

Annex III

Views of the Committee on the Elimination of Discrimination against Women under article 7, paragraph 3, of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women

**Communication No.: 2/2003, Ms. A. T. v. Hungary^a
(Views adopted on 26 January 2005, thirty-second session)**

Submitted by: Ms. A. T.

Alleged victim: The author

State party: Hungary

Date of communication: 10 October 2003 (initial submission)

The Committee on the Elimination of Discrimination against Women, established under article 17 of the Convention on the Elimination of All Forms of Discrimination against Women,

Meeting on 26 January 2005,

Having concluded its consideration of communication No. 2/2003, submitted to the Committee on the Elimination of Discrimination against Women by Ms. A. T. under the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women,

Having taken into account all written information made available to it by the author of the communication and the State party,

Adopts the following:

Views under article 7, paragraph 3, of the Optional Protocol

1.1 The author of the communication dated 10 October 2003, with supplementary information dated 2 January 2004, is Ms. A. T., a Hungarian national born on 10 October 1968. She claims to be a victim of a violation by Hungary of articles 2 (a), (b) and (e), 5 (a) and 16 of the Convention on the Elimination of All Forms of Discrimination against Women. The author is representing herself. The Convention and its Optional Protocol entered into force in the State party on 3 September 1981 and 22 March 2001, respectively.

2.5 The author states that she also initiated civil proceedings regarding division of the property, which have been suspended. She claims that L. F. refused her offer to be compensated for half of the value of the apartment and turn over ownership to her. In these proceedings the author reportedly submitted a motion for injunctive relief (for her exclusive right to use the apartment), which was rejected on 25 July 2000.

2.6 The author states that there have been two ongoing criminal procedures against

3.5 As to the admissibility of the communication, the author maintains that she has exhausted all available domestic remedies. She refers, however, to a pending petition for review that she submitted to the Supreme Court in respect of the decision of 4 September 2003. The author describes this remedy as an extraordinary remedy and one which is only available in cases of a violation of the law by lower courts. Such cases reportedly take some six months to be resolved. The author believes that it is very unlikely that the Supreme Court will find a violation of the law because Hungarian courts allegedly do not consider the Convention to be a law that is to be applied by them. She submits that this should not mean that she has failed to exhaust domestic remedies for the purposes of the Optional Protocol.

3.6 The author contends that, although most of the incidents complained of took place prior to March 2001 when the Optional Protocol entered into force in Hungary, they constitute elements of a clear continuum of regular domestic violence and that her life continues to be in danger. She alleges that one serious violent act took place in July 2001, that is after the Optional Protocol came into force in the country. She also claims that Hungary has been bound by the Convention since becoming party to it in 1982. The author further argues that Hungary has in effect assisted in the continuation of violence through lengthy proceedings, the failure to take protective measures, including timely conviction of the perpetrator and the issuance of a restraining order, and the court decision of 4 September 2003.

Request for interim measures of protection in accordance with article 5, paragraph 1, of the Optional Protocol

4.1 On 10 October 2003, with her initial submission, the author also urgently requested effective interim measures, as may be necessary, in accordance with article 5, paragraph 1, of the Optional Protocol in order to avoid possible irreparable damage to her person, that is to save her life, which she feels is threatened by her violent former partner.

4.2 On 20 October 2003 (with a corrigendum on 17 November 2003), a note verbale was sent to the State party for its urgent consideration, requesting the State party to provide immediate, appropriate and concrete preventive interim measures of protection to the author, as may be necessary, in order to avoid irreparable damage to her person. The State party was informed that, as laid down in article 5, paragraph 2, of the Optional Protocol, this request did not imply a determination on admissibility or on the merits of the communication. The Committee invited the State party to provide information no later than 20 December 2003 of the type of measures it had taken to give effect to the Committee's request under article 5, paragraph 1, of the Optional Protocol.

4.3 In her supplementary submission of 2 January 2004, the author states that, apart from being interrogated by the local police at the police station in her vicinity

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the proceedings, and thus the Office retained a lawyer with professional experience and practice in cases of domestic violence for her.

