 49 of the CCP (see paragraph 43 below) were not met. Furthermore, the police had informed D.M. about criminal responsibility in case of inflicting moderate or grievous bodily harm, or threatening with murder or making other threats in the context of domestic violence.

VII. APPEALS BY THE APPLICANT

28. The applicant, assisted by a lawyer, challenged the district prosecutor's refusal to open criminal proceedings before hierarchically superior prosecutors. She argued in particular that she had presented evidence of violence committed against her and evidence which corresponded to three offences subject to public prosecution. She also emphasised the gravity of those offences, in the context of her age and gender. She relied on Article 3 of the Convention and on related case-law of the Court.

29. On 6 February 2020 the Sofia regional prosecutor confirmed the refusal to open criminal proceedings. Specifically, the prosecutor found that the bodily harm caused to the applicant had not been serious enough to warrant the opening of criminal proceedings for attempted murder, given that not every application of pressure to a person's throat could be classified as attempted murder. To be qualified as such, the offence had to be of intensity capable of achieving the aim of choking the victim, or at the very least to have started the life-threatening processes which occur during strangulation. The medical report issued to the applicant after the incident did not contain information that her life had been endangered. In addition, there was no evidence that the applicant and D.M. had lived together as husband and wife (an offence under Article 191 of the CC): on the one hand, it had not been categorically established that she had moved in with him and, on the other hand, the existence of a relationship of an intimate nature had only been claimed by the applicant's mother, yet had not been verified, the applicant having refused a gynaecological examination on 9 September 2019 (see paragraph 8 above). Finally, the applicant had not been in the care of D.M., so it was unnecessary to discuss whether her beating fell under Article 187 of the CC. The Sofia regional prosecutor concluded that the applicant could seek justice in the form of private prosecution proceedings, which the law entitled her to bring directly in court.

30. The applicant appealed again. She pointed out that her beating was classified as ill-treatment under Article 3 of the Convention and under the United Nations Convention on the Rights of the Child, hence it had to be

investigated before a conclusion could be reached. On 10 April 2020 the Sofia appellate prosecutor upheld the lower prosecutor's decision, finding the conclusions in that decision correct.

31. The applicant appealed before the Supreme Cassation Prosecutor's Office, arguing that under the Convention the authorities had a positive obligation to investigate complaints of domestic violence, and referred to the related case-law of the Court. She pointed out that relevant evidence had not been collected. She also stated that a private criminal prosecution could not provide appropriate redress and was not an effective remedy for her as a minor. Given her complaints that she had been the victim of several offences subject to public prosecution, she did not have to pursue a private prosecution for only one of them.

32. On 4 August 2020 the Supreme Cassation Prosecutor's Office ("SCPO") informed the applicant that there were no reasons to overturn the refusal to investigate her complaints. In particular, the Sofia regional prosecutor's refusal to open criminal proceedings had been well motivated and sufficiently detailed.

33. In a letter of 20 August 2021, addressed to the Office of the Government Agent in the Ministry for Justice and prepared in the context of providing information for the purposes of the present application before the Court, the SCPO confirmed that in the applicant's case the prosecutors had established that an offence under Article 130 of the CC (minor bodily harm) had been committed and that offence was subject to private prosecution (see paragraph 35 below). The SCPO further specified that, to be considered committed "in the context of domestic violence", the law, namely Article 93 (31) of the CC, required the act to be preceded by systematic physical, sexual or psychological violence and to have been inflicted on a person with whom the perpetrator lived in the same household or was in a *de facto* marital relationship (see paragraph 37 below).

34. The SCPO stated that, in the applicant's case, it had been established that a single act of violence had been committed against her. Furthermore, lasting cohabitation as required in law had not been established, given that the applicant had stayed at D.M.'s dwelling for a few days at a time, but had kept returning to her mother's home only to leave again without specifying where she was going. Finally, the applicant could not have lived with D.M. in a *de facto* marital relationship either. The definition of *de facto* marital relationship was to be found in particular in point 6 of the Additional Provisions of the Judiciary Act (see paragraph 38 below); such a relationship required two adult individuals to voluntarily live together as husband and wife in the same household for no less than two years taking care of each other and of the household. This legal definition excluded the possibility for the applicant and D.M. to have been in a *de facto* marital relationship, given that she had not been an adult but a minor.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LAW

35. Under Article 161 of the Criminal Code ("the CC"), in conjunction with Article 130 of the same Code, criminal proceedings in respect of wilfully inflicted "minor bodily harm" may only be instituted by the victim directly in court and are not pursued by the public prosecutor. Under the Code of Criminal Procedure ("the CCP"), where criminal proceedings are instituted by the victim, he or she acts as a private prosecutor. The proceedings are discontinued if the victim fails to appear when summoned or abandons the case. The Government submitted examples of private prosecutions which had been brought before and decided by the courts (реш. от 05.06.2017 г. на ОСК по внчхд. № 56/2017 г.; реш. от 14.04.2016 г. на ОСС по внчхд. № 85/2016 г.; реш. от 25.03.2016 г. на ОСС по внчхд. № 74/2016 г.; реш. от 01.07.2019 г. на ОСК по внчхд. № 530/2018 г.).

36. As regards bodily harm, since February 2019 minor bodily harm inflicted "in the context of domestic violence" has been an offence subject to public prosecution (on the basis of Article 161 of the CC, read in conjunction with Article 131 § 1(5a) of the CC).

37. Article 93(31) of the CC specifies that the meaning of "in the context of domestic violence" is as follows:

> "The offence has been committed in the context of domestic violence if it has been preceded by systematic physical, sexual or psychological abuse; the person's placement in [a situation of] economic dependence; [or] the forceful limitation of [his or her] private life, personal freedoms and rights; and [if the offence] has been committed in respect of an older or younger relative, a current or former spouse, a person with whom one has a child, a person with whom one is living or has lived in a *de facto* marital relationship, or a person with whom one lives or has lived in the same household."

38. Point 6 of the Additional Provisions of the Judiciary Act define "*de facto* marital cohabitation" as "the voluntary joint cohabitation of two adults with regard to whom a kinship constituting an impediment to entry into marriage does not exist, which [cohabitation] has continued for more than two years, and whereupon the persons take care of one another and of a shared household".

39. Domestic violence is not, as such, a specific offence under the CC. Since February 2019 domestic violence has been an aggravating circumstance in respect of each type of bodily harm sustained by a victim (minor, moderate or grievous). It is also an aggravating circumstance in respect of a number of other offences under the CC, such as murder (Articles 115-116 of the CC), kidnapping (Article 142 of the CC), deprivation of liberty (Article 142a of the CC) and coercion (Article 143 of the CC).

