Bulgarian Gender Research Foundation

Gender Stereotyping - a pervasive and overlooked source of Discrimination against Women in Bulgaria

Special Alternative Report to the 4th, 5th, 6th and 7th governmental report

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A. Introduction

The present report represents a study based on the results of the research and monitoring activities of the Bulgarian Gender Research Foundation /BGRF/ and on the experience of the organization with women's rights litigation in the last 5-7 years. The experience of partner organizations working in the field of human rights and women's rights in the country is also taken into account for the observations, conclusions and recoomendations made in the report.

This is a special report of the BGRF on the cross- cutting issue of gender stereotyping in media and advertisement and of stereotyped and victimizing attitude of the institutions, including the judiciary towards women in Bulgaria. The information, data and analysis are compiled by Genoveva Tisheva and Albena Koycheva.

Organizational profile of the submitting organization-

The Bulgarian Gender Research Foundation was established in 1998. It is a non-governmental organization registered in Sofia City Court under №8516/1998. BGRF is a foundation according to the Bulgarian Law on non-profit organizations - a non-membership structure organization. It was founded by a group of women, including the current Managing Director Genoveva Tisheva, in order to work on pro-active research, education, legal counseling, campaigning and lobbying for legislative changes in the field of gender equality and women's rights. Violence against women and socio-economic rights of women make the main focus of the BGRF activities.

The organization works in the field of gender equality, prevention of domestic violence, protection of reproductive rights and anti-discrimination by providing information, elaborating and conducting research, analyses and draft laws, conducting campaigns and lobbying for legislative changes, provision of training and consultations for professionals and working in wide networks in cooperation with other organizations, public institutions and experts.

A special focus in the work of the BGRF is the cross-cutting issue of gender stereotyping. In addition to the monitoring and the preparing of research reports, the BGRF supported bringing of several cases in courts and special jurisdictions, which will be reflected in the Alternative report that follows.

B. The related provisions of the CEDAW

This report covers identification of problematic issues under several inter-related CEDAW provisions- Article 5 in conjunction with Articles 1, 2, 3, 15 and 16.

The issues tackled in the report are related also to to GR 19, to GR 25, *Karen Vertido* case and *V.K. v. Bulgaria* case.

This special report of the BGRF was prepared with our conviction that the CEDAW is unique in creating this new area of intervention for the State- the modification of the social and cultural patterns of conduct of men and women, in view of achieving gender equality. The latter means broadening the concept of human rights, by formally recognizing the role of culture and tradition as limiting the exercise of the fundamental rights by women.

This creates a positive obligation for Bulgarian government to change not only the law but also culture and traditions if they make an obstacle for equality, or when they are a source of discrimination. We very much hope that our report will provide arguments to the CEDAW Committee for conveying this message to our government.

C. Gender stereotyping of women in advertisements and media

The phenomenon of gender stereotyping in the field of advertisement and media is part of gender stereotyping of women in Bulgaria more in general and in all areas of private and public life which is not paid enough and proper attention by the government. And

this, in spite of the existing provisions in legislative and policy documents. In fact the National Strategy for Promotion of Gender Equality /2009- 2015/ explicitly mentions the fight against stereotyping as one of the priority issues. Same is valid for the respective National plans on gender equality for the last three years. Furthermore, the national plans identify explicitly the area of media as an area at risk but no concrete and tangible steps were made by the State in the direction of their implementation.

The absence of adequate gender equality policies is combined by the non supervision and non implementation by the State of well forgotten legal provision in the Anti-Discrimination Law in force since 2004:

Article 35. (1) Individuals conducting education and training, as well as authors of textbooks and manuals for learning, shall provide information and apply educational and training approaches enabling the overcoming of stereotypes referring to the roles of women and men in all spheres of public and family life.

(2) Kindergartens, schools and higher schools shall include in their educational curricula and syllabuses training on gender issues.

……..

.Eight years after the adoption of these provisions were not sufficient for the government to elaborate and adopt the mechanisms and programmes needed to ensure quality and continuous gender sensitive and gender education. On the other hand, the potential and resources, and existing programmes of gender equality and women's NGOs was not mobilized and used by the State.

The lack of proper response by the State to the List of Issues in the field of gender stereotyping and the absence of any relevant reference is illustrative of this big gap in the implementation of the CEDAW Convention.

This vacuum of policy and legislation in the field of gender stereotyping, combined with the absence of supervision and regulation, where needed, of the liberalized market in media and advertisement, is in the genesis of the distorted, offensive and beyond all limits humiliating images of women. Not only is this phenomenon the result of the gap in State policy. It is on top of that condoned and justified by the State.

1. Description of the situation and of the violation

Since some 12 years ago the public sphere in Bulgaria has been abundant in sexist alcohol advertisements, which have genuinely discriminating contents and messages. The situation deteriorated over the last 5- 7 years. Such are the widely disseminated advertisements of *Peshtera* anise aperitif, *Flirt* vodka, *Byala Mechka* vodka, etc., which could be seen on billboards, on the printed or electronic media, as well as on the Internet. They flooded the market and entered people's lives to such a degree that they already tend not to notice them and start getting used with their vulgarity. Irrespective of the imposed "standards" in the advertisement by the corporate sector, the majority of women feel deeply discriminated by the widely broadcasted and circulated offensive portrayal of women as sex objects and products for sale and

consumption, which go hand in hand with alcohol and other merchandise. These advertisements systemically assign to women a subordinate position both in the family and in the public sphere, and exemplify widespread stereotyping and discrimination against women based on sex, personal and family status. More specifically, the representation of women as sex targets only, accompanying the commodities and the objects to be purchased assign to them a secondary, inferior role, exposes thair bodies which are part of their human integrity as objects to the public. The women's body is inherent part of women's identity and seeing it vulgaraised and deffamated at everyday basis is deeply humiliating and in the same time disseminating the model of women in inferior and debasing position, with limited functions in society. The commodification of women in the alohol advertisement is followed by their treating as objects and environment in the advertisements of construction materials industry, ads of tyres, furniture, food, to a higher degree of vulgarity, than in clothing and underwear industry. This massive commodification of women's body and treating women as sex objects in the last period of transition in Bulgaria and also in the period after the accession to the EU, is related to the images and symbols of the widespread in the last 10- 15 years so called "chalga"culture-[1] a type of pervasive music and whole culture based on the mixture of folk and pop music with monotonous, superficial, basic and even vulgar content, advertising good and easy life, sex, alcohol use, and even violence against women in some instances "justified" by jealousy. The images of women, formatted by the chalga- culture are spread and promoted by the media at a daily basis through the main TV channels, like BTV channel, NOVA channel, such models being presented as good examples of successful, happy and popular women in society because part of this industry. The persons in power, namely form the government, acclaim the examples of this culture by supporting their performances and not questioning in any way their impact on society, on women and mainly younger women. The "chalga"culture was intentionally introduced and promoted to a big industry during the period of transition not only because it is deeply rooted into the patriarchal stereotypes but also because it is aimed at distracting people from the economic, social and political hardship.This culture displays largely also sado- maso and pornographic images of women, where nudity is by far not the most problematic issue. The "chalga" culture publicizes a formatted image of the woman with a certain type and size of legs, artificial breasts, face, hair and lips especially. The formatted women "chalga"-singers dominate the media and the advertisement at a daily basis, they are always present in the most popular TV shows. All this does not leave much choice to people and they are subjected to the influence of the imposed stereotypes. It is important to stress this fact as this pervasive culture in Bulgaria reinforces the general trend for commodification and stereotyping of women in the media and advertisement industry. According to data gathered by the BGRF in the period 2008- 2010, between 10 and 15% of the advertisements on billboards on roads connecting different towns in Bulgaria are openly sexist. Concrete references from research will be annexed and examples of such ads are in the current annexes. Only in some regions in South Bulgaria, like Plovdiv and Haskovo region, this percentage is even higher- about 40 percent. A private survey among secondary schools students in the same period showed that the majority of girls have the female "chalga"- singers as a model to follow in life. The situation has not changed substantially in the last 2- 3 years.

