



**Convention on the Elimination  
of All Forms of Discrimination  
against Women**

Distr.: General  
6 August 2007

Original: English

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**Committee on the Elimination of Discrimination  
against Women**

**Thirty-ninth session**  
23 July-10 August 2007

**Views**

**Communication No. 5/2005**

<i>Submitted by:</i>	The Vienna Intervention Centre against Domestic Violence and the Association for Women's Access to Justice on behalf of Hakan Goekce, Handan Goekce, and Guelue Goekce (descendants of the deceased)
<i>Alleged victim:</i>	Şahide Goekce (deceased)
<i>State party:</i>	Austria
<i>Date of communication:</i>	21 July 2004 with supplementary information dated 22 November and 10 December 2004 (initial submissions)

On 6 August 2007 the Committee on the Elimination of Discrimination against Women adopted the annexed text as the Committee's views under article 7, paragraph 3, of the Optional Protocol in respect of communication No. 5/2005. The views are appended to the present document.



## Annex

### **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 (thirty-ninth session)**

#### **Communication No. 5/2005\***

<i>Submitted by:</i>	The Vienna Intervention Centre against Domestic Violence and the Association for Women's Access to Justice on behalf of Hakan Goekce, Handan Goekce, and Guelue Goekce (descendants of the deceased)
<i>Alleged victim:</i>	Şahide Goekce (deceased)
<i>State party:</i>	Austria
<i>Date of communication:</i>	21 July 2004 with supplementary information dated 22 November and 10 December 2004 (initial submissions)

*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 6 August 2007,*

*Having concluded its consideration of communication No. 5/2005, submitted to the Committee on the Elimination of Discrimination against Women by the Vienna Intervention Centre against Domestic Violence and the Association for Women's Access to Justice on behalf of Hakan Goekce, Handan Goekce and Guelue Goekce, descendants of Şahide Goekce (deceased) 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 authors of the communication and the State party,*

*Adopts the following:*

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\* The following members of the Committee participated in the examination of the present communication: Ms. Ferdous Ara Begum, Ms. Magalys Arocha Dominguez, Ms. Meriem Belmihoub-Zerdani, Ms. Saisuree Chutikul, Ms. Mary Shanthi Dairiam, Mr. Cees Flinterman, Ms. Naela Mohamed Gabr, Mr. Françoise Gaspard, Ms. Violeta Neubauer, Ms. Pramila Patten, Ms. Silvia Pimentel, Ms. Fumiko Saiga, Ms. Heisoo Shin, Ms. Glenda P. Simms, Ms. Dubravka Šimonović, Ms. Anamah Tan, Ms. Maria Regina Tavares da Silva and Ms. Zou Xiaojiao.

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

1. The authors of the communication dated 21 July 2004 with supplementary information dated 22 November and 10 December 2004, are the Vienna Intervention Centre against Domestic Violence and the Association for Women's Access to Justice, two organizations in Vienna, Austria, that protect and support women victims of gender-based violence. They claim that Şahide Goekce (deceased), an Austrian national of Turkish origin and former client of the Vienna Intervention Centre against Domestic Violence, is a victim of a violation by the State party of articles 1, 2, 3 and 5 of the Convention on the Elimination of All Forms of Discrimination against Women. The Convention and its Optional Protocol entered into force for the State party on 30 April 1982 and 22 December 2000, respectively.

### **The facts as presented by the authors**

2.1 The first violent attack against Şahide Goekce by her husband, Mustafa Goekce, that the authors are aware of took place on 2 December 1999 at approximately 4 p.m. in the victim's apartment at which time Mustafa Goekce choked Şahide Goekce and threatened to kill her. Şahide Goekce spent the night with a friend of hers and reported the incident to the police with the help of the Youth Welfare Office of the 15th district of Vienna the following day.

2.2 On 3 December 1999, the police issued an expulsion and prohibition to return order against Mustafa Goekce covering the Goekce apartment, pursuant to Section 38a of the Security Police Act (Sicherheitspolizeigesetz).<sup>1</sup> In the documentation supporting the order, the police officer in charge of the case stated that two light red bruises were visible under Şahide Goekce's right ear that, according to her, were from the choking.

2.3 Under section 107, paragraph 4, of the Penal Code (Strafgesetzbuch), a threatened spouse, direct descendant, brother or sister or relative who lives in the same household of the accused must give authorization in order to prosecute the alleged offender for making a criminal dangerous threat. Şahide Goekce did not authorize the Austrian authorities to prosecute Mustafa Goekce for threatening her life. Mustafa Goekce was, therefore, charged only with the offence of causing bodily harm. He was acquitted because Şahide Goekce's injuries were too minor to constitute bodily harm.