40. The Government submitted examples of domestic case-law concerning minor bodily harm committed "in the context of domestic

violence" under Article 131 § 1(5a) of the CC (see опр. № 899 от 06.11.2019 г. на РСЯ по нохд. № 1069/20019 г.; опр. от 13.07.2020 г. на СГС по внчд. № 1525/20020 г.; опр. от 21.02.2020 г. на РСБк по нохд. № 48/2020 г.; присъда от 21.01.2021 на РСБк по нохд. № 48/2020 г.; присъда от 24.02.2020 на РСПз по нохд. № 78/2020 г.; присъда от 03.06.2019 на РСНс по нохд. № 310/2019 г.; присъда от 20.02.2020 на РСРз по нохд. № 681/2019 г.; реш. от 10.03.2020 г. по вноxд. № 235/2019). In those decisions, the courts consistently scrutinised the facts in accordance with the criteria described in Article 93(31) of the CC, in order to establish whether the offence being prosecuted had been committed "in the context of domestic violence". Where no systematic violence preceding the alleged offence could be established on the basis of the evidence collected, the courts returned the case to the prosecutor and terminated the proceedings. In the cases in which the courts found the accused guilty of that offence, the sentences specifically referred to the systematic nature of the violence preceding the offence as an element decisive for the conviction.

41. Under Article 131 § 1(4) of the CC, read in conjunction with Article 161 of the CC, causing minor bodily harm to minors is an offence subject to private prosecution, although it attracts a heavier punishment when compared with instances where the victim is an adult.

42. The relevant provisions of Bulgarian law as regards moderate and grievous bodily harm have been set out in the Court's judgment in *Myumyun v. Bulgaria*, no. 67258/13, § 28, 3 November 2015. Both moderate and grievous bodily harm are subject to public prosecution.

43. Under Article 131 § 1(7) of the CC, read in conjunction with Article 161 of the CC, causing more than once moderate or grievous bodily harm is an offence subject to public prosecution, which attracts a heavier punishment when compared with instances of one-off moderate or grievous bodily harm.

44. Article 49 of the CCP provides that the prosecutor may, in exceptional cases, institute criminal proceedings of his or her own motion in respect of offences subject to private prosecution, where the victim is not able to defend his or her rights owing to being in a state of helplessness or dependence on the perpetrator of the crime. The prosecutor has to do so within the time-limit set for bringing a private prosecution, which is six months from the moment the victim learns of the offence.

45. Under section 65 of the Ministry of the Interior Act, the police may warn individuals who they have sufficient information to suspect might commit an offence of the consequences of such conduct.

II. RELEVANT INTERNATIONAL MATERIAL AND DOMESTIC REPORTS

A. CEDAW Convention and its interpretation

46. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was adopted in 1979 by the United Nations General Assembly and ratified by Bulgaria in 1982. The implementation of the CEDAW is monitored by the Committee on the Elimination of Discrimination against Women ("the CEDAW Committee"), which makes general recommendations to the States parties on any specific matters concerning the elimination of discrimination against women.

47. In its General Recommendation No. 28 (2010) on the core obligations of States Parties under Article 2 of the CEDAW Convention, the CEDAW Committee noted "States parties have a due diligence obligation to prevent, investigate, prosecute and punish ... acts of gender-based violence" (Paragraph 19).

48. On 26 July 2017 the CEDAW Committee updated its General Recommendation No. 19 by adopting General Recommendation No. 35 on gender-based violence against women (CEDAW/C/GC/35). As regards prosecution and punishment, the CEDAW Committee recommended that States parties, amongst other things, "ensure effective access for victims to courts and tribunals and that the authorities adequately respond to all cases of gender-based violence against women, including by applying criminal law and, as appropriate, *ex officio* prosecution to bring alleged perpetrators to trial in a fair, impartial, timely and expeditious manner and imposing adequate penalties".

49. In the concluding observations in their eighth periodic report on Bulgaria of 10 March 2020, the CEDAW Committee stated as follows:

> "21. The Committee remains concerned by the State party's limited commitment to combating persistent gender stereotypes affecting the educational and career choices of women and girls. The Committee is particularly concerned by:
>
> (a) Increases in cases of anti-gender discourse in the public domain, public backlash in the perception of gender equality and misogynistic statements in the media, including by high-ranking politicians;
>
> (b) The promotion of a concept of traditional family values that confines women solely to the role of mothers with domestic responsibilities and the lack of a comprehensive strategy for the elimination of discriminatory stereotypes regarding the roles and responsibilities of women and men in the family and in society;
>
> ...
>
> 23. ...The Committee also remains concerned by:
>
> (a) The fact that all forms of gender-based violence, including physical, sexual, psychological and economic violence, against women and girls are not defined and

criminalized in the current legislation, nor is there provision for *ex officio* prosecution of acts of gender-based violence against women;

...

(c) The high rates at which complaints by victims of gender-based violence are withdrawn, ..."

B. Council of Europe

1. Committee of Ministers

50. In Recommendation Rec(2002)5 on the protection of women against violence, the Committee of Ministers of the Council of Europe recommended, amongst other things, that member States "have an obligation to exercise due diligence to prevent, investigate and punish acts of violence, whether those acts are perpetrated by the state or private persons, and provide protection to victims". The recommendation also stated that member States should ensure that all victims of violence were able to institute proceedings; make provisions to ensure that criminal proceedings could be initiated by the public prosecutor; encourage prosecutors to regard violence against women as an aggravating or decisive factor in deciding whether or not to prosecute in the public interest; ensure, where necessary, that measures were taken to protect victims effectively against threats and possible acts of revenge; and take specific measures to ensure that children's rights were protected during proceedings.

51. Recommendation CM/Rec(2009)10 of the Committee of Ministers to member States on integrated national strategies for the protection of children from violence, adopted by the Committee of Ministers of the Council of Europe on 18 November 2009, emphasises that "children's fragility and vulnerability and their dependence on adults for the[ir] growth and development call for greater investment in the prevention of violence and protection of children on the part of families, society and the State".

2. Commissioner for Human Rights

52. In her report concerning her visit to Bulgaria in November 2019 (CommDH(2020)8), published on 31 March 2020, the Commissioner for Human Rights of the Council of Europe stated, among other things:

"73. Promoting equality between women and men is a crucial tool in the prevention of violence against women and domestic violence. The Commissioner urges the authorities to fight sexist prejudices based on the idea of [the] inferiority of women or on stereotyped roles for women and men in society, which fuel misperceptions and social tolerance of violence against women and domestic violence and significantly hinder, at a systemic level, the authorities' capacity to adequately protect victims and ensure the accountability of perpetrators. She calls on the authorities to fight any discrimination against women in law enforcement and the judiciary and enhance capacity-building for all officials in the justice system to ensure a gender-sensitive

approach to cases concerning violence against women and domestic violence. She draws attention to the Council of Europe Committee of Ministers Recommendation CM/Rec(2019)1 on preventing and combating sexism that provides detailed guidance on addressing sexism in different fields, including in access to justice."

