

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.

^a The following members of the Committee participated in the examination of the communication: Magalys Arocha Dominguez, Meriem Belmihoub-Zerdani, Huguette Bokpe Gnacadja, Dorcas Coker-Appiah, Mary Shanthi Dairiam, Cornelis Flinterman, Françoise Gaspard, Salma Khan, Tiziana Maiolo, Rosario Manalo, Silvia Pimentel, Victoria Popescu, Hanna Beate Schöpp-Schilling, Heisoo Shin, Glenda P. Simms, Dubravka Simonovic, Anamah Tan, Maria Regina Tavares da Silva and Zou Xiaoqiao. Pursuant to rule 60 of the Committee's rules of procedure, Krisztina Morvai did not participate in the examination of this communication.

1.2 The author urgently requested effective interim measures of protection in accordance with article 5, paragraph 1, of the Optional Protocol, at the same time that she submitted her communication, because she feared for her life.

The facts as presented

2.1 The author states that for the past four years she has been subjected to regular severe domestic violence and serious threats by her common law husband, L. F., father of her two children, one of whom is severely brain-damaged. Although L. F. allegedly possesses a firearm and has threatened to kill the author and rape the children, the author has not gone to a shelter, reportedly because no shelter in the country is equipped to take in a fully disabled child together with his mother and sister. The author also states that there are currently no protection orders or restraining orders available under Hungarian law.

2.2 In March 1999, L. F. moved out of the family apartment. His subsequent visits allegedly typically included battering and/or loud shouting, aggravated by his being in a drunken state. In March 2000, L. F. reportedly moved in with a new female partner and left the family home, taking most of the furniture and household items with him. The author claims that he did not pay child support for three years, which forced her to claim the support by going to the court and to the police, and that he has used this form of financial abuse as a violent tactic in addition to continuing to threaten her physically. Hoping to protect herself and the children, the author states that she changed the lock on the door of the family's apartment on 11 March 2000. On 14 and 26 March 2000, L. F. filled the lock with glue and on 28 March 2000, he kicked in a part of the door when the author refused to allow him to enter the apartment. The author further states that, on 27 July 2001, L. F. broke into the apartment using violence.

2.3 L. F. is said to have battered the author severely on several occasions, beginning in March 1998. Since then, 10 medical certificates have been issued in connection with separate incidents of severe physical violence, even after L. F. left the family residence, which, the author submits, constitute a continuum of violence. The most recent incident took place on 27 July 2001 when L. F. broke into the apartment and subjected the author to a severe beating, which necessitated her hospitalization.

2.4 The author states that there have been civil proceedings regarding L. F.'s access to the family's residence, a 2 and a half room apartment (of 54 by 56 square metres) jointly owned by L. F. and the author. Decisions by the court of the first instance, the Pest Central District Court (*Pesti Központi Kerületi Bíróság*), were rendered on 9 March 2001 and 13 September 2002 (supplementary decision). On 4 September 2003, the Budapest Regional Court (*Forvarosi Bíróság*) issued a final decision authorizing L. F. to return and use the apartment. The judges reportedly based their decision on the following grounds: (a) lack of substantiation of the claim that L. F. regularly battered the author; and (b) that L. F.'s right to the property, including possession, could not be restricted. Since that date, and on the basis of the earlier attacks and verbal threats by her former partner, the author claims that her physical integrity, physical and mental health and life have been at serious risk and that she lives in constant fear. The author reportedly submitted to the Supreme Court a petition for review of the 4 September 2003 decision, which was pending at the time of her submission of supplementary information to the Committee on 2 January 2004.

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 L. F., one that began in 1999 at the Pest Central District Court (*Pesti Központi Kerületi Bíróság*) concerning two incidents of battery and assault causing her bodily harm and the second that began in July 2001 concerning an incident of battery and assault that resulted in her being hospitalized for a week with a serious kidney injury. In her submission of 2 January 2004, the author states that there would be a trial on 9 January 2004. Reportedly, the latter procedure was initiated by the hospital ex officio. The author further states that L. F. has not been detained at any time in this connection and that no action has been taken by the Hungarian authorities to protect the author from him. The author claims that, as a victim, she has not been privy to the court documents and, that, therefore, she cannot submit them to the Committee.