2.4 The next violent incidents of which the authors have knowledge occurred on 21 and 22 August 2000. When the police arrived at the Goekce's apartment on 22 August 2000, Mustafa Goekce was grabbing Şahide Goekce by her hair and was pressing her face to the floor. She later told the police that Mustafa Goekce had threatened to kill her the day before if she reported him to the police. The police issued a second expulsion and prohibition to return order against Mustafa Goekce covering the Goekce's apartment and the staircase of the apartment building, which was valid for 10 days. They informed the Public Prosecutor that Mustafa Goekce had committed aggravated coercion (because of the death threat) and asked that he be detained. The request was denied.

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<sup>1</sup> This act has been translated as both the Security Police Act and the maintenance of Law and Order Act.

2.5 On 17 December 2001, 30 June 2002, 6 July 2002, 25 August 2002 and 16 September 2002 the police were called to the Goekce's apartment because of reports of disturbances and disputes and/or battering.

2.6 The police issued the third expulsion and prohibition to return order against Mustafa Goekce (valid for 10 days) as a result of an incident on 8 October 2002 that Şahide Goekce had called in; she claimed that Mustafa Goekce called her names, tugged her by her clothes through the apartment, hit her in the face, choked her and again threatened to kill her. Her cheek was bruised and she had haematoma on the right side of her neck. Şahide Goekce pressed charges against her husband for causing bodily harm and making a criminal dangerous threat. The police interrogated Mustafa Goekce and again requested that he be detained. Again, the Public Prosecutor denied the request.

2.7 On 23 October 2002, the Vienna District Court of Hernals issued an interim injunction for a period of three months against Mustafa Goekce, which forbade Mustafa Goekce from returning to the family apartment and its immediate environs and from contacting Şahide Goekce or the children. The order was to be effective immediately and entrusted to the police for execution. The children are all minors (two daughters and one son) born between 1989 and 1996.

2.8 On 18 November 2002, the Youth Welfare Office (which had been in constant contact with the Goekce family because of the violent assaults that took place in front of the children) informed the police that Mustafa Goekce had not obeyed the interim injunction and was living in the family apartment. The police did not find him there when they checked.

2.9 The authors indicate that the police knew from other sources that Mustafa Goekce was dangerous and owned a handgun. At the end of November 2002, Remzi Birkent, the father of Şahide Goekce, informed the police that Mustafa Goekce had frequently phoned him and threatened to kill Şahide Goekce or another family member; no police report was filed by the police officer taking the statement of Mr. Birkent. Mustafa Goekce's brother also informed the police about the tension between Şahide Goekce and her husband and that Mustafa Goekce had threatened to kill her several times. His statement was not taken seriously by the police or recorded. The police did not check whether Mustafa Goekce had a handgun even though a weapons prohibition was in effect against him.

2.10 On 5 December 2002, the Vienna Public Prosecutor stopped the prosecution of Mustafa Goekce for causing bodily harm and making a criminal dangerous threat on grounds that there was insufficient reason to prosecute him.

2.11 On 7 December 2002, Mustafa Goekce shot Şahide Goekce with a handgun in their apartment in front of their two daughters. The police report reads that no officer went to the apartment to settle the dispute between Mustafa Goekce and Şahide Goekce prior to the shooting.

2.12 Two-and-a-half hours after the commission of the crime, Mustafa Goekce surrendered to the police. He is reportedly currently serving a sentence of life imprisonment in an institution for mentally disturbed offenders.<sup>2</sup>

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<sup>2</sup> He is reportedly of sound mind (*compos mentis*) vis-à-vis the murder but was diagnosed to be mentally disturbed to a higher degree generally.

### **The complaint**

3.1 The authors complain that Şahide Goekce is a victim of a violation by the State party of articles 1, 2, 3 and 5 of the Convention on the Elimination of All Forms of Discrimination against Women because the State party did not actively take all appropriate measures to protect Şahide Goekce's right to personal security and life. The State party failed to treat Mustafa Goekce as an extremely violent and dangerous offender in accordance with criminal law. The authors claim that the Federal Act for the Protection against Violence within the Family (Bundesgesetz zum Schutz vor Gewalt in der Familie) does not provide the means to protect women from highly violent persons, especially in cases of repeated, severe violence and death threats. Instead, the authors insist that detention is necessary. The authors also allege that had the communication between the police and Public Prosecutor been better and faster, the Public Prosecutor would have known about the ongoing violence and death threats and may have found that he had sufficient reason to prosecute Mustafa Goekce.