3. The Istanbul Convention

53. The relevant provisions of the Council of Europe Convention on preventing and combating violence against women and domestic violence ("the Istanbul Convention") were set out in *Kurt v. Austria* ([GC], no. 62903/15, §§ 76-86, 15 June 2021). Specifically, its Article 3(b) defines domestic violence as "all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim" (see *Kurt*, cited above, § 79).

54. Bulgaria signed that Convention on 21 April 2016. In January 2018 its government proposed that its Parliament ratify it, but, following a heated public controversy about some of the provisions of that Convention relating to the terms "sex" and "gender", in February 2018 a group of members of parliament asked the Constitutional Court to determine whether that Convention was compatible with the Constitution, in a preliminary-consultation procedure provided for by Article 149 § 1 (4) of the Constitution. As a result, in March 2018 the government withdrew the ratification bill. It its judgment, delivered in July 2018 (*реш. № 13 от 27.07.2018 г. по к. д. № 3/2018 г., КС, обн., ДВ, бр. 65/2018 г.*), the Constitutional Court held, by eight votes to four, that the Istanbul Convention was incompatible with the Bulgarian Constitution.

55. In a resolution of 28 November 2019 (P9_TA(2019)0080), the European Parliament called on Bulgaria, the Czech Republic, Hungary, Latvia, Lithuania, Slovakia and the United Kingdom to ratify the Istanbul Convention "without delay" (point 2).

C. Reports by the Ombudsperson and by non-governmental organisations

56. In her annual report for 2020, the Bulgarian Ombudsperson, referring to information provided by the Ministry of the Interior, reported that there had been 1,810 protection orders issued by the courts to women in the context of domestic violence, out of 3,057 such orders issued in total that year. The remaining protection orders were issued to children (898) and men (349). Furthermore, 25 women had been killed within an intimate relationship in 2020.

57. In their annual report for 2009, the Bulgarian Helsinki Committee ("BHC"), referring to information provided by the Ministry of the Interior (specifically one of its main directorates at the time - *главна дирекция*

„Криминална Полиция“), reported that for the first eleven months of 2009 the courts had issued more than 1,000 protection orders in the context of domestic violence across the country. Of the victims of domestic violence in that period, 88% had been women, 10% children and 2% men.

58. According to the findings in the 2014 annual report of the BHC, which were based on an analysis of the convictions for murder and attempted murder handed down by Bulgarian courts in the period between 2012 and 2014, in 91% of the cases in which the victims were women - the perpetrators were men. In 35% of those cases, the perpetrator was the partner or former partner of the victim; in 25% of them the perpetrator was her brother, son, grandson or another close relative; in 31% of them the perpetrator was a man known to the victim; and in 9% of them the perpetrator was a man unknown to the victim. In 19% of the judicial sentences delivered for murder or attempted murder, the courts explicitly stated that the victims had been subjected to systematic physical violence in domestic context; in 21% of those sentences, the courts stated that the victim had been either of an advanced age or suffering from serious physical or mental impairment. In two thirds of the cases the murder had taken place in the victim's own home.

59. The BHC noted in its report for 2017 that during that year no institutional, organisational or legislative changes aimed at improving protection against domestic violence had been pursued in Bulgaria, and that the Government had demonstrated utter lack of interest in the matter. The BHC pointed out in that connection that, although under section 6(5) of the Protection Against Domestic Violence Act, the Government had been expected to adopt annual programmes of measures against domestic violence, the Council of Ministers had only in January 2018 adopted a programme for the prevention of and protection against domestic violence during the year 2017. In the same 2017 report, the BHC noted the absence of official statistics in respect of domestic violence in Bulgaria.

60. According to a report of the Animus Foundation Association, a non-governmental organisation and one of the oldest service providers for victims of violence in Bulgaria, 1,939 women and 425 men called the association's hotline for victims of violence in 2020; in 2019 those numbers were respectively 2,068 women and 389 men, and in 2018 - 2064 women and 378 men.

D. The EU Gender Equality Index

61. According to the Gender Equality Index (a tool for measuring progress of gender equality in the European Union (EU)) produced by the European Institute for Gender Equality (an agency of the EU specialising in research and data collection in respect of gender equality in the EU), Bulgaria held the worst position of all EU countries in terms of prevalence, severity and disclosure of cases of violence against women. Specifically, according to

the 2017 Gender Equality Index report, the score of Bulgaria as regards violence against women was 44.2, the highest in the EU, when the average EU score was 27.2 (the higher the score, the more serious the phenomenon of violence against women). According to the same Gender Equality Index report, women in Bulgaria were victims of the most severe forms of violence (the report recorded that the percentage of women in Bulgaria who had experienced health consequences of physical and/or sexual violence in the preceding 12 months was 74% as opposed to the EU average of 31%) yet they complained about it most rarely (the percentage of women in Bulgaria who had experienced physical or sexual violence but had not told anyone was 48% compared with the EU average of 14%).

E. Reports by the Bulgarian authorities

62. In two letters, respectively of 16 November 2020 and 22 February 2021, the Ministry of Interior, replying to requests for access to public information by the National Network for Children, provided the following data. In 2019, there had been 14 women victims of crimes committed in the context of domestic violence, and in the first nine months of 2020, there had been 342 women victims of domestic violence.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

63. The applicant complained, under Article 3 taken separately and in conjunction with Article 13 of the Convention, that she had been the victim of domestic violence and the State had failed to provide her with adequate protection. In the first place, she considered that the legal framework applicable to her complaint that she had been the victim of domestic violence was not compliant with the Convention. Specifically, she pointed out that since minor bodily harm was not an offence subject to public prosecution, her situation as a victim who was a minor and a woman who had complained of violence inflicted by her adult boyfriend was not sufficiently protected in law. In the second place, she claimed that in practice the prosecutors had failed to adequately investigate her complaints of violence. The Court, being the master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 114 and 126, 20 March 2018) is of the view that the complaint falls to be examined under Article 3 alone. That provision reads as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. Admissibility

1. The parties' positions

(a) The Government

64. The Government argued that the applicant had failed to exhaust domestic remedies.

65. In particular, she had omitted to bring a private prosecution in court through her legal representative (her mother) to initiate criminal proceedings in respect of an offence of a private nature. The Government specified that in private criminal cases no preliminary investigation was carried out. The charges brought were clarified during the judicial hearing, where the court's task was to establish the objective truth. Such private criminal proceedings constituted an effective domestic remedy, according to the Government, given that domestic courts examined the individual situation of the complainant (the alleged victim) in detail, analysed all relevant circumstances comprehensively and issued fair decisions.