These widespread images of the woman present an environment of and encouraging violence against women in its diverse forms – domestic violence, sexual violence and

[1] Chalga is also called pop-folk or ethno-pop is a musical style, which became popular in Bulgaria in the beginning of 90s and which combines Bulgarian, Arab, Turk, Greek and Roma melodies, as well as flamenco motives. The characteristics are the repetitive musical and dance rythms and the way of dancing si likeTurkish "KIuchek"/ source Wikipedia/

exploitation, sexual abuse, sexual harassment, abuse of girls included.[2] Such advertisements construct a woman who is always ready and incites to sexual interaction and intercourse, publicly offering herself for sexual interaction and pleasure, a woman who does not mind being publicly undressed and with whom everything is allowed, even when the men are unknown to her. These are expectations which men are supposed to gain, to whom this advertisement is directed. In this way, more normal and decent manners on the part of the women could create well-founded violence against women who do not respond directly to this imposed by the advertisements model of behavior. Furthermore, the widely circulated ads and media images of easy and accessible women perpetuate the sterotypes of promiscuity and infidelity of women which also make the basis for the stereotyped attitude of the institutions/ the judiciary, the police, the social services, the local authorities/ towards women in concrete cases which involve violence against women and parental rights.

It is worth mentioning here the concrete research data from the latest representative sociological research on sexual violence against women in Bulgaria.[3] The results based on standardused interviews with 1000 women and on in-depth interviews with specialized oganizations, showed that 54% of women perceive sexual violence as a serious problem and another 35% of them perceive it as a rather serious problem. The attitudes of women indicate that the phenomenon is associated first with rape and attempted rape - 79%, with trafficking of women for sexual exploitation - 67& and with domestic violence - 57%.It is important to note that among the reasons perceived for sexual violence, alcohol abuse is ranked first with 82%.

This is an offense to the dignity of women and humiliation of Bulgarian women by all persons involved in the whole process (advertisers, producers and distributors of the project, the authors of these ads, the participants in these advertisements, the media and all those who disseminate the advertisements, authorities and local authorities allowing the displaying of advertisements) who present the woman solely as a sex object, a commodity and as a part of men's pleasure. These facts put women in an overt unequal position in society. They impose obvious stereotyping of the women's role, disregarding women's diverse roles, abilities and capacities for realization and their contribution for the Bulgarian society. The unreal representation of women's role and place leads to further discrimination of women in other spheres such as the labor market, education, decision-making policy and family relations.

In fact, according to Rebecca J. Cook and Simone Cusack[4], in order to abolish all forms of discrimination against women, priority needs to be given to the elimination of gender stereotypes. While stereotypes affect both men and women, they can have particularly egregious effects on women, often devaluing them and assigning them to subservient roles in society.Treating women according to restrictive generalizations instead of their individual needs, abilities, and circumstances denies women their human rights and fundamental freedoms.

This was confirmed by a recent research of the BGRF on gender stereotypes and gender equality policy in Bulgaria.[5] .The media content analysis which is part of this research shows that women are mentioned mainly when a social issue is at stake, and namely in relation to maternity, child care, family relations; women are not related at all with the themes of foreign policy and economy in Bulgaria; women's participation in the internal policy is not reflected either, even in specific pre-electoral periods; expert opinions are given predominantly by

[2] See also "Killing us Softly"4- Advertising's image of Women/ 2011/- a documentary by Jean KIlbourne/

[3] *Alpha Research Agency* " Sexual violence against women in Bulgaria"/ January, 2011/

[4] *Rebecca Cook, Simone Cusack*,"Gender Stereotyping- International Legal Perspectives", 2011, University of Pennsylvania Press

[5] *I. Balabanova, E. Triffonova, G. Tisheva*, Gender equality policy and gender stereotyping in Bulgaria, BGRF, 2012/ under editing/

men; in contrast to that, even in the most serious and analytical electronic media there are sexist pictures of women, almost naked with brief comments about their sexual aspirations.

The described environment is a constant source of discrimination of women and a serious cross- cutting basis for violation of the rights of women in Bulgaria in many other fileds coverd by the CEDAW Convention. Despite that, as it will be described below, this phenomenon passes without any reaction of the State to try to recognize, regulate and balance this istuation with law, policy or education measures. In such a way the government expresses openly its complicity with the corporate sector owning media and arvertisement industry for the vulgarization, commodfication of women and assigning an inferior position for them in society, thus making the sterotypes even more resistant and sustainable. The State did not pay attention to these alerting trends and messages which marked the results of the privatization process and the attitude of the Bulgarian corporate sector. As this discriminatory acts passed without being punished, the situation, as we will see below, exacerbated exactly around and after the time Bulgaria became full member of the EU.

What are these media and advertisement images of women condoned by the State if not a "distinction"of women, which has the effect **and** purpose, we would say *"……. of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field." /Article 1 CEDAW/*

Where is the State which has to ensure "…*elimination of prejudices … and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women…"./*Article 5 CEDAW/?

Where are the appropriate measures taken *"…… to eliminate discrimination against women by any person, organization or enterprise"* /Article 2 e/ CEDAW/?

It will be further described how the high degree of tolerance for this type of gender stereotyping is complemented with the stereotyped and even hostile attitude of the courts and other jurisdictions before which these advertisements were challenged. It entails discrimination and secondary victimization of those women who dared to complain of discrimination.

The crucial issue of gender stereotyping was given little attention of the State in its Responses to the List of issues and questions of the CEDAW Committee in page 8. There is a pale recognition of the fact that there is some "risk" /!!/ for gender stereotyping in the media and advertisement. No indication about a specific State policy or action. The Council for Electronic Media and the Commission for Protection against Discrimination are mentioned there as guarantees for ensuring gender equality in the field. Their highly contradictory role, as well as the one of the courts will be discussed more in detail further on. As a whole, this part of the responses of the government is rather weak and shows lack of understanding and concern about this problem.

2. The Legal and Institutional guarantees

- The general protection against discrimination is in fact contained in the Protection against Discrimination Act in force since January 2004 which gives legal guarantees against discrimination based on a wide range of grounds/ Article 4/, and among the protected grounds are sex, personal and social status, family status. The Law covers all areas of social life, with only few explicitly mentioned exceptions. The protection given encompasses equality before the law, equality in treatment and equal opportunities, as well as effective protection against discrimination. /Article 2/. The Anti-Discrimination Law explicitly bans

harassment and sexual harassment, as discriminatory acts. The Law contains also explicit obligations for the State actors to ensure effective protection against multiple discrimination. The Law provides for an important tool for victims of discrimination- the shifting of the burden of proof. According to Article 9, upon evidence for *prima facie discrimination*, the burden of proof shifts to the other party who has to prove that the right to equal treatment was not violated. /Article 9/

We note that EU Directive 2004/113 on equal treatment of men and women in access to and provision of goods and services provides an explicit exception of the contect of media and edvertisement from the scope of application of the Directive and from the EU standards. When Bulgaria transposed this Directive, these exceptions were not explicitly adopted and these areas are currently clearly within the scope of the Anti- Discrimination Law. In addition to that, the Bulgarian government is bound by the universal international standards in the field of human rights and gender equality, like the CEDAW and the ICCPR.