3.2 The authors further contend that the State party also failed to fulfil its obligations stipulated in the general recommendations Nos. 12, 19 and 21 of the Committee on the Elimination of Discrimination against Women, the United Nations Declaration on the Elimination of Violence against Women, the concluding comments of the Committee (June 2000) on the combined third and fourth periodic report and the fifth periodic report of Austria, the United Nations Resolution on Crime Prevention and Criminal Justice Measures to Eliminate Violence against Women, several provisions of the outcome document of the twenty-third special session of the General Assembly, article 3 of the United Nations Universal Declaration of Human Rights, articles 6 and 9 of the International Covenant on Civil and Political Rights, several provisions of other international instruments, and the Austrian Constitution.

3.3 With regard to article 1 of the Convention, the authors contend that women are far more affected than men by the failure of public prosecutors to take domestic violence seriously as a real threat to life and their failure to request detention of alleged offenders as a matter of principle in such cases. Women are also disproportionately affected by the practice of not prosecuting and punishing offenders in domestic violence cases appropriately. Furthermore, women are disproportionately affected by the lack of coordination of law enforcement and judicial personnel, the failure to educate law enforcement and judicial personnel about domestic violence and the failure to collect data and maintain statistics on domestic violence.

3.4 With regard to article 1 together with article 2 (a), (c), (d) and (f) and article 3 of the Convention, the authors maintain that the lack of detention of alleged offenders in domestic violence cases, inadequate prosecution and lack of coordination among law enforcement and judicial officials and the failure to collect data and maintain statistics of incidences of domestic violence resulted in inequality in practice and the denial of Şahide Goekce's enjoyment of her human rights. She was exposed to violent assault, battery, coercion and death threats and when Mustafa Goekce was not detained, she was murdered.

3.5 With regard to articles 1 together with 2 (e) of the Convention, the authors state that the Austrian criminal justice personnel failed to act with due diligence to

investigate and prosecute acts of violence and protect Şahide Goekce's human rights to life and personal security.

3.6 With regard to article 1 together with article 5 of the Convention, the authors claim that the murder of Şahide Goekce is one tragic example of the prevailing lack of seriousness with which violence against women is taken by the public and by the Austrian authorities. The criminal justice system, particularly public prosecutors and judges, consider the issue a social or domestic problem, a minor or petty offence that happens in certain social classes. They do not apply criminal law to such violence because they do not take the danger seriously and view women's fears and concerns with a lack of gravity.

3.7 The authors request the Committee to assess the extent to which there have been violations of the victim's human rights and rights protected under the Convention and the responsibility of the State party for not detaining the dangerous suspect. The authors also request the Committee to recommend that the State party offer effective protection to women victims of violence, particularly migrant women, by clearly instructing public prosecutors and investigating judges about what they ought to do in cases of severe violence against women.

3.8 The authors further request the Committee to recommend to the State party to implement a "pro-arrest and detention" policy in order to effectively provide safety for women victims of domestic violence and a "pro-prosecution" policy that would convey to offenders and the public that society condemns domestic violence and ensure coordination among the various law enforcement authorities.

3.9 The authors also request the Committee to recommend to the State party to ensure that all levels of the criminal justice system (police, public prosecutors, judges) routinely cooperate with organizations that work to protect and support women victims of gender-based violence and to ensure that training programmes and education on domestic violence be compulsory for criminal justice personnel.

3.10 As to the admissibility of the communication, the authors maintain that there are no other domestic remedies that could possibly have been used to protect Şahide Goekce's personal security and to prevent her homicide. Both the expulsion and prohibition to return orders and the interim injunction proved ineffective. All of the deceased's own attempts to obtain protection (calling the Vienna Police several times when Mustafa Goekce assaulted and choked her; three formal complaints to the police; pressing charges against Mustafa Goekce) and the attempts of others (neighbours calling the Vienna Police; the victim's father reporting on the death threats; Mustafa Goekce's brother reporting that Mustafa Goekce had a handgun) were in vain.