4.5 The State party further informed the Committee that on 26 January 2004, the Office set up contact with the competent family and child-care service at the Ferencváros local government in order to halt the domestic violations against the author and her children. The State party stated that urgent measures were enforced for securing the safety and the personal development of the children.

4.6 On 9 February 2004, the Office sent a letter to the notary of Ferencváros local government containing a detailed description of the author's and her children's situation. The Office requested the notary to convene a so-called "case-conference" with the aim of determining the further necessary measures for promoting effective protection of the author and her children. As at 20 April 2004, the Office had not had a reply to that letter.

4.7 On 13 July 2004, on behalf of the Working Group on Communications, a note verbale with a follow-up to the Committee's request of 20 October and 17 November 2003 was sent to the State party, conveying the Working Group's regret that the State party had furnished little information on the interim measures taken to avoid irreparable damage to the author. The Working Group requested that A. T. be immediately offered a safe place for her and her children to live and that the State party ensure that the author receive adequate financial assistance, if needed. The State party was invited to inform the Working Group as soon as possible of any concrete action taken in response to the request.

4.8 By its note of 27 August 2004, the State party repeated that it had established contact with the author, retained a lawyer for her in the civil proceedings and established contact with the competent notary and child welfare services.

State party's submission on admissibility and merits

5.1 By its submission of 20 April 2004, the State party gave an explanation of the civil proceedings to which reference is made by the author, stating that in May 2000 L. F. instituted trespass proceedings against the author because she had changed the door-lock of their common flat and prevented him from gaining access to his possessions. The notary of Ferencváros local government ordered the author to cease interfering with L. F.'s property rights. She applied to the Pest Central District Court (*Pesti Központi Kerületi Bíróság*) in order to set aside this decision and to establish her entitlement to use the flat. The District Court dismissed the author's claims on grounds that L. F. was entitled to the use of his property and that the author could have been expected to try to settle the dispute by lawful means, instead of the arbitrary conduct she had resorted to. In a supplementary judgement of 13 September 2002, the District Court established that the author was entitled to use the flat, but ruled that it was not competent to establish whether she was entitled to the exclusive use of the flat since she had not submitted a request to that effect. The judgement of 4 September 2003 of the Budapest Regional Court (*Forvarosi Bíróság*) confirmed the District Court's decision. The author submitted a petition for review by the Supreme Court on 8 December 2003 and these proceedings were still pending as at 20 April 2004, the date of the submission of the State party's observations.

5.2 On 2 May 2000, the author brought an action against L. F. before the Pest Central District Court requesting separation of their common property. On 25 July 2000, the District Court dismissed the author's request for interim measures on the use and possession of the common flat on grounds that the other set of proceedings concerning that issue (the "trespass" proceedings) were pending and that it was not competent to decide the question in the proceedings concerning the division of the property. The State party contends that the progress of the proceedings was considerably hindered by the author's lack of cooperation with her then counsel and failure to submit the requested documents. Furthermore, it turned out that the

ensuring adequate legal protection for the personal security of victims of violence

communication in December 2003. Non-governmental organizations have also been involved in the elaboration of the governmental policy to combat domestic violence.

The author's comments on the State party's observations on admissibility and merits

6.1 By her submission of 23 June 2004, the author states that, in spite of promises, the only step that has been taken under the Decree/Decision of Parliament on the Prevention of, and Response to Domestic Violence is the entry into force of the new protocol of the police, who now respond to domestic violence cases. She states that the new protocol is still not in line with the Convention and that batterers are not taken into custody, as this would be considered a violation of their human rights. Instead, according to the media, the police mostly mediate on the spot.

6.2 The author further states that the parliamentary debate on the draft law on restraining orders has been postponed until the autumn. Resistance to change is said to be strong and decision-makers allegedly still do not fully understand why they should interfere in what they consider to be the private affairs of families. The author suggests that a timely decision in her case may help decision-makers understand that the effective prevention of, and response to domestic violence are not only demands of victims and "radical" non-governmental organizations but also of the international human rights community.

6.3 The author reports that her situation has not changed and she still lives in constant fear as regards her former partner. From time to time L. F. has harassed her and threatened to move back into the apartment.