2.7 The author also submits that she has requested assistance in writing, in person and by phone, from the local child protection authorities, but that her requests have been to no avail since the authorities allegedly feel unable to do anything in such situations.

The Claim

3.1 The author alleges that she is a victim of violations 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 for its failure to provide effective protection from her former common law husband. She claims that the State party passively neglected its “positive” obligations under the Convention and supported the continuation of a situation of domestic violence against her.

3.2 She claims that the irrationally lengthy criminal procedures against L. F., the lack of protection orders or restraining orders under current Hungarian law and the fact that L. F. has not spent any time in custody constitute violations of her rights under the Convention as well as violations of general recommendation 19 of the Committee. She maintains that these criminal procedures can hardly be considered effective and/or immediate protection.

3.3 The author is seeking justice for herself and her children, including fair compensation, for suffering and for the violation of the letter and spirit of the Convention by the State party.

3.4 The author is also seeking the Committee’s intervention into the intolerable situation, which affects many women from all segments of Hungarian society. In particular, she calls for the (a) introduction of effective and immediate protection for victims of domestic violence into the legal system, (b) provision of training programmes on gender-sensitivity, the Convention on the Elimination of All Forms of Discrimination against Women and the Optional Protocol, including for judges, prosecutors, police and practising lawyers, and (c) provision of free legal aid to victims of gender-based violence, including domestic violence.

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 on the day before Christmas, she had not heard from any authority concerning the ways and means through which they would provide her with immediate and effective protection in accordance with the Committee's request.

4.4 By submission of 20 April 2004, the State party informed the Committee that the Governmental Office for Equal Opportunities (hereinafter "the Office") established contact with the author in January 2004 in order to inquire about her situation. It turned out that at that time, the author had had no legal representative in

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 couple's ownership of the flat had not been registered and that civil proceedings had been suspended in this connection.

5.3 The State party states that several sets of criminal proceedings were instituted against L. F. on charges of assault and battery. On 3 October 2001 the Pest Central District Court convicted L. F. on one count of assault committed on 22 April 1999 and sentenced him to a fine of 60,000 Hungarian forints (HUF). The District Court acquitted L. F. on another count of assault allegedly committed on 19 January 2000 for lack of sufficient evidence. The public prosecutor's office appealed but the case file was lost on its way to the Budapest Regional Court. On 29 April 2003, the Budapest Regional Court ordered a new trial. The proceedings were resumed before the Pest Central District Court and were joined to another set of criminal proceedings pending against L. F. before the same court.

5.4 A proceeding was brought against L. F. on charges of an assault allegedly committed on 27 July 2001 causing bruises to the author's kidneys. Though the investigations were twice discontinued by the police (on 6 December 2001 and 4 December 2002) they were resumed by order of the public prosecutor's office. Witnesses and experts were heard and a bill of indictment was brought against L. F. on 27 August 2003 before the Pest Central District Court.

5.5 The State party states that the two sets of criminal proceedings (that is the criminal proceedings regarding the separate incidents of assault allegedly committed on 19 January 2000 and 21 July 2001) have been joined. The Pest Central District Court has held hearings on 5 November 2003, 9 January and 13 February 2004. The next hearing is scheduled for 21 April 2004.

5.6 The State party maintains that although the author did not make effective use of the domestic remedies available to her, and although some domestic proceedings are still pending, the State party does not wish to raise any preliminary objections as to the admissibility of the communication. At the same time, the State party admits that these remedies were not capable of providing immediate protection to the author from ill-treatment by her former partner.