The Commission for Protection against Discrimination / Chapter 3 and 4 of the Anti-Discrimination Act/ is an independent State body for protection against discrimination. The Commission has the competence to consider discrimination case, which can be brought, alternatively, before the district court. The decisions of the Commission as a special jurisdiction are subject to appeal before the Supreme Administrative Court. It is important to mention that the Commission is in many instances a preferred mechanism for initiating discrimination cases because its procedure is regulated as a quick and more accessible one, compared to the court procedure. The Commission is supposed to be more specialized, the procedure is expected to be more flexible and friendly to the victims, as the law provides that the Commisison has the competence to support the complainants in the procedure against discrimination, where needed.

The Report of the state authorities does not provide specific data on how this Law is implemented in the cases of gender-based discrimination and multiple discrimination against women by the Commission and by the courts. Neither the Report, nor the officially published Annual reports on the activity of the Commission on Protection against Discrimination contain data on how these cases are being decided and what is the impact of these decisions. On March 8th, 2011 an anonymous statement on behalf of the Commission on Protection against Discrimination was widely disseminated in the media, stating that “men are the more discriminated against in Bulgaria”. No one appeared on behalf of the Commission to explain this striking statement and to answer the numerous questions of journalists from many media. No official data were to be found on the website of the Commission to support this statement. The effect though lasted for days in the affirming the wide-spread stereotyped attitude of neglect, suspicion and underestimation towards the complaints of women against discrimination on the grounds of sex and gender.

- The mentioned by the government Radio and Television Act /RTA/ and the Council for Electronic Media /CEM/ have to be considered in relation to their role in the protection against sexist advertisements. According to the Act, the CEM has a supervisory role also in the field of commercial advertising. The provisions of the Radio and Television Act from July, 1999, do not allow commercial advertisements that affect human dignity and those which encourage any act of discrimination, including based on sex. The review of the practice of the CEM in the field of sanctions imposed to the respective media and advertisement service providers for the last three years, shows that the Council has never condemned and imposed a sanction for a sex discriminatory advertisement. There have been notorious examples of sexist ads but no reaction followed from the Council’s side. It is true that there is not a clear provision in the RTA on ban of sex discrimination but the violations and discrimination

described above were so widespread that the silence of the CEM is not only surpising and disproportional to the extent of violations but also highly suspicious in the context of the fact that a former member and chair of the same body (namely Mrs. Margarita Pesheva) was also an expert in the case before the Commission on Protection against Discrimination and she presented there her written expert's concluding observation on the highly abusive and humiliating to women nature of the messages of all these advertisements explaining in details the mechanisms how such messages are being conveyed to the public and negatively influencing women's dignity and the attitude towards women. In this way the CEM was deliberately notified of the problem and its gendered nature but it took no action which was within its competence and obligations under the Law.

We note that the regulation of the RTA, besides being insufficient, does not comprise at all the other media, except radio and television and the other means of communication and advertisements, like the commercial billboards. A concept for a general Law on Media is still under preparation.

- In its Responses to the List of Issues, the State mentions also the mechanism of the National Council for Self - Regulation. Despite the promising practice in the field of discriminatory advertisement of this relatively new self- regulation body, we consider this mechanism not relevant as it cannot replace the obligations of the State to protect women from all forms of discrimination.
- The Law on Health from 2005 contains, among others, important provisions for the safeguard of public health. One of them is **the ban of the direct advertisement of alcohol beverages** /Article 55/. The main limitations for the idirect advertisement, which is allowed, are related to the protection of the rights and health of minors and to general concerns for public health. There are no limitations for the discriminatory and/or abusive content of the ads. Thus this provision opens a wide space free from control for the alcohol and other producers and advertisers and thus their freedom of expression in the contents of the ads practically supersedes the women's right to dignity and non-discrimination.

  The Law on Protection of Consumers from 2006 does not contain protection against discriminatory advertisement any more. In fact, the Law used to have a provision on unethical advertisement which included discriminatory ads based on sex as well/ Article 39/ but the text was subsequently abolished in September 2007 which was a serious step back in the anti-discrimination legislation. It is of importance to note that in the previous Consumers' Protection Act, in force until 2006, such a provision was in force and several cases were brought to court based on this text. The stated amendments of the current law are maybe due to the fact that there is protection against discrimination in this area also in the general Anti-Discrimination Act but the practice of the CPD and the courts under this act reveals that it is by far not the case.

  In Bulgaria there is no special Gender Equality Act where the issue of gender equality and gender stereotypes could have been regulated in a more consistent way. Despite the mention of the importance of gender stereotypes in the Gender Equality Strategy and in the annual gender equality plans, no concrete action was undertaken by the State for sustainable supervision and regulation of the content of media and advertisement in this field. There is no specialized governmental body on gender equality and no general supervisory body in the field of the advertisement industry.

3. Case law and Stereotyping by the court

The described environment of highly tolerated sexist advertisements, the lack of officially established and biding criteria for their contents, the insufficient legislation and policy and the absence of effective supervisory mechanisms make the task of challenging discriminatory ads through litigation very difficult in Bulgaria. The stereotyping and victimizing attitude of the jurisdictions and the courts creates additional obstacles for the identification and condemning of sex discrimination through stereotyping and in practice hamper the access of women to justice in this field.

- Case - law under the abolished Consumers' Protection Act – In 2001, prior to the entry into force of the Anti- Discrimination Law, two major cases against sexist advertisements were brought before the Bulgarian courts. The first is less known and is a case initiated by the Bulgarian Gender Research Foundation as an interested party under the Consumers'Act. The BGRF challenged the widely spread at that time advertisement of phone cards of the company *"Mobikom"* Ltd. which were advertising their cards with different numbers of units in each of them. The appealing text read "What is your preferred size?" and depending on the different numbers of units, each type of card was accompanied by a pair of women's breasts with a meter measuring them and with the indication of the size - A, B, G, D or E. The first instance court adopted a temporary order for banning the ad and started considering the merits of the case. After the first hearing, there is a serious suspicion that the company influenced the decision of the court as there is no alternative explaination of how and why the same first instance court and the same judge that had banned the ad so promptly suddenly changed its views and found the complaint even inadmissible, thus avoiding the necessity to judge the case on the merits. The same happened in the course of the successive appeals and the Supreme Court of Cassation with a final decision declining the claim, saying for the first time and without such an objection from the respondent that the BGRF was not an interested party according the law (being a legal person it could not experience any negative psychological damages), although the special law read that the claim could be brought by any party who/ which proves its legal interest.

  A series of claims - 9 claims, were brought by women and feminist NGOs in 2001 against another ad of a well known brand of beer of *"Zagorka"* joint stock company. These cases made a lot of publicity. The challenged ad represented a TV ad of the beer of the same brand saying "What else does a man need, besides a new car, a good woman and a good beer." The cases were not a victory, the court did not find the messages of the advertisement discriminatory to women and finally the plaintiffs had to pay the legal fees of the defendants. But this was the beginning and together with the previous case, it represented a breakthrough in the legal practice and the society.