(b) The applicant

66. The applicant disagreed, emphasising that private prosecution was not an effective remedy in cases of complaints of domestic violence. She submitted that in the cases of private prosecutions provided by the Government (see paragraph 35 above) there was not a single example where the victim had been female, let alone a minor, and had been confronting her partner and alleged aggressor in court to complain of violence which he had inflicted on her. Most examples of such proceedings provided by the Government concerned complaints by men against men who were the complainants' neighbours or unknown to them. In one case the private prosecutors in question had been a man and a woman suing their male neighbour, and in another case the private prosecutor had been a man suing a woman where the relationship between those persons had not been clarified. According to the applicant, this showed that there was no case-law at national level on private prosecutions brought by women against their domestic partners. That was understandable, given the power which perpetrators usually had over victims of domestic violence, since they were in a position to influence and discourage the victims from pressing charges in private prosecutions.

2. The Court's assessment

67. As regards the Government's submission that a private prosecution was an effective remedy which the applicant should have pursued before turning to the Court, the Court observes that the essence of the applicant's complaint is that only public prosecution could be an effective remedy. The

Court thus considers that this question is closely linked to the merits and joins it to the merits.

68. The Court further notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' positions

(a) The applicant

69. The applicant stated that the threshold under Article 3 had been reached in her case. She pointed to the injuries which she had sustained at the hands of her aggressor, an adult man who had squeezed her throat in an attempt to choke her.

70. Turning to the domestic legal framework, she submitted the following arguments. Although harm inflicted in the context of domestic violence had been elevated to an offence subject to public prosecution in 2019, only a year after that change the Council of Ministers had appointed a working group to amend the definition of domestic violence so as to create "reliable, effective protection and guarantee[s] for the life, health and rights of persons at risk of domestic violence". The result had been a bill, not yet introduced in Parliament, eliminating the systematic nature of the violence which had hitherto been required for offences committed in the context of domestic violence. Also, the definition of domestic violence in the CC did not cover the intimate relationship of a dating couple, such as the applicant and her former boyfriend. The above, in the applicant's view, demonstrated that the existing legal framework was deficient, as it was unable to provide victims of domestic violence with effective protection.

71. Furthermore, referring to Article 131 § 1(4) of the CC in conjunction with Article 161 of the CC (see paragraph 41 above), the applicant emphasised that violence against minors like her, where the violence had resulted in minor bodily harm, was also not an offence subject to public prosecution.

72. She submitted that, since violence had to be repeated or moderate or grievous in order to be subject to public prosecution, the legal framework was deficient.

73. The applicant also stated that at the very least the prosecutors had been obliged to open criminal proceedings into her complaints in order to properly investigate. She had formulated credible allegations and had provided prima facie evidence. The prosecutors, however, had refused to open criminal proceedings to conduct an effective investigation. The preliminary inquiry carried out instead had lacked a number of crucial investigative steps. Thus, instead of demonstrating a desire to elucidate the circumstances complained

of, it had seemed more like an attempt to shield the perpetrator from responsibility, and this had made the whole inquiry inadequate. While Article 9 of the CCP provided a theoretical framework for publicly prosecuting one-off incidents of minor bodily harm sustained in the context of domestic violence, it had not been applied in practice in her case, which had made the remedy ineffective.

(b) The Government

74. The Government submitted that the treatment to which the applicant had been subjected had not reached the threshold under Article 3. She had sustained minor bodily harm which had not caused long-term damage to her health or lasting trauma.

75. The Government then emphasised that following the amendments to the CC enacted in early 2019, inflicting bodily harm in the context of domestic violence had become an offence subject to public prosecution (see paragraph 36 above). Furthermore, a number of serious offences – such as murder, threats to kill, unlawful detention and stalking – attracted more severe punishments if committed in the context of domestic violence (see paragraph 39 above). This showed that the legislature had adopted adequate measures to deter, prosecute and punish all offences relating to bodily harm. The Government also referred to the examples of domestic case-law concerning complaints of violence committed in the context of domestic violence (see paragraph 40 above). They submitted that the above considerations showed that the criminal legal framework was capable of providing victims of Article 3 breaches with sufficient protection.

76. In addition, the competent prosecutor had ordered a preliminary check in relation to the applicant's complaints and the police had carried it out. The Government referred to the findings of the police report described in paragraphs 23 to 26 above.

77. The prosecutors had refused to open criminal proceedings because they had established, on the basis of the preliminary inquiry's findings and the related analysis of those findings, that no offence subject to public prosecution had been committed, given that a single act of violence against the applicant had taken place which had caused her minor bodily harm. The Government specified that under the relevant legal provision, namely Article 93(31) of the CC, for an offence to be committed "in the context of domestic violence", it had to be preceded by "systematic physical, sexual or mental violence" and committed against a person with whom the perpetrator lived in a "*de facto* marital relationship, or a person with whom he or she lived or had lived in the same household". The courts had held that "systematic" meant no fewer than three acts, where there was "consistency in the way such acts were performed, and [in relation to] the identity of the subject and the same subjective attitude of the perpetrator to the act and its consequences".

78. The Government explicitly referred to and reiterated the position of the SCPO provided to them in August 2021 (see paragraphs 33 and 34 above).

79. As regards measures for effective child-protection, the Government pointed out that by signalling to the prosecutor that the applicant had been the victim of a crime, and by promptly placing her outside of her family environment, social services had been part of the effective State protection provided in such cases.

80. The Government concluded by stating that both the national legal framework and the authorities' actions had provided practical and effective protection to the applicant, who had declined to actively pursue this. It had been up to the applicant herself, represented by her mother, to lodge a private prosecution in respect of the minor bodily harm that she had suffered, which could also have been accompanied by a parallel civil claim. However, she had failed to pursue that legal path. Claimants who manage to prove that their injuries have been caused by the defendants in such proceedings, see defendants found guilty in court and may be awarded related damages.

(c) Third-party intervener

81. The National Network for Children referred, among others, to a report by the World Health Organisation of 9 March 2021, according to which globally about one in three women worldwide have been subjected to either physical and/or sexual violence, most of which has been intimate partner violence. Also, they pointed out that, according to the Bulgarian Ombudsperson, in 2019 at least two women a month lost their life as a result of domestic violence. The Bulgarian Government did not appear to collect data on criminal cases pursued in case of light bodily harm and what percentage of those had resulted in convictions. Furthermore, private prosecutions were hard for victims to pursue, especially when victims were minors or in an otherwise vulnerable position.