3.11 In the submission of 10 December 2004, the authors indicate that no civil action has been brought by the heirs under the Act on Official [State] Liability. The authors contend that such an action would not be an effective remedy against the lack of protection of Şahide Goekce and the failure to prevent her homicide. Suing the State for omissions and negligence would not bring her back and would serve the different purpose of providing the heirs with compensation for sustaining a loss and other damages. The two approaches, compensation on the one hand and protection on the other are opposites. They differ in respect of the beneficiary (the heirs versus the victim), what the intentions are (to compensate for loss versus to save a life) and timing (after death rather than prior to death). If the State party

protected women effectively, there would be no need to establish State liability. Additionally, compensation suits entail huge costs. The authors state that they have submitted the communication in order to call the State party to account for its omissions and negligence rather than to obtain compensation for the heirs. Finally, suing the State party would be unlikely to bring effective relief in accordance with article 4 of the Optional Protocol.

3.12 The authors also state that they have not submitted the communication to any other body of the United Nations or any regional mechanism of international settlement or investigation.

3.13 On the issue of *locus standi*, the authors maintain that it is justified and appropriate for them to submit the complaint on behalf of Şahide Goekce — who cannot give consent because she is dead. They consider it appropriate to represent her before the Committee because she was a client of theirs and had a personal relationship with them and because they are special protection and support organizations for women victims of domestic violence; one of the two organizations is an intervention centre against domestic violence that was reportedly established pursuant to Section 25, paragraph 3, of the Federal Security Police Act. They are seeking justice for Şahide Goekce and to improve the protection of women in Austria from domestic violence so that her death would not be in vain. This being said, the authors have obtained the written consent of the City of Vienna Office for Youth and Family Affairs, the guardian of Şahide Goekce's three minor children.

#### **The State party's submission on admissibility**

4.1 By its submission of 4 May 2005, the State party describes the sequence of events leading up to the murder of Şahide Goekce. Mustafa Goekce was not prosecuted for making a criminal dangerous threat against Şahide Goekce on 2 December 1999 because she did not authorize the authorities to do so. The authorities proceeded to prosecute him for maliciously inflicting bodily harm. According to the court records, Şahide Goekce did not want to testify against Mustafa Goekce and expressly asked the court not to punish her husband. He was acquitted because of an absence of evidence.

4.2 On 23 August 2000, the police issued an expulsion and prohibition to return order against Mustafa Goekce. They reported by phone to the Public Prosecutor about an incident involving aggravated coercion and making a criminal dangerous threat that had occurred the previous day.

4.3 On 18 September 2000, the Public Prosecutor received a written complaint (Anzeige) regarding the incident of 22 August 2000. When interrogated, Şahide Goekce said that she had suffered an epileptic fit and bouts of depression and denied that Mustafa Goekce had threatened to kill her. As a consequence, the Public Prosecutor discontinued the proceedings against Mustafa Goekce for aggravated coercion and making a criminal dangerous threat.

4.4 On 13 January 2001, the court with competence over guardianship matters restricted Mustafa Goekce's and Şahide Goekce's role in the care and upbringing of their children and required them to comply with measures agreed upon in cooperation with the Youth Welfare Office. In its decision, the court noted that Mustafa Goekce and Şahide Goekce always tried to give an impression of living a well-ordered life. When asked about the charges of inflicting bodily harm and

making a criminal dangerous threat, both Mustafa Goekce and Şahide Goekce considered it important to note that they had reconciled fully shortly after each incident.

4.5 Mustafa Goekce and Şahide Goekce agreed to go into partner therapy and to stay in contact with the Youth Welfare Office. Until summer 2002, they were in therapy. The city administration also offered them a new and more spacious apartment to meet their pressing accommodation needs. In spite of these arrangements, the police repeatedly intervened in the couple's disputes on 17 December 2001, 30 June 2002, 6 July 2002, 25 August 2002 and 16 September 2002.

4.6 On 23 October 2002 the Hernals District Court issued an interim injunction against Mustafa Goekce pursuant to section 382b of the Act on the Enforcement of Judgments (Exekutionsordnung) that prohibited him from returning to the apartment and its immediate surroundings and from contacting the children and Şahide Goekce. She gave testimony before the judge in the presence of Mustafa Goekce (although she had been informed of her rights) that she would make every effort to keep the family together, that Mustafa Goekce had a very good relationship with the children and that he assisted her in the household because of her epilepsy.

4.7 A police report of 18 November 2002 showed that the Youth Welfare Office requested the police to come to the Goekce apartment because he had violated the interim injunction and was in the apartment. Mustafa Goekce was no longer there when the police arrived. Şahide Goekce seemed angry that the police had come and asked them why they came almost on a daily basis although she had expressly declared that she wished to spend her life together with her husband.