  - Case-law under the Anti-Discrimination Act - In September, 2008, thirteen women brought a complaint for sex discrimination against a series of advertisements of *Peshtera* anise aperitif, with producer the joint stock company *Vinprom Peshtera.* They are entitled Passion in Crystals and The Season of Watermelons and were notoriously famous for their television, printed media and billboard versions. The billboard one displays the pop-folk/ "chalga" singer Galena in a skimpy bathing suit patterned with watermelon motifs at her breasts. Galena holds a watermelon at the level of her hips on which a small pink triangle has been carved out. Her look is lustful and inviting men to consume the "renown" Peshtera anise aperitif. The message of this advertisement is more than clear – "Come and consume me along with the anise aperitif". The advertisement from the billboards could be seen in the printed media as well. Furthermore, the television advertisement does not show anything new: two enticing and provocative divas, the pop-folk singers Galena and Emiliya, seduce in the most definite manner two men on the beach, offering them anise aperitif with

watermelon. Galena wears again a watermelon bathing suit, generously showing her silicone breasts on a par with her colleague Emiliya. This scene happens in front of the foolishly staring men. Galena has even shown part of one of her nipples so that the striking association with watermelon becomes even more tangible. This is the moment where men are invited to follow their primary instincts and to consume Peshtera anise aperitif garnished with the offered "pair" of watermelons. The woman and her body are directly connected with the accessibility and pleasure gained from alcohol, summer and a slice of watermelon. She is nothing more than this; she is easy to reach and always ready for sex./ The billboard versions and the video versions of attacked ads and thir modifications are annexed to this report/

This case was brought against the producer, the advertisement agency, the media and all who were related with the dissemination of the advertisement before the Commission for Protection against Discrimination also with the support of the BGRF. The procedure for adjourning the first hearing was unusually lengthy and contradictory and it took 10 months to the Commision to start considering the case. The complainants were not provided with timely information by the Commission and some of them were even advised unofficially to abandon this impossible cause and to drop the case. No support was provided to the women despite the explicit provision for that in the law. The complainants were obliged – by the members of the panel of CPD, ex officio, and without any request from the respondents - to explain many times and one by one how they felt in front of these ads and why they felt discriminated against. Despite the explicit message in the ads, the explanations of the women and four detailed experts opinions, most of them in favour of the claim, at the end of 2010 the Commission found that no evidence of *prima facie* discrimination was available , and subsequently no sex discrimination in this case. It has to be noted that one of the expert opinions solicited by the Commission was of a sexologist, as if there was something wrong with the perceptions and sexual life of the women who complained. This decision, appealed by the women, was confirmed by the Supreme Administrtaive Court with a decision from June, 2011. The court confirmed the decision of the Commission and added that there was no empirical evidence that the ads affected the majority of women in Bulgaria and that the 13 women cannot be representative of the women in Bulgaria. They were maybe too sensitive to the ads. The court said that the reference to international instruments, and namely to CEDAW, was not relevant for the court, as only the government but not the judiciary, was bound by the international human rights instruments. We note that in this case the court refused to take into account not only international norms but any norms regulating discrimination and human rights by saying that it is a problem out of the scope of law, a moral problem, raised through a subjective opinion. Upon the appeal, a final judgement was issued by the special panel of the Supreme Administrative Court on 13 March, 2012 - there is no data for *prima facie sex* discrimination. As to the gender stereotypes, the Court refused to deal with them as a source of such discrimination and confirmed that they are stable enough and immutable in Bulgaria: *'…It has been a just and lawful assumption by the Commission that these are issues from the area of esthetics, ethics, psychology and social science, and namely of a type of sub-culture, which issues have a philosophical dimension, which are characteristics of the state of the society at the given historical moment and cannot, and could not be solved within the limited factual frame of a concrete legal case.'*

Thus the Commission and the court managed to additionally victimize those women who dared to challenge a company which is maybe too close to those in power and too influencial for allowing a group of women to trouble their market and profits strategy. There was a clear trend from the very beginning to discourage and humiliate the women. It all resulted in the refusal to consider, identify and expose the existing stereotypes and it is equivalent to denial of justice to the Bulgarian women. The message is that this issue should not be raised, touched and analysed **in this historical moment**. The last case also showed that the legal

cases based on gender stereotypes are still a “high bar” for the judiciary in Bulgaria, as a well known human rights lawyer Mihail Ekimdjiev affirmed. This deficit is not compensated by continuous education and training of the judges which is a State obligation as well.

There have been numerous attempts to raise the issue of the stereotyped images of women in the advertisements and media presenting them just as highly sexualized objects, subordinate to men, serving the men… The final court decisions in all these cases consolidate the conclusions that 1.) No arguments will be heard against the best interest of the companies and their freedom of expression by using the female body in vulgar images and thus discriminating women; 2.) No provisions of the CEDAW can be invoked and be considered by the courts in such cases – as stated in a Supreme Administrative Court’s decision “they are binding to the State but not binding to the court in this case…” ; 3.) The existing stereotypes in this type of degrading treatment of women are to be affirmed for the simple reason that they exist “in this historical moment”; 4.) No violation could be sought or found in such images because there is no consensus in the society that they are humiliating and thus discriminative to women. It is to note that the main evidence for it is that the court affirms the stereotyping practice through its recent statement from the highest level - nothing can be done in this historical moment. It means that even a concrete practice stops (ads in question being stopped mostly on the initiative of the respondent and for the sole purpose to facilitate his position in the concrete pending case), not for reasons of recognizing that it is a violation but just to make the life of the defendent easier, the discriminative practice persists, another image is allowed to emerge and be disseminated, condoned by the lack of clear rules and criteria, the refusal of the courts to recognize this type of discrimination as a legal issue at all (not to mention women’s human rights violation| and because no sanction from the State is possible in this situation.

All these attempts were unsuccessful but only in the context of the specific claims. They are breakthroughs that happened exactly because of women who dared to stand with their names and their cause, and against the *status quo*. And despite the fact that none of those women labeled herself openly as a feminist, the very fact of their resistence is perceived as unusual, irregular and out of normal, and de facto “feminist” attitude.[6]

It is indicative that the current chief of the Council for Electronic Media, Mr. Georgui Lozanov was one of the experts on the last case in 2009 and he noted in his opinion that the sexist images were just an entertaining chalga-scenario and a nice fairy tale that some women did not have the capacity to understand. After the last hearing of the case, Mr. Lozanov was so afraid of a positive decision by the Commission and was eager to write in the media against this group of women and the danger to attack such advertisements from a feminist point of view. He was very worried and obviously was assigned the task to defend the neo-liberal media and corporate sector. Luckily for him, nobody was touched and the stereotypes are ever stable. This stance of Mr. Lozanov on this strategic case is very important to explain why the CEM whose management he took over did not react to any of the overtly sexist media and advertisement image.

So in this case what can women expect from the CEM mentioned as a remedy in the State replies?

This example shows how the stereotyping and victimization of all actors are directed against women, with the consent and complicity of the State. Just the opposite of the State obligation under CEDAW - to protect women from discrimination. The international obligation of the

[6] *Prof. Milena Kirova* in her article “ How to “grow” inequality or gender identities in the Bulgarian advertisement”, April 1st, 2010

State and its judiciary to uncover and expose gender stereotypes is emphasized also in the book of R.Cook and S.Cusack, mentioned above.

And last but not least, we note that the panels of the Equality body and of the Supreme Administrative Court who took the decisions about the sexist ads of alcohol beverages were composed mainly of women. The composition of the Council on Electronic media is also four women and one man chair of the CEM. This is an evidence of the lack of sensitivity of women themselves in such positions and of the phenomenon of co- optation of women by the system which condones gender stereotyping, instead of them being able to act as agents and change the system and its structures from inside.

D. Gender stereotyping and victimization of women in Domestic Violence and family law cases - description of major problems in relation to law and practice

- Gender equality is misunderstood as uniformity of men and women. With regard to violence against women and domestic violence, there is no special policy, legislation, practice or measure that regards these phenomena as gender-based and as violations of the women's human rights. Accordingly, the case-law reveals a tendency to gender neutrality. It corresponds to the absence of such special legislation and policy and the evidence of it lies in the legal practice in the last two years of the team of legal experts of the BGRF in Sofia on domestic violence.

