

**SECRETARIAT GENERAL**

SECRETARIAT OF THE COMMITTEE OF MINISTERS  
SECRETARIAT DU COMITE DES MINISTRES



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Meeting: 1157 DH meeting (4-6 December 2012)

Item reference: Action report (03/10/12)

Communication from Bulgaria concerning the case of Bevacqua and S against Bulgaria (Application No. 71127/01).

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Réunion : 1157 réunion DH (4-6 décembre 2012)

Référence du point : Bilan d'action

Communication de la Bulgarie relative à l'affaire Bevacqua et S contre Bulgarie (requête n° 71127/01)  
**(anglais uniquement).**

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## Action report

### Case of *Bevacqua and S v. Bulgaria*, application no. 71127/01, judgment of 12 June 2008, final on 12 September 2008

The applicants in this case are mother and son. The case concerns the authorities' failure to take appropriate action in the context of the first applicant's divorce proceedings in 2000-2002, and in particular their failure to decide rapidly on interim custody measures concerning the second applicant, a minor at the time, and to impose sanctions or otherwise react adequately to the father's unlawful and violent behaviour. The European Court concluded that the authorities had failed to ensure respect for the private and family life of the two applicants, in violation of Article 8 of the Convention.

#### 1) INDIVIDUAL MEASURES

- The European Court awarded jointly to the two applicants EUR 4,000 for non-pecuniary damage, which the Government paid on 5 December 2008.
- The divorce proceedings between the first applicant and her former husband ended in 2002 and the first applicant obtained custody of the child (§ 37 of the judgment). At the time of the judgment both applicants (mother and son) were already living abroad.

The Government is of the view that no further individual measures are necessary to erase the consequences of the violation of the applicants' rights.

#### 2) GENERAL MEASURES

The violation of Article 8 found by the Court resulted from imperfect legislation, which did not take into account the need to take special measures to protect persons in a vulnerable position like the applicants'. Since the time of the relevant events (2000-2002) new legislation has been enacted, providing for the necessary care.

- *Concerning interim custody measures:* At the relevant time, interim measures in divorce proceedings were regulated by the Code of Civil Procedure of 1952, in force until 2008, which did not provide for any special time-limits for examining requests for such measures. At present, the matter is regulated by the new Code of Civil Procedure of 2008, in which special care has been taken to ensure speedy decisions in the matter, Article 323 § 2 of the Code providing now that the courts are to decide on these measures at the same hearing where the respective measure has been requested. In cases where it is necessary to gather additional evidence, the courts are to schedule a new hearing within two weeks. The decision on interim measures is not amenable to appeal but can, at a request by the parties, be modified by the court which has given it – this can be the first-instance or the appellate court.

- *Concerning protection from conjugal violence:* The Protection Against Domestic Violence Act was adopted in 2005 and provides for administrative and policing measures in cases of physical, psychological or sexual violence in the home. In particular, it provides that the courts may issue injunctions or take other measures to remove the perpetrator from the common home, ban them from approaching the victim's home, workplace or place of social contacts, temporarily remove the child from the custody of the perpetrator, or impose compulsory education programs. The courts can also fine the perpetrator. Failure to comply with measures imposed on the perpetrator may result in arrest and prosecution. The courts are to take the measures provided for in a speedy manner. In urgent cases they can order interim measures, which are to be decided on within 24 hours. The Act also provides for measures of prevention and rehabilitation of the victims, and for co-operation of the authorities with non-governmental organisations. In the Government's view, this legislation is compatible with Recommendation Rec(2002)5 of the Committee of Ministers of the Council of Europe (§§ 49-50 of the judgment), in so far as it relates to the problems identified in the present case. Since the Act's adoption the measures provided therein have often been sought and applied by the national courts, which have developed significant jurisprudence in that regard.

In addition, the Child Protection Act of 2000 created a State Child Protection Agency and regional Social Care Offices, which are competent, inter alia, to take protection measures in respect of children in danger. They are empowered to act immediately and under an obligation to work in the best interests of the child.

The Government is thus of the view that no further general measures are necessary in the case.