82. The National Network for Children further referred to the concluding observations of the CEDAW Committee in its eighth periodic report on Bulgaria (see paragraph 49 above).

83. Minor bodily harm was a privately prosecutable offence in Bulgaria, irrespective of whether the victim was a minor or an adult. Given that medium and grievous bodily harm involved rather serious injuries, the vast majority of cases of violence resulted in minor bodily harm yet fell outside the scope of publicly prosecutable offences despite being equally endangering and pain-inflicting. The National Network for Children had been advocating for years for making all forms of corporal punishment of children publicly prosecutable offences, including where minor bodily harm had been caused.

2. The Court's assessment

(a) General principles

84. In respect of the threshold of severity required for a complaint to fall within the scope of Article 3, the Court has held that it is relative and depends on the particular circumstances of the case, such as the nature and context of the treatment, its duration, its physical and mental effects and, in some instances, the sex, age and state of health of the victim (see, among many other authorities, *Dimitar Shopov v. Bulgaria*, no. 17253/07, § 45, 16 April 2013).

85. The Court reiterates that the issue of domestic violence, which can take various forms – ranging from physical assault to sexual, economic, emotional or verbal abuse – transcends the circumstances of an individual case. It is a general problem which affects, to a varying degree, all member States and which does not always surface, since it often takes place within personal relationships or closed circuits and affects different family members, although women make up an overwhelming majority of victims (see *Volodina v. Russia*, no. 41261/17, § 71, 9 July 2019).

86. The particular vulnerability of the victims of domestic violence and the need for active State involvement in their protection have been emphasised in a number of international instruments and the Court's case-law under different provisions of the Convention (see, among other authorities *Opuz v. Turkey*, no. 33401/02, §§ 72-86, ECHR 2009; *Bevacqua and S. v. Bulgaria*, no. 71127/01, §§ 64-65, 12 June 2008; and *Hajduová v. Slovakia*, no. 2660/03, § 46, 30 November 2010). There is a common understanding in the relevant international material that comprehensive legal and other measures are necessary to provide victims of domestic violence with effective protection and safeguards (see *Kurt v. Austria* [GC], no. 62903/15, § 162, 15 June 2021).

87. The Court has also held that an immediate response to allegations of domestic violence is required from the authorities (see *Kurt*, cited above, § 165, with further references). Where it has found that the authorities failed to act promptly after receiving a complaint of domestic violence, it has held that this failure to act deprived such complaint of any effectiveness, creating a situation of impunity conducive to the recurrence of acts of violence (ibid., and *Talpis v. Italy*, no. 41237/14, § 117, 2 March 2017).

88. Moreover, the Court has reaffirmed that special diligence is required from the authorities when dealing with cases of domestic violence (see *Kurt*, cited above, § 166 with further references). Children and other vulnerable individuals – into which category victims of domestic violence fall – in particular are entitled to State protection, in the form of effective deterrence, against such serious breaches of personal integrity (see *Talpis*, cited above, § 99).

89. It is not the Court's role to replace the national authorities and to choose in their stead from among the wide range of possible measures that could be taken to secure compliance with their positive obligations under Article 3 of the Convention (see *Opuz*, cited above, § 165). However, under Article 19 of the Convention and under the principle that the Convention is intended to guarantee not theoretical or illusory, but practical and effective rights, the Court has to ensure that a State's obligation to protect the rights of those under its jurisdiction is adequately discharged (see *Sandra Janković v. Croatia*, no. 38478/05, § 46, 5 March 2009, and *Hajduová*, cited above, § 47). The question of the appropriateness of the authorities' response may raise a problem under the Convention (see *Bevacqua and S.*, cited above, § 79).

(b) Application of these principles to the instant case

(i) Threshold under Article 3

90. In respect of the threshold of severity required under Article 3, the Court has found treatment to be "degrading" because it was such as to arouse in its victims feelings of fear, anguish and inferiority capable of humiliating and debasing them (see *Labita v. Italy* [GC], no. 26772/95, § 120, 6 April 2000), or if it humiliated or debased the victim in his or her own eyes (see *Raninen v. Finland*, 16 December 1997, § 32, *Reports of Judgments and Decisions* 1997-VIII), or if it showed a lack of respect for or diminished human dignity (see *Svinarenko and Slyadnev v. Russia* [GC], nos. 32541/08 and 43441/08, §§ 118 and 138, 17 July 2014). In a case concerning a complaint about domestic violence, which involved repeated instances of ill-treatment over a period of time – *Valiulienė v. Lithuania* (no. 33234/07, §§ 68 and 70, 26 March 2013) – the Court found that although the applicant had sustained minor physical injuries, those injuries had been compounded by her feelings of fear, anguish and inferiority, to the extent that her ill-treatment could be considered "degrading" enough to fall within the scope of Article 3 of the Convention.

91. The Court finds that the treatment at the origin of the applicant's complaint attained the threshold of severity required to engage Article 3, for the following reasons. The medical report on the applicant's state after the incident recorded numerous haematomas on her face, neck and limbs, and concluded that the injuries could have been sustained in the manner described by her, and had caused her pain and suffering (see paragraphs 7 to 9 above). The applicant had marks on her neck which she claimed were the result of her adult boyfriend's attempt to strangle her. She was fifteen years old at the time, was arguably in a state of physical and emotional vulnerability and dependent on her alleged aggressor and, in the circumstances, was likely to have experienced serious intimidation and distress in addition to the pain and suffering recorded in the medical certificate (see, on the point of the

psychological impact of domestic violence, *M.G. v. Turkey*, no. 646/10, § 99, 22 March 2016, and *Tunikova and Others v. Russia*, nos. 55974/16 and 3 others, § 75, 14 December 2021; and also compare, *mutatis mutandis*, with *Eremia v. the Republic of Moldova*, no. 3564/11, § 54, 28 May 2013).

92. The Court notes that the applicant's complaint is two-fold. On the one hand, she complained that the legal framework governing State intervention in cases of complaints of domestic violence was deficient. Specifically, violence had to be repeated or moderate or grievous in order to be subject to public prosecution. On the other hand, she submitted that in practice the prosecutors had failed to effectively investigate her specific complaints, although the law empowered them to act on their own initiative even in cases which were usually left to the victims to prosecute (see paragraph 44 above). The Court will examine the two complaints separately below.