The legal definition of discrimination and the grounds of discrimination including sex and gender in the Bulgarian Law on Protection against Discrimination is a rather general one and does not contain detailed provisions on specific but widespread forms of gender-based discrimination against women such as violence against women and domestic violence and thus does not cover all the forms of discrimination against women and this is clearly confirmed in the case-law of the Commission for Protection against Discrimination. There is not a single case on domestic violence in the whole case-law of this Commission since it was established and thus the general Law on Protection against Discrimination was never applied in matters related to domestic violence. This general law is not harmonized with the other special legislative acts and with the administrative acts and regulations, which is a serious obstacle for its efficient implementation in practice.

The special Law on Protection against Domestic Violence is gender neutral and this is considered by the State as one its advantages, but it does not define the DV against women as a form of gender-based violence (while in the vast majority of the cases in the courts this is a fact), there is no special protection for the women – victims of DV, and there are no special measures for protecting women against DV – like state funded shelters and programmes for these victims and their children, free legal aid and special protection of pregnant women and women-mothers, migrant women, elderly women, disabled women, socially disadvantaged women. The evidence for the lack of such services for women is given to the Committee by the case *V.K v. Bulgaria – Communication 20,* by some pending cases before the Committee against Bulgaria – *Communication 31 and Communication 32*, by the main State report before the Committee presented for this session where the crucial role of women's NGOs is emphasized. Additional information will be provided to the Committee through an annex report from the BGRF and the Alliance for Protection against Domestic Violence in Bulgaria. As a result, many women can not afford the access to justice and do never report the violence they have been subjected to, or if they finally reach the

judicial system, they have often missed to do so within the 1-month deadline period. There is no other effective legal remedy to protect them in the future in such cases, or they have to wait for the next act of violence, if they survive it.

- The history of violence in the family is either underestimated or directly refused to be taken into consideration by the judges in the cases under the Law on Protection against Domestic Violence (LPDV) based on the main argument that it is written in the LPDV that the Application for protection against domestic violence should be submitted to the the court within a one month period after the act of domestic violence was committed – article 10, paragraph 1. The courts most often assume that they are supposed to decide only on the facts related to the act of violence which has been committed within this one month period and not to address the previous such acts of violence in the same relationship of the same parties - Monitoring report 2009 – Sept. 2011 carried out by the Alliance for Protection against Domestic Violence[7].
- For similar reasons the development of the situation of violence after the submission of the application and while the case is still pending is also not taken into consideration based on the formalistic understanding that whenever a new act of violence follows, there should be a new application and a separate case in court. In some high risk cases of domestic violence this leads to the practical denial of access to jurisprudence for the victims as they can not file an application every time as they can not afford as many cases as the acts of violence they have suffered but they are entitled to and they expect an overall and comprehensive estimation of all the relevant facts in their cases. The history of violence and the persisting acts of violence are such relative facts – Monitoring report of the Alliance for Protection against Domestic Violence for the period 2009 – Sept. 2011.[8]
- The history of violence in the family is underestimated in the decisions on other family matters and thus affirming the stereotyped understanding that if the woman has not reported the violent act immediately, she must have forgiven and any later complaints would be considered by the authorities with suspiciousness and distrust.
- The long lasting negative effects of the gender-based violence against women that impairs or nullifies the enjoyment of their human rights and fundamental freedoms are not included in the available legal protection against violence in Bulgaria.

The case-law based on the experience of the team of DV lawyers to the BGRF in Sofia and the monitoring reports of the BGRF and the Alliance for Protection against DV /to be annexed/ reveal that the Law on Protection against Domestic Violence is often regarded as a satellite to the other [basic] matters within the Family Law. The acts of DV are regarded as isolated incidents, not affecting the overall family situation and the history of violence is often disregarded by the courts due to the sole fact that previous acts had not been reported and protection had not been sought within the 1-month deadline period under this Law. This prevents the victims (in 97% of the cases women, in the rest – children) from the chance to prove the real danger and risk, imposed on them.

[7] The Report is worked out following a research within the Project "Together for the effective implementation of the LPDV – monitoring and informational campaign on the implementation of the Law in ten Bulgarian cities – Varna, Bourgas, Sofia, Pernik, Plovdiv, Haskovo, Dimitrovgrad, Silistra, Targovishte, Pleven" – November, 2011. The project is financed by the Ministry of Justice in Bulgaria.

[8] Ibid.

- Domestic violence is not explicitly criminalized but often the acts of domestic violence constitute also crimes under the Penal Code.
- Domestic violence is not investigated as a crime whenever there is an option for the victim to ask for a protection order from the civil courts. The possible protection for the future is used as a convenient, although not legal, argument not to investigate such cases.
- The penal justice system feels relaxed from the topic and declines investigation and jurisdiction and dismisses cases where there is violence against women within the family with the reasoning that "it is a civil case or a family issue".
- Marital rape is not explicitly criminalized in the Penal Code.

The analysis of the case law shows that domestic violence and the violence against women are generally understood as a matter within the competence of the civil courts and where existing – their family departments. The Prosecutor's Office in the capital city Sofia, for example, has the practice to re-direct the victims (women), who wish to submit complaints against perpetrators of DV or VAW, to the respective Family Department of the court, thus refusing to accept any complaints of possible crimes for the only "reason" that it is a family issue, e.g. private issue. This practice has been strongly criticized, yet it is still in place, totally neglecting the fact, that besides the protection of the victim for the future (which the Law on Protection against Domestic Violence can only provide), the State has also the obligation to investigate and to punish the perpetrator. We can hardly point out a single case where the penal justice system has acted in parallel to the civil justice system but we have examples/ to be annexed also to the report as case studies illustrating the practice of the institutions in such cases and the negative results for women and their children/ where investigations have been terminated because prosecutors decided that the Order for Protection for the future guarantees the protection of the woman – victim of a crime committed in the family.

- Parents are equal in their rights, while women-mothers are bearing the greater part if not all of the responsibilities and obligations for upbringing the children.

The same refers to the Family Code and the Law on the Protection of the Child and the related legislation, which does not provide for any specific anti-discrimination provision and does not refer to the general Law on Protection against Discrimination. The two parents are formally treated as equal in their rights regardless of their individual parental experience, family status, their history of parenthood, whether they live or not together with the child, parental capacity and behavior, possible history of negligence or violence against the child, and relations with the child. The rights of the fathers to visitation and contacts in cases with a history of domestic violence often supersede the fights of the mothers [and their children] to security and to a life free of violence.

- Whatever the father has done to the mother in cases with a history of domestic violence should not affect his rights as a parent.
- Whatever the mother has suffered from the father should not be a reason for any restrictions for his rights as a parent.

As in many analyzed decided cases, the history of violence and the potential future danger for the mother, the fulfillment of the parental responsibilities and obligations are almost never a concern for the representatives of the Child

Protection Authorities (who are obliged to make a report on the situation of the child in a family whenever a matter concerning this child is to be decided by the court). The general understanding is that it is always in the best interest of the child to have regular and often contacts with the father, regardless of any history of a violent relationship of the later with the mother (and even with the child, or witnessed by the child) and to preserve the link at all costs. No sanctions and no other negative consequences for the father are provided in any Bulgarian law, should he does not wish in the future to exercise his rights to child contacts because child contacts as drafted in the Family Code, are just his right, not an obligation.