5.7 Having realized that the system of remedies against domestic violence is incomplete in Hungarian law and that the effectiveness of the existing procedures is not sufficient, the State party states that it has instituted a comprehensive action programme against domestic violence in 2003. On 16 April 2003, the Hungarian Parliament adopted a resolution on the national strategy for the prevention and effective treatment of violence within the family, setting forth a number of legislative and other actions to be taken in the field by the State party. These actions include: introducing a restraining order into legislation; ensuring that proceedings before the Courts or other authorities in domestic violence cases are given priority; reinforcing existing witness protection rules and introducing new rules aimed at

ensuring adequate legal protection for the personal security of victims of violence within the family; elaborating clear protocols for the police, childcare organs and social and medical institutions; extending and modernizing the network of shelters and setting up victim protection crisis centres; providing free legal aid in certain circumstances; working out a complex nationwide action programme to eliminate violence within the family that applies sanctions and protective measures; training of professionals; ensuring data collection on violence within the family; requesting the judiciary to organize training for judges and to find a way to ensure that cases relating to violence within the family are given priority; and launching a nationwide campaign to address indifference to violence within the family and the perception of domestic violence as a private matter and to raise awareness of State, municipal and social organs and journalists. In a resolution of 16 April 2003 by the Hungarian Parliament, a request with due regard to the separation of powers has been also put forward to the National Council of the Judiciary to organize training for judges and to find a way to ensure that cases relating to violence within the family are given priority. In the resolution, reference is made, inter alia, to the Convention on the Elimination of All Forms of Discrimination against Women, the concluding comments of the Committee on the combined fourth and fifth periodic report of Hungary adopted at its exceptional session in August 2002 and the Declaration on the Elimination of Violence against Women.

5.8 In a second resolution, the Parliament has also stated that prevention of violence within the family is a high priority in the national strategy of crime prevention and describes the tasks of various actors of the State and of the society. These include: prompt and effective intervention by the police and other investigating authorities; medical treatment of pathologically aggressive persons and application of protective measures for those who live in their environment; operation of 24-hour "SOS" lines; organization of rehabilitation programmes; organization of sport and leisure time activities for youth and children of violence-prone families; integration of non-violent conflict resolution techniques and family-life education into the public educational system; establishment and operation of crisis intervention houses as well as mother and child care centres and support for the accreditation of civil organizations by municipalities; and launching of a media campaign against violence within the family.

5.9 The State party further states that it has implemented various measures to eliminate domestic violence. These measures include registration of criminal proceedings (Robotzsaru) in a manner that will facilitate the identification of trends in offences related to violence within the family, as well as the collection of data, the expanded operation of family protection services by 1 July 2005, including units for ill-treated women without children in Budapest, which is to be followed by the establishment of seven regional centres. The first shelter is planned to be set up in 2004. The Government has prepared a draft law, which will enter into force on 1 July 2005, that provides for a new protective remedy for victims of domestic violence, namely the issuance of a temporary restraining order by the police and a restraining order by the Courts, accompanied by fines if intentionally disregarded, and has decided to improve the support services available to such victims.

5.10 Additionally, the State party states that special emphasis has been put on the handling of cases of domestic violence by the police. The State party observes that the efforts made in this field have already brought about significant results which were summed up by the National Headquarters of the Police in a press

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 District Court, to retry the case, namely because it had failed to decide on the merits of the request. She believes that it is clear from the context and from her court documents, including the decisions, that she had requested sole possession of the apartment to avoid a continuation of the violence. However, she states that under the established law and jurisprudence in the State party, battered individuals have no right to the exclusive use of the jointly owned/leased apartments on grounds of domestic violence.

6.9 The author requests that the Committee declare her communication admissible without delay and decide on the merits that the rights under the Convention have been violated by the State party. She requests that the Committee recommend to the State party to urgently introduce effective laws and measures towards the prevention of and effective response to domestic violence, both in her specific case and in general. The author furthermore seeks compensation for long years of suffering that have been directly related to the severe and serious violations of the Convention. The author believes that the most effective way would be to provide her with a safe home, where she could live in safety and peace with her children, without constant fear of her batterer's "lawful" return and/or substantial financial compensation.