4.8 On 6 December 2002, the Vienna Public Prosecutor's Office withdrew the charges of making a criminal dangerous threat that related to an incident that took place on 8 October 2002, because Şahide Goekce gave a written statement to the Police in which she claimed that a scrap had caused her injury. She also stated that her husband had repeatedly over a number of years threatened to kill her. The Public Prosecutor proceeded on the assumption that the threats were a regular feature of the couple's disputes and would not be carried out. Şahide Goekce repeatedly tried to play down the incidents in the interest of preventing the prosecution of Mustafa Goekce. By doing this and refusing to testify in the criminal proceedings, she contributed to the fact that he could not be convicted of a crime.

4.9 On 7 December 2002, Mustafa Goekce came to the apartment in the early hours of the morning and opened the door with a key given to him by Şahide Goekce one week earlier. He left the apartment at 8.30 a.m. only to return at noon. Şahide Goekce shouted at him that he was not the father of all her children and Mustafa Goekce shot her dead with a handgun that he had purchased three weeks earlier, despite a valid weapons prohibition against him.

4.10 According to an expert witness at the trial of Mustafa Goekce, he had committed the murder under the influence of a paranoid jealousy psychosis which absolved him of criminal responsibility. For this reason, the Vienna Public Prosecutor's Office requested that he be placed in an institution for the criminally insane. On 23 October 2003, the Vienna Regional Criminal Court ordered Mustafa Goekce to be placed in such an institution.



4.11 As to admissibility, the State party disputes that domestic remedies have been exhausted. Firstly, Şahide Goekce did not give the competent authorities her authorization to prosecute Mustafa Goekce for making a criminal dangerous threat. Nor was she prepared to testify against him. She asked the court not to punish her husband and, after filing charges, regularly made great efforts to play down the incidents and deny their criminality.

4.12 The State party further argues that the Federal Act for the Protection against Violence within the Family constitutes a highly effective system to combat domestic violence and establishes a framework for effective cooperation among various institutions. Details are provided about aspects of the system, including the role of intervention centres. In addition to criminal measures, there are a number of police and civil-law measures to protect against domestic violence. Shelters supplement the system. It is possible to settle disputes in less severe cases under the Maintenance of Law and Order Act (Sicherheitspolizeigesetz).

4.13 Şahide Goekce never made use of section 382b of the Act on the Enforcement of Judgments to request an interim injunction against Mustafa Goekce. Instead, she made it clear that she was not interested in further interference with her family life. She never made a clear decision to free herself and the children from their relationship with her husband (for example, she gave him the keys to the apartment, despite there being a valid interim injunction). Without such a decision on the part of Ms. Goekce, the authorities were limited in the actions that they could take to protect her. Effective protection was doomed to fail without her cooperation.

4.14 Against this background, the use of detention was not justified in relation to the incident of 8 October 2002. Mustafa Goekce had no criminal record and the Public Prosecutor did not know at the time that Mustafa Goekce had a weapon. The Public Prosecutor did not consider that the known facts indicated an imminent danger of Mustafa Goekce committing a homicide; detention could only be justified *ultima ratio*. In light of Şahide Goekce's apparent anger at the police intervention on 18 November 2002 (see above paragraph 4.7), the Public Prosecutor could not assume that the charge would lead to a conviction and prison sentence. The court must take the principle of proportionality into account when detaining a defendant and must, in any event, set aside the detention if the duration becomes disproportionate to the expected sentence.

4.15 Furthermore, Şahide Goekce would have been free to address the Constitutional Court (Verfassungsgerichtshof) with a complaint in accordance with article 140, paragraph 1, of the Federal Constitution (Bundes-Verfassungsgesetz) that would challenge the provision that did not allow her to appeal against the decisions of the Public Prosecutor not to issue a warrant for the arrest of Mustafa Goekce. Assuming that they can show a current and direct interest in the preventive effect of the repeal of the pertinent provision for the benefit of victims of domestic violence, such as Şahide Goekce, it may still be possible for her surviving heirs to address the Constitutional Court on this question.

4.16 The State party also argues that special training courses are held on a regular basis for judges and the police on domestic violence. Cooperation between judges and the police is constantly reviewed in order to ensure more rapid intervention by organs of the State — the aim being to prevent as far as possible tragedies such as that of Şahide Goekce without improper interference into a person's family life and other basic rights.