In many cases where domestic violence against a woman has been reported and/or physical, sexual or emotional violence against a girl child, the Child Protection Authorities keep pressing the mother to cooperate for the child contacts and they would even recommend mediation, or appoint such meetings within their premises and try to mediate or negotiate the conflict even without the consent of the woman. In one such moderated child contact within the premises of the Child Protection Office in Sofia, in the "Ljulin" district, a several months old baby girl, still being breastfed, was kidnapped by the father in the presence of the social workers. On the contrary, when fathers kidnap the children from their mothers and thus attempting to blackmail them or to revenge, or to punish them, all the relevant state authorities would keep silent and prove incapable to intervene, presuming that the father has "equal rights" to take care of the child for example, the case of a Gambian woman and her daughter, which case was brought before the CEDAW Committee – *Communication 32*/.

The mother who is often in such cases the only upbringing parent, is always obliged to ensure that the child is always present and ready for these contacts and wishes to meet with the father – no matter how violent the father might have been, until another court decision follows (which might take years). Otherwise, she is criminally responsible under article 182 of the Penal Code for preventing, or creating obstacles for the child contacts, which are always the father's rights and the mother's responsibilities. Thus, the father's right to child contact and visitations would often supersede the mother's right to life, free of violence and thus being in her best capacity to exercise her rights and responsibilities as a parent – quite often the only parent upbringing the child. Such penal proceedings against the mother can last for many years like in prosecutor's file No.8586/ 2006 in the Sofia District Prosecutor's Office with a more than five years long preliminary investigation, where finally the accused woman was acquitted by the court. This particular investigation was carried out after the prosecutor discontinued several times another five year long investigation against the father following a signal/complaint for a debauchery against the same child, where the mother was never heard as a witness and she was finally exhausted to appeal the prosecutor's acts for discontinuing the investigation.

- Child contacts are always a right of the father and a responsibility of the mother.

In many still pending divorce cases or cases on the custody for the children, mothers are often accused for alienating the children from their fathers, whenever the children refuse to contact with the fathers because they have survived or witnessed violence from them. In such cases, the Family Code provides for appointment of an expert psychologist to decide on whether there is a Parental Alienation Syndrome – article 59, para. 6 of the Family Code, and in case there is

such an alienation the general attitude is that it is the mother's guilt, as she has been taking care of the child during the respective period of time. The laws do not provide for such obligatory expertise in cases when children have shown, shared or expressed their reasonable fears from contacting the abusive fathers, thus keeping the women-mothers in a double re-victimized position – fearing for them themselves, and for their children, plus burdening them with the responsibility of what the child will do or say (not pleasing the father).

- Symbolic and disproportionately small participation of the fathers in the child support in cases of dissolution of the marriage or separation of the parents due to the formal and inadequate criteria applied.

With regard to the child support in cases of divorce and/or separation of the parents, it is true, as explained in paragraph 307 in the State Report, that there is a new general provision in the Family Code stating that "*After the divorce the parents owe maintenance of an amount which must ensure the living conditions of the child which it had before the divorce, unless this would cause special difficulties to the parent incurring the maintenance obligations*." – article 59, paragraph 5 of the Family Code. There are no effective legal guarantees for the implementation of this principle and this makes it more likely a wish, rather than a rule. No formal criteria have been established to define neither the term "extreme special difficulties", nor the notion of "same living conditions". It is also essential to note that the concern about "extreme special difficulties" refers only to the obliged to pay the child support parent [i.e. the father] and no such concern exists in the law about the parent with whom the child lives [i.e. the mother]. In cases of such "extreme special difficulties" the other parent will have to cover the greater part if not entirely the needs of the child. There are no tax exemptions or reliefs for such overburdened parents. There is no other legal mechanism for their compensation in the future. This provision not only entirely neglects the contribution and the participation of the other parent (usually the mother) in the providing the support and permanent care for the child but it is rarely implemented even as it is. The reason is that there are no established clear, contemporary and objective criteria, or fair and equitable principles for the equal distribution of the child support between the parents. The Family Code says in its article 142, paragraph 1 that it depends on the necessities of the person and the financial capacities of the obliged person and this provision, which is taken from the old Family Code, leaves a broad space for arbitrary interpretation by the judges. Generally, they would consider only the very basic needs of the child, proven with written evidence. As for the finantial capacities of the obliged parent (the one not living with the child) the courts would consider only the written evidence, like official documents of his present income. The only legally fixed criterion is the minimum amount of the child support and it is in article 142, paragraph 2 of the Family Code – ¼ of the minimum salary (now approx. equal to 40 euro). In practice, the amount of the child support awarded by the courts is rarely much more, in the best cases twice this minimum.

This minimum amount of the child support established in the Family Code is less than what the foster parents, for example, receive as financial support from the State (minimum of approx.100 euro), and less than the minimum pension for a child with a deceased parent (minimum of approx. 46 euro).

And whenever the obliged for the payment of awarded maintanence - this child support - parent (usually the father) does not pay and has no income or property, the State covers only part of the due child support – up to approx. 41 euro, which

is approx. the minimum amount of the child support [this amount is decided each year with the Law on the State Budget]. The procedure is provided in article 152 of the Family Code and is applicable only in the cases of child support, not in the cases of a former wife's support, even if the former wife could be also underage, or in any other cases. This is not an easy procedure, there is a special Ordinance [SG 77/2009] on it and it reqires additional efforts and is very time consuming as no electronic exchange of data is possible ex officio and all the requirements have to be fulfilled by the creditor, i.e. the mother. Most often she would need a legal assistance. It requires that the lack of income or property of the obliged person to be proven in an executive procedure before a bailiff to be confirmed every six months with a written certificate by the same bailiff. The financial insolvency of the debtor for the payment of two or more monthly installments is to be proven with a written certificate of the bailiff. The compensation from the State is paid only from the date of the first such certificate from the bailiff although it might have been awarded for years before this date. There is no compensation from the state budget for the period before the date of the bailiff's certificate. When the state pays under this procedure instead of the debtor and only part of his debt it can later claim back the money from him with the statutory interest. When the mother covers this debt – whenever the procedure is not applicable or for the rest of the awarded maintanence – she is not entitled to the same or similar reimbursement mechanism.

There is no mechanism for automatic changes in the amount of the child support, which forces many women-mothers to periodically bring cases to the courts for the increase of the child support. Many others can not afford these procedures.

None of these important issues was tackled in the State report and in its Responses to the Committee.

E. **Gender stereotyping and victimization of women in relation to sexual harassment cases**

1. Description of the situation and of the violation

Harassment and sexual harassment are issues that started being debated in Bulgaria after its full accession to the EU in 2007, despite the respective provisions of the Anti-Discrimination Act that were already in force at that time. The influence of the European standards for fostering the debate was obvious. Irrespective of this positive development, the deeply-rooted gender stereotypes in the field were slow to uncover and to remove and they strongly influence every debate. This is the reason why sexist portraying and stereotyping of women in public is still allowed, and why accusing somebody of sexual harassment is not yet accepted by some people, arguing that this is an American and, more generally, a Western fashion, feminist attacks / and feminism is still a pejorative term in Bulgaria/ against the freedom of sexual conduct. This was found in the research of the BGRF from 2011 on the status of genger equality and gender stereotyping, the summary of which will be given as an annex/. There are even jokes about sexual harassment in the workplace. And there are private surveys showing how pleasant and healthy sex at the workplace can be. And all this, without even touching upon the issue of unwanted sexual relationships, which are common enough in Bulgaria. A research report produced in 2011 by Alpha Research Agency is about sexual violence against women in general, without specifying violence at the workplace.[9] In this report the attitudes of the respondents towards sexual harassment is reflected: the workplace is indicated as the third place where women are subjected to sexual