6.4 The author submits that in the minutes of the official case conference of 9 May 2004 of the local child protection authority regarding her case, it is stated that it cannot put an end to her threatening situation using official measures. It recommends that she continue to ask for help from the police, medical documentation of injuries and help from her extended family as well as to keep the local authority informed. The child protection authority also reportedly states that it would summon L. F. and give him a warning in the event that the battering continues.

6.5 As at 23 June 2004, according to the author, the criminal proceedings against L. F. were still ongoing. A hearing scheduled for 21 April was postponed to 7 May and, as the judge was reportedly too busy to hear the case, the criminal proceedings were again postponed until 25 June 2004. The author believes that, whatever the outcome, the criminal proceedings have been so lengthy and her safety so severely neglected that she has not received the timely and effective protection and the remedy to which she is entitled under the Convention and general recommendation 19 of the Committee.

6.6 The author refers to the civil proceedings, in particular to the petition for review by the Supreme Court, which she considers to be an extraordinary remedy but submitted nonetheless. She states that, in response to the Committee's intervention, the State party covered the legal costs of supplementing her petition with additional arguments.

6.7 On 23 March 2004, the Supreme Court dismissed the petition, arguing, *inter alia*, that the jurisprudence is established with regard to the legal issue raised in the petition.

6.8 The author refutes the State party's argument that she did not submit a request for the exclusive use of the apartment. The court of the second instance, the Budapest Regional Court, ordered the court of the first instance, the Pest Central

ensure the internationally expected, coordinated, comprehensive and effective protection and support for the victims of domestic violence.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 In accordance with rule 64 of its rules of procedure, the Committee shall decide whether the communication is admissible or inadmissible under the Optional Protocol to the Convention. Pursuant to rule 72, paragraph 4, of its rules of procedure, it shall do so before considering the merits of the communication.

8.2 The Committee has ascertained that the matter has not already been or is being examined under another procedure of international investigation or settlement.

8.3 With regard to article 4, paragraph 1, of the Optional Protocol, the Committee observes that the State party does not wish to raise any preliminary objections as to the admissibility of the communication and furthermore concedes that the currently existing remedies in Hungary have not been capable of providing immediate protection to the author from ill-treatment from L. F. The Committee agrees with this assessment and considers that it is not precluded by article 4, paragraph 1, from considering the communication.

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life was still in danger, as documented by the battering which took place 27 July 2001, that is after the Optional Protocol came into force in Hungary. The Committee is persuaded that it is competent *ratione temporis* to consider the communication in its entirety, because the facts that are the subject of the communication cover the alleged lack of protection/alleged culpable inaction on the part of the State party for the series of severe incidents of battering and threats of further violence that has uninterruptedly characterized the period beginning in 1998 to the present.

8.6 The Committee has no reason to find the communication inadmissible on any other grounds and thus finds the communication admissible.

Consideration of the merits

9.1 The Committee has considered the present communication in the light of all the information made available to it by the author and by the State party, as provided in article 7, paragraph 1, of the Optional Protocol.

9.2 The Committee recalls its general recommendation No. 19 on violence against women, which states that "... [T]he definition of discrimination includes gender-based violence" and that "[G]ender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence". Furthermore, the general recommendation addresses the question of whether States parties can be held accountable for the conduct of non-State actors in stating that "... discrimination under the Convention is not restricted to action by or on behalf of Governments ..." and "[U]nder general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation". Against this backdrop, the immediate issue facing the Committee is whether the author of the communication is the victim of a violation of articles 2 (a), (b) and (e), 5 (a) and 16 of the Convention because, as she alleges, for the past four years the State party has failed in its duty to provide her with effective protection from the serious risk to her physical integrity, physical and mental health and her life from her former common law husband.