**The author's comments on the State party's observations on admissibility**

5.1 By their submission of 31 July 2005, the authors contend that the victim and the authors have exhausted all domestic remedies, which would have been likely to bring sufficient relief. They claim that there is no legal obligation to apply for civil measures — such as an interim injunction.

5.2 The authors also are of the view that the idea of requiring a woman who is under threat of death to file an application to the Constitutional Court was not an argument put forward by the State party in good faith. The procedure lasts for some two to three years and, for this reason, would be unlikely to bring sufficient relief to a woman who has been threatened with death.

5.3 The authors consider that the State party has wrongfully placed the burden and responsibility of taking steps against a violent husband on the victim and has failed to understand the danger the victim faces and the power of the perpetrator over the victim. The authors, therefore, believe that section 107, paragraph 4, of the Penal Code covering authorization for prosecutions against persons who make criminal dangerous threats should be repealed so that the burden will be placed on the State — where it belongs — and would reinforce the fact that making a criminal threat is a crime against the community as well as a crime against an individual victim.

5.4 The authors clarify that Şahide Goekce was afraid to leave her violent husband. Victims try to avoid actions that might increase the danger they face (the “Stockholm Syndrome”) and often feel compelled to act in the interest of the perpetrator. She should not be blamed for not being in a position to separate due to psychological, economic and social factors.

5.5 The authors also dispute the State party's description of certain facts; Mustafa Goekce (and not Şahide Goekce) stated that she had an epileptic fit and suffered from depression. She did not, as claimed by the State party, deny the threats of her husband. She refused to testify against Mustafa Goekce only once. If Şahide Goekce played down the incidents in front of the Youth Welfare Office, it was because she was afraid to lose her children. The authors also point out that Mustafa Goekce quit therapy and that it would have been easy for the police to discover that Mustafa Goekce was carrying a gun. They also point out that Şahide Goekce called the police the night before she was killed — a fact that demonstrates how great her fear was and that she was willing to take steps to prevent him from coming to the apartment.

5.6 As to the State party's comments about effective cooperation among various institutions, the police and the Public Prosecutor only began to talk to the Vienna Intervention Centre against Domestic Violence after Şahide Goekce's death.

**Additional comments of the State party on admissibility**

6.1 By its submission of 21 October 2005, the State party firmly rejects the arguments put forward by the authors and maintains its previous submission. The State party points out that the authors not only refer to alleged failures on the part of the competent Public Prosecutor and investigating judge but to the law itself. Their criticism relates to the legal framework, the application of legal provisions that protect the right to life, physical integrity and the right to respect for private and family life and the failure to take enough effective measures in a general, abstract way.

6.2 Under article 140, paragraph 1, of the Federal Constitution any individual may challenge legal provisions for being unconstitutional if he/she alleges direct infringement of individual rights insofar as the law has been operative for that individual without the delivery of a judicial decision or ruling. There are no time limits for filing such applications.

6.3 The aim of the procedure would be to redress an alleged violation in law. The Constitutional Court only considers the application legitimate if in repealing the provision at issue, the legal position of the applicant would be changed to such an extent that the alleged negative legal implications no longer exist. Furthermore, the legally protected interests of the applicant must be actually affected. This must be the case both at the time that the application is filed and when the Constitutional Court takes its decision. Successful applicants are entitled to compensation.

6.4 Section 15 of the Constitutional Court Act (Verfassungsgerichtshofgesetz) contains the general requirements as to form when addressing the Constitutional Court. These requirements include: that the application must be in writing; that the application must refer to a specific provision in the Constitution; the applicant must set out the facts; and the application must contain a specific request. Under section 62, paragraph 1 of the Act, the application must state precisely which provisions should be repealed. Moreover, the application must explain in detail why the challenged provisions are unlawful and to what extent the law had been operative for the applicant without the delivery of a judicial decision or ruling. Under section 17, paragraph 2 of the Act, applications must be filed by an authorized lawyer.

6.5 If the Constitutional Court agrees with the applicant, it issues a ruling setting aside these provisions. The Federal Chancellor is then under an obligation to promulgate the repeal of these provisions in the Federal Law Gazette, which comes into force at the end of the day of its promulgation. The Constitutional Court may also set a maximum deadline of 18 months for the repeal — which does not necessarily apply to the applicants, themselves. A time limit is fixed if the legislature is to be given an opportunity to introduce a new system that complies with the constitutional framework. In light of its previous decisions, it can be assumed that the Constitutional Court would make use of the latter possibility if it were to decide that a provision should be repealed.