[9] *Sexual violence against women in Bulgaria,* Alpha Research Agency January 2011, www. aresearch.org

violence. In 56.6 %, public places are experienced as most risky for them, in 54.9 % of the cases this is the home and in 47.9 % of the cases the workplace is risky for women. Another study from 2011 identifies frequent cases of sexual harassment in the health sector where it is notorious that women prevail and where physical and verbal sexual harassment was found in most of the cases.
Despite the frequent and often severe cases of sexual harassment, there is no specific policy of the State and no mechanisms for facilitating the access of women to counseling and their access to justice. At the exception of some NGO projects and programmes for counseling and legal aid of women, there are no other measures provided by the State. The legal provisions which will be mentioned further are far not sufficient for motivating women to report sexual harassment cases and for their effective protection throughout the procedure. Most of women know that if they complain, especially in the *quid pro quo* cases, they will be fired for sure. This is one of the reason why women stay in the employment relations and suffer violence. The other obvious reason is the fear that they will be pointed our and labeled as provoking the violence themselves, as promiscuous. Here play the general stereotypes surrounding the whole issue of sexual violence against women. This is in addition to the constraints how to access the courts themselves, without any support. Financial support in order to access the court for many women is crucial.
There are no incentives by the government for the employers and their organizations to take measures against sexual harassment, special training included. Because of a lack of sensitivity, the employers in Bulgaria do not take measures in order to prevent sexual harassment, usually they cannot identify the problem, However, when sexual harassment occurs and complaints against them are lodged, e.g. post factum, they start to think how to deal with it. There is no information available about special procedures established by the employers to tackle sexual harassment.
The Bulgarian government has due diligence obligations to tackle and protect women against all forms of violence but it is not the case for sexual harassment and stereotypes related to that. This shows that just formal legislative measures do no suffice to implement the State obligations for the protection of women's rights under the CEDAW Convention.
The absence of a special law and special body on gender equality in Bulgaria is one of the reasons for this gap, as well as the absence of a general national plan for combating gender-based violence.
The government has not taken the appropriate measures also against stereotyping and victimization of women by the judiciary in the legal cases against sexual harassment.
It is indicative that the issue on gender stereotyping in the practice of the institutions, and especially of the court, was not understood and not discussed by the State in its report and in its responses.

2. The Law

The Bulgarian legislation ensures protection by civil law against sexual harassment, the main provisions being contained in the Anti-Discrimination Act. The implementation of the law is the problematic area.
The definition of sexual harassment given by this act reads as follows:
(2) 'Sexual harassment' shall be any unwanted conduct of a sexual character expressed physically, verbally or in any other manner, which violates the dignity or honour or creates a hostile, degrading, humiliating or intimidating environment and, in particular when the refusal to accept such conduct or the compulsion thereto could influence the taking of decisions, affecting the person.' Paragraph 1 of the Supplementary provisions of the law.

Article 17 of this law provides for the obligations of the employer in cases of complaints of sexual harassment. Article 18 envisages the adoption by the employer jointly with the trade unions of effective measures against discrimination in the workplace. The law has effect explicitly also in cases of sexual harassment in the educational institutions. The victimisation or less favourable treatment because the person has refused to discriminate or

has taken or is supposed to have taken, or will take action in defence against discrimination, is also a form of prohibited discrimination explicitly regulated in the law. The general procedure of the Anti- Discrimination Act is in force for discrimination claims based on sexual harassment, including the shift of the burden of proof. Cases about alleged sexual harassment can be brought before the Commission for Portection against Discrimination or, alternatively, before the court.

These otherwise good provisions are not fully implemented in practice. In addition to the civil/ administrative protection against sexual harassment in the Anti- Discrimination Law, there are penal prvisions as well. The penal provision are valid for severe cases of sexual harassment/ Article 153/ of the Penal Code - for a person who compels somebody to have sexual intercourse with him/ her by using his/ her official or material dependence. The provision is not used at all as there is no practice recorded under Article 153 PC, which provides for up to three years of imprisonment.

3. Case law and Analysis

Cases of sexual harassment have been brought by women before the national courts and before the Commission for Protection against Discrimination. Despite the fact that such cases are both from Sofia and from other towns, they are only few cases and do not reveal any clear trend in the case law on this issue. We are convinced that there is a wide discrepancy between the number of cases brought to justice and the incidence of sexual harassment against women in employment.

Most of the cases which were discussed in society represent cases of harassment at work: unwanted conduct of a sexual nature, expressed physically and verbally, some of them pure quid pro quo cases, with only isolated cases of humiliating and offensive environment.

Since 2010, the BGRF has been monitoring the implementation of the law in cases of sexual harassment brought before the Commission and before the courts, as well as the attitude of these institutions towards women victims.

For example, in April, 2010, the District Court in Sofia issued a decision against a victim of serious sexual harassment at the workplace. The victim was a female teacher who had been suffering sexual harassment by the director of the school for a long time. As she refused to have sexual intercourse with him, she was fired. The act of dismissal which was based on the grounds of lack of skills to perfom the job was declared unlawful by the Court. The judge on the case for quid pro quo sexual harassment did not find such indications, using arguments that only foster gender stereotyping: *' ..for a woman over 42 the sexual hints can be regarded as a compliment…'.* Despite this, the Court ordered the defendant to refrain from further acts of sexual harassment in front of the claimant. The court decision was appealed and the higher court (the Sofia City Court) again refused to recognize the fact of discrimination and sexual harassment. Sustaining the arguments of the first instance court, the appellate court also added that the claimant had not proved that the dismissal was due exactly to the fact of sexual harassment. Again, the Court showed a lack of understanding of the substance of harassment and of the procedure in discrimination cases, i.e. the shift of the burden of proof rule. The case was referred to the Supreme Court of Cassation for judicial review but in May, 2012 the review was refused and thus it was confirmed that no discrimination related to sexual harassment was found. The BGRF as supporting party to the woman victim made extensive arguments based on onternational law, on CEDAW included but the Supreme Court did not deem necessary to examine the case through these arguments. We note that the case was initiated in 2004, when the Anti- Discimination Law enterd into force and the victim has been waiting for justice for more than 8 years now.

The lengthy and dissuasive procedures, the insufficient knowledge of the notions of prima facie and burden of proof in discrimination cases, and the effect of stereotyping and re-victimisation of women by the courts are the main shortcomings of the system in cases of sexual harassment. Procedural delays are often observed also in the practice of the Commission.

And, most importantly, strong the arguments from the CEDAW Convention given by the lawyers in the above mentioned case were not discussed and not taken into account by the court.

E. **Main recommendations in relation to the issues raised**:

- ***The State to ensure initial and continuous education of the governmental institutions and of the judiciary on the CEDAW Convention and CEDAW OP, and on gender equality by involving and supporting relevant NGOs for this work***
- ***The State to ensure also the education and training of the special bodies dealing with supervision of all media and advertisement sector under the terms mentioned above and to introduce clear rules for their products, supplied with effective guarantees for their implementation***
- ***The State to encourage through special laws and regulations the training on gender equality and women's rights of the media and the relevant representatives of the private sector***
- ***The State to adopt special laws and regulations, where needed for banning discrimination of women in media and advertisement, for the term needed in order to curb the negative tendencies observed***
- ***The State to establish, if needed, a special regulatory body against discrimination in media and advertising, for ensuring quick action in cases of overt discriminatory messages***
- ***The State to adopt a special law on gender equality where stereotyping and gender – based violence to be explicitly included, to provide the respective mechanisms for the protection of women's rights***
- ***The State to adopt special policies and programmes, and action plans against all forms of gender-based violence***
- ***The State to ensure strong penal protection of women against domestic violence, which is essential for women's safety, along but separate from civil protection by the court OsFP.***
- ***The State to adopt the necessary legal changes and respective training of the representatives of the judiciary and law enforcement personnel on a regular basis in order to educate them to recognize the priority of the women's and their children's right to life and the right to a life free of violence, to consider the gender-based nature of the violence against women and to guarantee protection of women in cases when they are acting in defence, protecting themselves and their children from violent partners and fathers.***
- ***The State to adopt legislative changes to ensure equality of parents in their obligations and responsibilities for the child care and child maintenance in cases of divorce and dissolution of the families and guarantees for the effective enforcement of such provisions from the moment of separation of the parents.***
- ***The State to introduce clear and adequate legal standards for the determining and calculating the amount of the child maintenance in cases of separation of the parents, including their automatic update and effective implementation.The State to introduce adequate compensation for parents (mothers) who can receive child support from the other parent.***

- The State to ensure specific training for the representatives of the social assistance departments and the judiciary on gender equality, gender-based violence and the strong links between children's rights and women's rights.