(ii) Legal framework

93. The Court has earlier held that the Convention does not require State-assisted prosecution in all cases of attacks on one's physical integrity (see *Sandra Janković*, cited above, § 50). Within the context of domestic violence the Court has also held that the opportunity to bring private prosecution proceedings was not sufficient, as such proceedings obviously required time and could not serve to prevent the recurrence of similar incidents (see *Bevacqua and S.*, cited above, § 83, where the issue was examined under Article 8 of the Convention; see also, more recently and in the context of Article 3, *J.I. v. Croatia*, no. 35898/16, § 63, 8 September 2022). It has also held that a private prosecution puts an excessive burden on the victim of domestic violence, shifting onto her the responsibility for collecting evidence capable of establishing the abuser's guilt to the criminal standard of proof (see *Volodina*, cited above, § 82). Similarly, the Court has found that a prosecutor's view that no criminal investigation could be initiated unless the injuries caused to a victim were of a certain degree of severity also raised questions regarding the efficiency of protective measures, given the many types of domestic violence which exist, not all of which result in physical injury, such as psychological or economic abuse (see *T.M. and C.M. v. the Republic of Moldova*, no. 26608/11, § 47, 28 January 2014).

94. In the present case, the Court considers that in the light of the Government's submissions contending that Bulgarian law provided adequate protection for victims of domestic violence because in February 2019 any such violence had been made an offence subject to public prosecution, it is not called upon to pronounce in the abstract whether domestic violence requires in all cases public prosecution as a matter of principle. Rather, it will examine the applicable legal framework and the Government's related arguments.

95. The Court notes that under Article 161 of the CC, read in conjunction with Article 131 § 1(5a) of the same Code, minor bodily harm sustained in

the context of domestic violence is prosecuted by the authorities and not left to be prosecuted by the victim. The Court considers this a positive development in Bulgarian legislation, as it attests to the importance the State attaches to effectively fighting all forms of domestic violence. Publicly prosecuting acts of violence committed in this context, a context which is sometimes erroneously considered to be an intimate sphere where State intervention has no place (see, *mutatis mutandis*, *Volodina*, cited above, § 84), sends a strong signal to society about the public importance of investigating complaints in this regard.

96. Nonetheless, the Court observes that, as advanced by the Government and as appears from the related domestic case-law submitted by them (see paragraph 40 above), in order for harm to be considered harm inflicted in the context of domestic violence, repeated acts of violence preceding a complaint in this regard have to be established. The case-law provided by the Government shows that the domestic courts have interpreted "repeated" or "systematic" to mean no fewer than three violent acts. On this point, the Court reiterates that domestic violence can occur even as a result of one single incident (see *Volodina*, cited above, § 81). It further reiterates that consecutive cycles of domestic violence, often with an increase in frequency, intensity and danger over time, are frequently observed patterns in that context (see *Kurt*, cited above, § 175). Accordingly, it finds that requiring repeated instances of violent behaviour in order for the State to intervene, bearing in mind the real risk of new incidents of violence with increased intensity, does not sit well with the authorities' obligations to respond immediately to allegations of domestic violence and to demonstrate special diligence in that context (see *Kurt*, cited above, §§ 165-166).

97. Furthermore, the Court notes the explanation of the SCPO (see paragraph 34 above) that the applicant's occasionally living with D.M. in the same dwelling was not enough for her to be considered under the law the victim of an offence committed "in the context of domestic violence". This was so because lasting cohabitation (*устойчиво съжителство*) was required in law according to the SCPO. Also, the other legal criterion in the definition of "in the context of domestic violence", namely whether the individuals in question lived together "in a *de facto* marital relationship", appears to require two adults to have been in a relationship for over two years (see paragraphs 34 and 38 above). The Court finds that interpreting the law as requiring lasting cohabitation, as well as the requirement in law for both individuals in a relationship to be adults and to have lived together for over two years, are hard to justify from the standpoint of States' obligations under Article 3 of the Convention in the context of domestic violence, as it is bound to filter out a number of cases in which violence is inflicted on a woman by her intimate partner (compare, *mutatis mutandis*, with *M.G. v. Turkey*, cited above, § 103).

98. The Court further notes that in respect of violence inflicted on children (the applicant having been fifteen years old at the time of the facts), causing minor bodily harm to minors is an offence subject to private prosecution (see Article 131 § 1(4) of the CC, read in conjunction with Article 161 of the CC, and paragraph 41 above). This is apparently the case even if there have been repeated acts of violence unless, as discussed above (see paragraph 95 above), the harm is inflicted "in the context of domestic violence". While a more severe punishment is provided for in law in such cases (of causing minor bodily harm to minors, see paragraph 41 above), victims who are minors, with all the vulnerabilities that this involves, are still expected to be able to rise to the challenge of bringing and maintaining charges in court against their aggressors in situations where minors suffered violence but the circumstances were not considered to meet the formal requirements of "in the context of domestic violence". In the Court's view, this situation can hardly be reconciled with the State's obligation to adequately deter and effectively combat violence against children (see paragraph 62 above).

99. Indeed, Article 49 of the CCP empowers a prosecutor to open a criminal investigation *proprio motu* and pursue criminal proceedings in exceptional cases concerning offences which would otherwise be subject to private prosecution. This is so where the victim is not able to defend his or her rights owing to being in a state of helplessness or dependence on the perpetrator of the crime. The Court observes that this option has the potential – if chosen by the prosecutor – to ensure that acts of violence are not left unprosecuted owing to the victim's inability to prosecute. However, the Court does not lose sight of the fact that the option to pursue a public prosecution is entirely at the discretion of the prosecutor, who is not legally obliged to take over a prosecution in such cases.

100. On the basis of the above, the Court considers that the applicable legal provisions are not fully capable of adequately responding to domestic violence or violence inflicted on victims (minors or otherwise) who are not themselves in a position to initiate and pursue judicial proceedings as private prosecutors. The law requires repeated instances of domestic violence before the State can step in (see paragraphs 37, 40 and 77 above). It apparently dictates that a *de facto* marital relationship is only present when both victim and offender in a domestic violence context are adults who have lived together for more than two years (see paragraphs 34 and 38 above); this, coupled with the requirement for cohabitation to have been of a lasting nature (see paragraph 34 above), is bound to effectively exclude from public prosecution a number of cases of violence against women by their partners. The law also establishes a minimum threshold in respect of the gravity of injuries which must be sustained before a public prosecution can be launched in relation to violence against minors in instances where such violence does not meet the formal legal requirements of being committed in the context of domestic violence (see paragraphs 35, 41, 42 and 43 above). Finally, the law

leaves the conducting of an official investigation to the discretion of the prosecutor in cases of minor bodily harm where victims are incapable of defending themselves (see paragraphs 44 and 99 above). Accordingly, the Court finds that the law falls short of the State's positive obligation to put in place an effective system punishing all forms of domestic violence and providing sufficient safeguards for victims (see, *mutatis mutandis*, *Volodina*, cited above, § 85).