6.6 The procedure under article 140, paragraph 1, of the Federal Constitution may indeed take two to three years, as stated by the authors. However, proceedings may be shorter if their urgency is explained to the Constitutional Court. Constitutional Court proceedings do not provide rapid redress. However, article 4, paragraph 1, of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women prescribes the exhaustion of all available domestic remedies unless the proceedings would be unreasonably prolonged or no effective relief could be expected.

6.7 The requirement of exhausting domestic remedies reflects a general principle of international law and a usual element of international human rights mechanisms. It gives the State concerned an opportunity to remedy human rights violations first at the domestic level.

6.8 The State party argues that Şahide Goekce or her surviving relatives should have made use of the possibility of filing an individual application before the Constitutional Court before submitting a communication to the Committee, as

required by article 4, paragraph 1, of the Optional Protocol. The proceedings before the Constitutional Court are not unreasonably prolonged. Moreover, it cannot be said, in light of the case law of the Court, that the surviving relatives would not be entitled to file an individual application because — as far as can be seen — no similar cases have been brought before the Court.

6.9 The State party further maintains that article 4, paragraph 1, of the Optional Protocol does not include only remedies that are successful in any event. If successful, the application could lead to the repeal of the procedural provisions in dispute or to the introduction by the legislature of a new system in the field of domestic violence in line with the intentions of the authors. It is true that now, after the death of Şahide Goekce, there is no effective relief with respect to the effective protection of her personal security and life. However, in the present proceedings, the Committee should examine at the admissibility stage whether Şahide Goekce had an opportunity under domestic law to subject the legal provisions which prevented her from asserting her rights to a constitutional review and whether her surviving relatives have an opportunity to make use of the same mechanism to repeal the legal provisions of concern at the domestic level in order to realize their aims.

#### **Issues and proceedings before the Committee concerning admissibility**

7.1 During its thirty-fourth session (16 January to 3 February 2006), the Committee considered the admissibility of the communication in accordance with rules 64 and 66 of its rules of procedure. It ascertained that the matter had not already been or was being examined under another procedure of international investigation or settlement.

7.2 With regard to article 4, paragraph 1, of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (the domestic remedies rule), the Committee noted that authors must use the remedies in the domestic legal system that were available to them and would enable them to obtain redress for the alleged violations. The substance of their complaints that were subsequently brought before the Committee should first be made to an appropriate domestic body. Otherwise, the motivation behind the provision would be lost. The domestic remedies rule was designed so that States parties have an opportunity to remedy a violation of any of the rights set forth under the Convention through their legal systems before the Committee addresses the same issues. The Human Rights Committee had recently recalled the rationale of its corresponding rule in *Panayote Celal, on behalf of his son, Angelo Celal, v. Greece* (1235/2003), paragraph 6.3:

“The Committee recalls that the function of the exhaustion requirement under article 5, paragraph 2 (b), of the Optional Protocol is to provide the State party itself with the opportunity to remedy the violation suffered ...”

7.3 The Committee noted that, in communications denouncing domestic violence, the remedies that came to mind for purposes of admissibility related to the obligation of a State party concerned to exercise due diligence to protect; investigate the crime, punish the perpetrator, and provide compensation as set out in general recommendation 19 of the Committee.

7.4 The Committee considered that the allegations made relating to the obligation of the State party to have exercised due diligence to protect Şahide Goekce were at the heart of the communication and were of great relevance to the heirs. Thus, the

question as to whether domestic remedies had been exhausted in accordance with article 4, paragraph 1, of the Optional Protocol must be examined in relation to these allegations. The allegations essentially related to flaws in law as well as the alleged misconduct or negligence of the authorities in applying the measures that the law provided. With regard to alleged flaws in law, the authors claimed that, according to the Penal Code, Şahide Goekce was unable to appeal against the decisions made by the Public Prosecutor not to detain her husband for making a criminal dangerous threat against her. The State party argued that a procedure, the aim of which would be to redress an alleged violation in law, was set out under article 140, paragraph 1, of the Federal Constitution and would have been available to the deceased and remained available to her descendants. The State party submitted that the failure of the deceased and her descendants to use the procedure should have barred the admissibility of the communication.