- ***The State to guarantee the implementation of Article 35 of the Anti-Discrimination Law and to ensure the educational and prevention strategies and programmes at all educational levels for avoiding gender stereotyping and discrimination of women.***

- ***The State to ensure the application of the CEDAW Convention and reference to it in the practice of the judiciary.***

Annex 1- Examples of gender stereotyping in advertisements condoned by ther State supervisory mechanism, by the Equality body and by the Supreme Administrative Court

http://www.vbox7.com/play:83aaa8f8

http://www.vbox7.com/play:cba73fe1

Annex 2 - Organisational profile of the BGRF

The Bulgarian Gender Research Foundation was established in 1998. It is a non-governmental organization registered in Sofia City Court under №8516/1998. BGRF is a

foundation according to the Bulgarian Law on non-profit organizations - a non-membership structure organization. It was founded by a group of women, including the current Managing Director Genoveva Tisheva, in order to work on pro-active research, education, legal counseling, campaigning and lobbying for legislative changes in the field of gender equality and women's rights. Violence against women and socio-economic rights of women make the main focus of the BGRF activities.

The organization works in the field of gender equality, prevention of domestic violence, protection of reproductive rights and anti-discrimination by providing information, elaborating and conducting research, analyses and draft laws, conducting campaigns and lobbying for legislative changes, provision of training and consultations for professionals and working in wide networks in cooperation with other organizations, public institutions and experts.

Giving the mission of the BGRF to protect women's human rights, it is well expected the NGO to prepare Shadow reports to the respective UN Human Rights Treaty Bodies when Bulgaria is to be considered before them. The NGO and its representatives have prepared and presented several alternative reports since 1998 - the first alternative report to the CEDAW Committee in 1998, the first alternative report to the Committee on ESCR in 1999. More recently, the NGO presented an alternative report for the Universal Periodic Review in 2010 and for the Human Rights Committee in 2011. In view of the proposed initiative – the research and preparation of the alternative report for the next session of the CEDAW Committee, the BGRF prerared for the Committee Pre-session working group on Bulgaria, September, 2011 List of issues and questions with regard to the consideration of the Bulgarian combined periodic report

Together with Center for Reproductive Rights/ CRR/ and the Network of East- West Women /NEWW/ , the BGRF is the main organizer and convener of the Women's Human Rights Training Institute (http://www.institute.bgrf.org/). The Institute is a unique initiative founded by the three partners in 2004 as a first-of-its-kind programme aimed at building the capacity of young lawyers from Central and Eastern European and the Newly Independent States (CEE/NIS) for litigation on women's rights issues, including: Violence against women; Sexual and Reproductive health and rights; Employment discrimination. The Institute has successfully completed three rounds: WHRTI 2004-2006, WHRTI 2007-2009 and WHRTI 2009-2011, where we have trained over 55 lawyers. It is currently training about 25 lawyers in its Fourth Round. The WHRTI provides practical skills for development of strategic litigation in the region both at the national and international levels through using regional and universal human rights mechanisms such as the European Convention on Human Rights (ECHR), the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the Optional Protocol to CEDAW as well as the International Covenant on Civil and Political Rights (ICCPR) and the Optional Protocol to ICCPR.

In the period 2007-2008, the BGRF together with The Advocates for Human Rights from Minnesota, conducted the first monitoring report of the implementation of the new Law on Protection against Domestic Violence (LPADV) adopted by the Bulgarian Parliament in March 2005 (in force since 1st of April 2005). The law was a groundbreaking development in the region where only few laws prohibiting domestic violence existed at the time. The monitoring process was very important in order to assess all the actions of the police, prosecutors and judges who began to implement it as well as to follow the NGOs activities and their interraction with the legal system as the latter are those supporting the victims in accessing the remedies provided under the new law. The authors recommended the law to be amended in order to have criminalization of the violation of the orders for protection, thus giving a clear sign to the perpetrators that they will be held accountable. The authors also recommended the government to ensure sustainability of the services provided for the victims – the existence and the functioning of the shelters, legal services and social services offered mainly by the NGOs. Without financial support from the government for these services, the success of the law would be at risk. Based on BGRF's advocacy efforts using the monitoring report, the criminalization of the

violation of the orders for protection /OFP/ passed in the Parliament in April 2009 through an amendment in the Penal Code. Other practical and effective amendments in the LAPDV were adopted in December 2009, like the inclusion of a specific provision in the law, providing for the financial support through the State budget of NGO projects aimed at the protection against domestic violence. The monitoring report was also used in drafting an individual communication to CEDAW, prepared by representatives of BGRF-Plovdiv branch, highlighting the gaps in the implementation of the law. The communication was submitted in October 2008 and resulted in the views of the CEDAW Committee under the case *V. K v. Bulgaria /Comminication 20/ 2008/*. Two more communications under the OP CEDAW followed in 2010 and are pending before the Committee. In the meantime, the BGRF continued its monitoring of the work of the institutions in implementation of the law, collected statistics from the courts and from the work of NGOs. The data were periodically announced to the public and was used in the process of advocating for the changes in the LPADV and collateral legislation. The recommendations of the Committee under the V. K. case were also used for formulating suggestions for legislative changes.

The BGRF is one of the founders and the coordinators of the Alliance for Protection against Domestic Violence, an umbrella NGO registered in 2009 in Varna and gathering nine women's NGOs from ten different towns in Bulgaria.

The BGRF through its legal aid and litigation programme developed a series of impact cases for protection of women's rights in Bulgaria before national courts and institutions and before international bodies. The total number of cases on women's rights brought through thed BGRF to the courts or special jurisdictions in the last five years is over 150. Among the national cases are the one about *quid pro quo* sexual harassment in Sofia district court related to unlawful dismissal, cases about housing problems of Roma women single parents. Numerous impact cases under the Law on Protection against DV were brought to the courts in Sofia, Plovdiv and Haskovo. Cases of women victims with disabilities, Roma women and foreign women were also taken to the court. They challenged the court practice for ensuring effective protection of women victims and their children. An important victory for the organization is the first successful case on domestic violence from Bulgaria brought by the foundation to the ECtHR in Strasbourg. The case was filed under the request of one of the first victims of DV who sought legal support in 2000-2001. The judgment of the Court on the case *Bevacqua and S. v Bulgaria* was issued in June 2008 and entered into force in September 2008. The Court found a violation of Art. 8 of the ECHR (the right to respect of family and private life) for the woman who was victim of DV and her minor son who witnessed the violence and was deprived for a long period from contacts with his mother.

A special focus in the work of the BGRF is the cross-cutting issue of gender stereotyping. In addition to the monitoring and the preparing of research reports, the BGRF supported bringing of several cases in courts and special jurisdictions, which will be reflected in the Alternative report that follows.