9.3 With regard to article 2 (a), (b), and (e), the Committee notes that the State party has admitted that the remedies pursued by the author were not capable of providing immediate protection to her against ill-treatment by her former partner and, furthermore, that legal and institutional arrangements in the State party are not yet ready to ensure the internationally expected, coordinated, comprehensive and effective protection and support for the victims of domestic violence. While appreciating the State party's efforts at instituting a comprehensive action programme against domestic violence and the legal and other measures envisioned, the Committee believes that these have yet to benefit the author and address her persistent situation of insecurity. The Committee further notes the State party's general assessment that domestic violence cases as such do not enjoy high priority in court proceedings. The Committee is of the opinion that the description provided

State party does not offer information as to the existence of alternative avenues that the author might have pursued that would have provided sufficient protection or security from the danger of continued violence. In this connection, the Committee recalls its concluding comments from August 2002 on the State party's combined fourth and fifth periodic report, which state "... [T]he Committee is concerned about the prevalence of violence against women and girls, including domestic violence. It is particularly concerned that no specific legislation has been enacted to combat domestic violence and sexual harassment and that no protection or exclusion orders or shelters exist for the immediate protection of women victims of domestic violence". Bearing this in mind, the Committee concludes that the obligations of the State party set out in article 2 (a), (b) and (e) of the Convention extend to the prevention of and protection from violence against women, which obligations in the present case, remain unfulfilled and constitute a violation of the author's human rights and fundamental freedoms, particularly her right to security of person.

9.4 The Committee addressed articles 5 and 16 together in its general recommendation No. 19 in dealing with family violence. In its general recommendation No. 21, the Committee stressed that "the provisions of general recommendation 19 ... concerning violence against women have great significance for women's abilities to enjoy rights and freedoms on an equal basis with men". It has stated on many occasions that traditional attitudes by which women are regarded as subordinate to men contribute to violence against them. The Committee recognized those very attitudes when it considered the combined fourth and fifth periodic report of Hungary in 2002. At that time it was concerned about the "persistence of entrenched traditional stereotypes regarding the role and responsibilities of women and men in the family ...". In respect of the case now before the Committee, the facts of the communication reveal aspects of the relationships between the sexes and attitudes towards women that the Committee recognized vis-à-vis the country as a whole. For four years and continuing to the present day, the author has felt threatened by her former common law husband, the father of her two children. The author has been battered by this same man, her former common law husband. She has been unsuccessful, either through civil or criminal proceedings, to temporarily or permanently bar L. F. from the apartment where she and her children have continued to reside. The author could not have asked for a restraining or protection order since neither option currently exists in the State party. She has been unable to flee to a shelter because none are equipped to accept her together with her children, one of whom is fully disabled. None of these facts have been disputed by the State party and, considered together, they indicate

I. Concerning the author of the communication

(a) Take immediate and effective measures to guarantee the physical and mental integrity of A. T. and her family;

(b) Ensure that A. T. is given a safe home in which to live with her children, receives appropriate child support and legal assistance as well as reparation proportionate to the physical and mental harm undergone and to the gravity of the violations of her rights;

II. General

(a) Respect, protect, promote and fulfil women's human rights, including their right to be free from all forms of domestic violence, including intimidation and threats of violence;

(b) Assure victims of domestic violence the maximum protection of the law by acting with due diligence to prevent and respond to such violence against women;

(c) Take all necessary measures to ensure that the national strategy for the prevention and effective treatment of violence within the family is promptly implemented and evaluated;

(d) Take all necessary measures to provide regular training on the Convention on the Elimination of All Forms of Discrimination against Women and the Optional Protocol thereto to judges, lawyers and law enforcement officials;

(e) Implement expeditiously and without delay the Committee's concluding comments of August 2002 on the combined fourth and fifth periodic report of Hungary in respect of violence against women and girls, in particular the Committee's recommendation that a specific law be introduced prohibiting domestic violence against women, which would provide for protection and exclusion orders as well as support services, including shelters;

(f) Investigate promptly, thoroughly, impartially and seriously all allegations of domestic violence and bring the offenders to justice in accordance with international standards;

(g) Provide victims of domestic violence with safe and prompt access to justice, including free legal aid where necessary, in order to ensure them available, effective and sufficient remedies and rehabilitation;

(h) Provide offenders with rehabilitation programmes and programmes on non-violent conflict resolution methods.

9.7 In accordance with article 7, paragraph 4, the State party shall give due consideration to the views of the Committee, together with its recommendations, and shall submit to the Committee, within six months, a written response, including any information on any action taken in the light of the views and recommendations of the Committee. The State party is also requested to publish the Committee's views and recommendations and to have them translated into the Hungarian language and widely distributed in order to reach all relevant sectors of society.