(iii) Practical application of the legal framework in the instant case

101. The Court will next examine whether the response of the prosecutors to the applicant's complaints complied with the Convention requirements.

102. It observes in the first place that, on the one hand, the prosecutors' reaction to the applicant's allegations that she had been the victim of domestic violence was based on the applicable legal framework, which required systematic acts of violence before a prosecutor could intervene. On the other hand, in order to establish whether systematic violence had taken place, prosecutors had to carry out an investigation. The Court has repeatedly held that where an individual raises an arguable complaint that he or she has been ill-treated at the hands of a private party, the State has a duty to conduct an effective official investigation (see, among many other authorities, *M. and Others v. Italy and Bulgaria*, no. 40020/03, § 100, 31 July 2012; *Eremia*, cited above, § 51, and *Bălşan v. Romania*, no. 49645/09, § 57, 23 May 2017). The minimum standards applicable, as defined by the Court's case-law, include the requirements that the investigation be independent, impartial and subject to public scrutiny, and that the competent authorities act with exemplary diligence and promptness (see *M. and Others v. Italy and Bulgaria*, cited above, § 100, and *Volodina*, cited above, § 92).

103. As can be seen from the facts of the present case, the director of the local directorate for social assistance gave the prosecutor notice that the applicant had been beaten repeatedly by her then adult boyfriend (see paragraph 11 above) and that on one occasion he had slapped her in the face, pushed her to floor, kicked her while she had been lying on the ground and tried to choke her, all of which had caused her physical pain and suffering and left her seriously frightened (see paragraphs 12 to 15 above). The Court considers that those were allegations of serious violence indicating public interest in the prosecution, which required an appropriate official response. Specifically, a number of relevant investigative steps should have been pursued in that context. Those ought to have included in particular following up on the allegations of repeated beatings (see paragraphs 11, 17 and 19 above). They also might have comprised, and not be limited to, questioning the applicant in a "blue room" (a special facility where child victims of or witnesses to abuse can be interviewed in a protected environment by specially trained professionals out of sight of the suspected perpetrator), especially in view of her withdrawal of her complaint; examining the correspondence

between the applicant and D.M.; questioning the applicant's friends; and looking into D.M.'s criminal history, particularly whether there had been any other violence towards other women in the past.

104. However, the prosecutor relied entirely on the preliminary inquiry conducted by the police, which did not include any of the above-mentioned investigative acts (see paragraphs 23 and 25 above; compare also with *Y and Others v. Bulgaria*, no. 9077/18, § 103, 22 March 2022). Despite that, the prosecutor found the inquiry's findings sufficient to refuse to open an investigation. This was so even though the material available to the prosecutor included information about the applicant's claims that she had been beaten repeatedly by D.M., described in detail an incident comprising multiple serious acts of violence, and contained an allegation that D.M. had attempted to murder the applicant and that the incident had caused her significant pain and distress (see paragraphs 11 to 15 above). That material was accompanied by a medical certificate attesting to the injuries and their effect on the applicant (see paragraphs 7 to 9 above). The Court cannot but find the prosecutor's failure to act in these circumstances wanting.

105. The Court cannot overlook in this context that the Sofia regional prosecutor justified his refusal to open criminal proceedings in response to the applicant's complaints, *inter alia*, by reference to her refusal to undergo a gynaecological examination (see paragraph 29 above). The Court finds such an argument inadequate; it is furthermore insensitive to and disrespectful of the dignity of the alleged victim who had complained of physical, not sexual, violence.

106. Lastly, as noted above (see paragraph 99), where victims were particularly vulnerable, the law empowered prosecutors to open criminal proceedings even in cases of offences subject to private prosecution. On the basis of the information in the file, the Court considers that the applicant could be seen as falling into that category, yet the prosecutor in her case failed to act.

(iv) Conclusion

107. The foregoing considerations are sufficient to enable the Court to conclude that the authorities failed to provide adequate protection to the applicant, both in law and in practice. The Government's non-exhaustion objection (based on the applicant's failure to pursue private prosecution proceedings), which was joined to the merits (see paragraph 67 above), must therefore be rejected.

108. There has accordingly been a violation of Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION IN CONJUNCTION WITH ARTICLE 3

109. The applicant complained that she had been discriminated against on the grounds of age and sex, contrary to Article 14 of the Convention, which reads as follows:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

A. Admissibility

110. According to the Government, the applicant had failed to pursue proceedings under the Protection Against Discrimination Act (PADA), which was the *lex specialis* in cases concerning complaints of discriminatory treatment.

111. The applicant submitted that she had raised the complaint that she had been discriminated against on the grounds of age and sex before the prosecutors, but to no avail.

112. In respect of the Government's argument that the applicant did not resort to proceedings under the PADA, the Court finds that the Government have not shown that it can be an effective remedy in respect of acts or inaction on the part of a prosecutor. It therefore dismisses this objection.

113. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' positions

114. The applicant submitted that although the relevant legislation was formulated in a gender-neutral way so as to protect every person equally, in practice, domestic violence affected women more than men. Accordingly, she stated, the failure of the authorities to prosecute and punish this crime disproportionately affected women. The applicant submitted a number of reports to the Court, including reports indicating that the number of female victims of domestic violence was consistently and overwhelmingly higher than the number of male victims. She also referred to the 2020 conclusions of the CEDAW Committee in their eighth periodic report on Bulgaria concerning the State's limited commitment to combating persistent gender stereotypes (see paragraph 49 above), as well as to the Gender Equality Index 2017 concerning gender equality in the European Union, according to which

violence against women in Bulgaria was higher than the European Union average (see paragraph 61 above).

115. The Government argued that the applicant's claim of discrimination was completely unsubstantiated, as nothing – either in the legal framework or in the attitude of the national authorities – demonstrated a different (less favourable) treatment of her because of her sex. Specifically, the legislation did not envisage different type or level of protection depending on the sex of the victim, but provided equal protection to all victims of domestic violence. Similarly, the prosecutors' decision not to open criminal proceedings in the applicant's case had been fully in accordance with the law. The authorities had not shown tolerance towards D.M., whom the police had warned about criminal responsibility in the event of repeated unlawful acts on his part. Furthermore, domestic violence was not condoned in the Bulgarian society, and the competent authorities condemned it and pursued consistent policies geared towards protecting victims and punishing offenders (see also the Government's arguments set out in paragraph 75 above).