6.10 By her submission of 30 June 2004, the author informs the Committee that the criminal proceedings against L. F have been postponed until 1 October 2004 in order to hear the testimony of a policeman because the judge thinks that there is a slight discrepancy between two police reports.

6.11 By her submission of 19 October 2004, the author informs the Committee that the Pest Central District Court convicted L. F. of two counts of causing grievous bodily harm to her and fined him for the equivalent of approximately \$365 United States dollars.

Supplementary observations of the State party

7.1 By note dated 27 August 2004, the State party argues that, although all tasks that the Decree/Decision of Parliament on the Prevention of and Response to Domestic Violence prescribe have not yet been completely implemented, some positive steps, including new norms in the field of crime prevention and Act LXXX (2003) on the conditions under which legal assistance is given to those in need, have been taken. These documents are said to provide an opportunity to establish a national network of comprehensive legal and social support for future victims of domestic violence.

7.2 The State party confirms that consideration of the Draft Act on Restraining Orders that applies to cases of violence within the family has been postponed to the autumn session of Parliament.

7.3 The State party admits that the experience of the Office and the information it has shows that domestic violence cases as such do not enjoy high priority in court proceedings.

7.4 Based on the experience of the Office both in the present case and in general, it is conceded that the legal and institutional system in Hungary is not ready yet to

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.

8.4 The Committee, nevertheless, wishes to make some observations as to the State party's comment in its submission of 20 April 2004 that some domestic proceedings are still pending. In the civil matter of L. F.'s access to the family's apartment, according to the author's submission of 23 June 2004, the petition for review by the Supreme Court was dismissed on 23 March 2004. The civil matter on the distribution of the common property, on the other hand, has been suspended over the issue of registration for an undisclosed period of time. The Committee considers, however, that the eventual outcome of this proceeding is not likely to bring effective relief vis-à-vis the current life-threatening violation of the Convention of which the author has complained. In addition, the Committee notes that two sets of criminal proceedings against L. F. on charges of assault and battery allegedly committed on 19 January 2000 and 21 July 2001 were joined and, according to the author, were decided on 1 October 2004 by convicting L. F. and imposing a fine equivalent to approximately \$365. The Committee has not been informed as to whether the conviction and/or sentence may or will be appealed. Nonetheless, the Committee is of the view that such a delay of over three years from the dates of the incidents in question would amount to an unreasonably prolonged delay within the meaning of article 4, paragraph 1, of the Optional Protocol, particularly considering that the author has been at risk of irreparable harm and threats to her life during that period. Additionally, the Committee takes account of the fact that she had no possibility of obtaining temporary protection while criminal proceedings were in progress and that the defendant had at no time been detained.

8.5 As to the facts that are the subject of the communication, the Committee observes that the author points out that most of the incidents complained of took place prior to March 2001 when the Optional Protocol entered into force in Hungary. She argues, however, that the 10 incidents of severe physical violence that are medically documented and which are part of an allegedly larger number constitute elements of a clear continuum of regular domestic violence and that her

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 of the proceedings resorted to in the present case, both the civil and criminal proceedings, coincides with this general assessment. Women's human rights to life and to physical and mental integrity cannot be superseded by other rights, including the right to property and the right to privacy. The Committee also takes note that the

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 that the rights of the author under articles 5 (a) and 16 of the Convention have been violated.

9.5 The Committee also notes that the lack of effective legal and other measures prevented the State party from dealing in a satisfactory manner with the Committee's request for interim measures.

9.6 Acting under article 7, paragraph 3, of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, the Committee is of the view that the State party has failed to fulfil its obligations and has thereby violated the rights of the author under article 2 (a), (b) and (e) and article 5 (a) in conjunction with article 16 of the Convention on the Elimination of All Forms of Discrimination against Women, and makes the following recommendations to the State party:

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.