2. The Court's assessment

(a) General principles

116. The relevant principles concerning the meaning of discrimination in the context of domestic violence can be traced back to the Court's judgment in the case of *Opuz* (cited above, §§ 184-91). They were further elaborated in *Volodina* (cited above, §§ 109-14) and were more recently summarised in *Y and Others v. Bulgaria* (cited above, § 122). In essence they comprise the recognition that violence against women, including domestic violence, is a form of discrimination against women, and that the State's failure to protect women from such violence breaches their right to equal protection of the law. Once an applicant has shown a difference in treatment, it is for the respondent State to show that that difference was justified.

(b) Application of those principles in the instant case

117. The applicant chiefly complained that the failure of the authorities to provide her with protection, both in law and in practice, stemmed from a broader institutional tolerance of domestic violence and from complacency of the Bulgarian authorities in such cases which undisputedly affected women more than men. The Government contested these submissions.

118. The Court observes that this is the third case in respect of Bulgaria in which it has found a violation of the Convention, stemming from the authorities' response to acts of domestic violence against women (the previous two cases being *Bevacqua and S.*, cited above, §§ 77-83, and *Y and Others v. Bulgaria*, cited above, §§ 110-111). The Court also held in the most recent of those judgments that it was hardly in doubt that domestic violence in Bulgaria affected predominantly women (see *Y and Others v. Bulgaria*,

cited above, § 124). In the absence of official comprehensive statistics, the applicant in the present case submitted various other statistics as regards violence against women in Bulgaria, reported by domestic non-governmental organisations and contained in the 2017 EU tool for measuring gender equality. It transpires from those statistics that women are the predominant victims of violence in Bulgaria (see paragraphs 56 and 57 above as regards specifically domestic violence, and paragraph 60 above as regards violence against women more generally) and that Bulgaria scored the highest overall among all EU countries in respect of prevalence, severity and lack of reporting by women victims of violence (see paragraph 61 above). The figures provided by the Ministry of Interior in respect of 2019 and 2020 (see paragraph 62 above) represent a further indication of the numbers of women who have complained about being victims of violence in the period in question.

119. The Court has already held that discrimination may result from a *de facto* situation (see *Y and Others v. Bulgaria*, cited above, § 122 (b)). The Court deems of relevance in the first place the fact that this is the third case in respect of Bulgaria concerning domestic violence against women in which it has found a violation of the Convention. It also observes that the information provided by the applicant includes statistics about domestic violence as well as violence against women in society in broader terms. Those statistics show specifically for Bulgaria that women are the predominant victims of domestic violence, as well as that violence against women in Bulgaria is the highest in the EU. Taking into account that it is the applicant who bears the initial prima facie burden of proof of a difference in treatment, the Court is satisfied that the applicant has submitted sufficient statistical material (see, *a contrario, Y and Others v. Bulgaria,* cited above, § 126) and has thus made a prima facie case that, by virtue of being a woman victim of domestic violence in Bulgaria, she was in an unequal position which required action on the part of the authorities in order to redress the disadvantage associated with her sex in that context. It reiterates that once it has been established that domestic violence affects women disproportionately, it is for the Government to show what kind of remedial measures the domestic authorities have deployed to tackle that disadvantage and to ensure that women can fully enjoy human rights and freedoms on an equal footing with men (see *Volodina*, cited above, § 111, and *Y and Others v. Bulgaria*, cited above, 122(e)).

120. However, apart from the general submissions as described in paragraph 115 above, the Government have not shown what specific policies geared towards protecting victims of domestic violence and punishing the offenders they have pursued and to what effect (see also in that context paragraph 59 above). While they emphasised that the law had been framed in neutral terms and provided equal protection against domestic violence to all, the Court found above in the context of Article 3 that the relevant legal

provisions examined in the instant case were not capable of adequately responding to domestic violence to which the majority of victims in Bulgaria are women. In particular, while it could not be said that Bulgarian law wholly failed to address the problem of domestic violence (contrast with *Volodina*, cited above, §§ 128 and 132), the way in which the legal provisions assessed in the present case were worded and interpreted by the relevant authorities was bound to deprive a number of women victims of domestic violence from official prosecution and thus effective protection (compare with *M.G. v. Turkey*, cited above, § 117). Furthermore, the Court finds that the absence of official comprehensive statistics kept by the authorities can no longer be explained as a mere omission on their part, given the level of the problem in Bulgaria and the authorities' related obligation to pay particular attention to the effects of domestic violence on women and to act accordingly.

121. In addition, while the Court reiterates that its role is not to pronounce on whether a Contracting State should ratify an international treaty, that being an eminently political decision (see *Y and Others v. Bulgaria*, cited above, § 130), the refusal of the Bulgarian authorities to ratify the Istanbul Convention (see paragraph 54 above) can still be seen as indicative of the level of their commitment to fighting effectively domestic violence.

122. The above combined elements are sufficient for the Court to find that the authorities have not disproved the applicant's prima facie case of a general institutional passivity in matters related to domestic violence in Bulgaria. As the statistics provided by the applicant show, for a sustained period of time women have continued to suffer disproportionately from domestic violence and the authorities have not shown that they have engaged adequately with the problem. In such a case, it is not necessary for the applicant to show that she was individually a target of prejudice by the authorities (see *Y and Others v. Bulgaria*, cited above, § 122 (g)).

123. In view of the above, the Court concludes that there has been a violation of Article 14 of the Convention, read in conjunction with Article 3.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

124. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

125. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

126. The Government stated that in the event that the Court found a violation of the Convention, the just satisfaction had to take into account the adverse consequences resulting solely from the violation found and had to correspond to the level of the standard of living in Bulgaria. They also stated that the amount claimed by the applicant was unreasonable and excessively high, and that the compensation should not exceed the amount of compensation awarded in similar cases.

127. Having regard to the seriousness of the violations found above, the Court considers that an award in respect of non-pecuniary damage is justified in this case. Making its assessment on an equitable basis, the Court awards the applicant EUR 10,000.

B. Costs and expenses

128. The applicant also claimed EUR 6,150 for the costs and expenses incurred before the domestic prosecutors and before the Court.

129. The Government submitted that this sum was excessive.

130. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 3,000 covering costs under all heads, plus any tax that may be chargeable to the applicant, to be paid directly to the applicant's legal representative before the Court.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Joins* the Government's objection of non-exhaustion of domestic remedies to the merits of the applicant's complaint under Article 3 and *rejects* it;

2. *Declares* the application admissible;

3. *Holds* that there has been a violation of Article 3 of the Convention;

4. *Holds* that there has been a violation of Article 14 in conjunction with Article 3 of the Convention;

5. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be

converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 3,000 (three thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be paid directly to her legal representative before the Court;

(iii) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 23 May 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova Deputy Registrar	Georgios A. Serghides President