7.5 The Committee noted that the procedure under article 140, paragraph 1, of the Federal Constitution could not be regarded as a remedy, which was likely to bring effective relief to a woman whose life was under a criminal dangerous threat. Neither did the Committee regard this domestic remedy as being likely to bring effective relief in the case of the deceased's descendants in light of the abstract nature of such a constitutional remedy. Accordingly, the Committee concluded that, for purposes of admissibility with regard to the authors' allegations about the legal framework for the protection of women in domestic violence situations in relation to the deceased no remedies existed which were likely to bring effective relief and that the communication in this respect was therefore admissible. In the absence of information on other available, effective remedies, which Şahide Goekce or her heirs could have pursued or still might have pursued, the Committee concluded that the authors' allegations relating to the actions or omissions of public officials were admissible.

7.6 On 27 January 2006, the Committee declared the communication admissible.

#### **The State party's request for a review of admissibility and submission on the merits**

8.1 By its submission of 12 June 2006, the State party requests the Committee to review its decision on admissibility. The State party reiterates that the descendants of Şahide Goekce should avail themselves of the procedure under article 140, paragraph 1, of the Federal Constitution in order to try to bring about an amendment to the legal provision that barred Şahide Goekce from appealing against the decisions made by the Public Prosecutor not to detain Mustafa Goekce. It maintains that this remedy is quite effective to pursue the aim of the communication at the domestic level.

8.2 The State party also submits that, after the Public Prosecutor dropped the charges against Mustafa Goekce, Şahide Goekce would have been free to bring an action, known as "associated prosecution" (Subsidiaranklage), against her husband. The Austrian legal system provides that an injured person may bring an action instead of the Public Prosecutor if the latter drops the charges and refuses to prosecute the offender. The Public Prosecutor is under an obligation to inform the injured person of this option.

8.3 The State party revisits the sequence of events leading up to the murder of Şahide Goekce. The State party indicates that a comprehensive report on the case of

Mustafa Goekce by the Vienna Senior Public Prosecutor's Office confirms that Şahide Goekce did not authorize the prosecution of her husband for making a criminal dangerous threat against her on 2 December 1999 and that the charges against him had to be dropped as a result. With regard to the ex officio prosecution of Mustafa Goekce for maliciously inflicting bodily harm in relation to the same incident, Şahide Goekce confirmed in the Fünfhaus District Court what her husband had stated, i.e. that she was epileptic and was suffering bouts of depression and that the bruising on her neck was caused by her husband holding her. Mustafa Goekce was acquitted of the charges of maliciously inflicting bodily harm in the absence of further evidence against him.

8.4 The State party provides more information relating to the incident that occurred on 21 August 2000: records show that Şahide Goekce was not injured and that Mustafa Goekce did not hit her; she was informed about possible means of protection that the Federal Act for the Protection against Violence within the Family provides and given a leaflet with information for victims of violence; the Vienna Intervention Centre and the Youth Welfare Office were also informed ex officio about this incident; and on 24 August 2000, Mustafa Goekce went to the Schmelz police office together with the couple's son, Hakan Goekce, who stated that his mother had started quarrelling with his father and had attacked him.

8.5 The State party asserts that, on 1 September 2000, Şahide Goekce (who, according to the record was questioned in her husband's absence) stated that her husband never threatened to kill her. She had had an epileptic fit and perhaps in her confusion made the accusations against her husband; during such fits she made weird statements, which she could not remember afterwards. On 20 September 2000, the Public Prosecutor withdrew the charges against Mustafa Goekce.

8.6 The State party submits that the Public Prosecutor brought charges against Mustafa Goekce for causing bodily harm and threatening to kill Şahide Goekce immediately following the 8 October 2002 incident. However, he did not request that Mustafa Goekce be arrested. Şahide Goekce reported to the police without her husband being present that he had choked her and threatened to kill her. She was again informed in detail about the possibility of filing a request for an interim injunction under section 382b of the Act on the Enforcement of Judgments and was given an information sheet for victims of violence. Mustafa Goekce completely denied the charges against him. There was evidence that Mustafa Goekce was slightly injured during the quarrel on 8 October 2002.

8.7 The State party submits that Şahide Goekce was given the opportunity to testify without her husband being present at the interim injunction hearings at the Hernals District Court. At those hearings Şahide Goekce stated that she would make every effort to keep the family together. She also stated that he had a very good relationship with the children and helped her with the household. According to a report of the police inspectorate Kriminalkommissariat West, Mustafa Goekce subsequently repeatedly disregarded the interim injunction and the police responded by coming to the Goekce home several times to the annoyance of Şahide Goekce.

8.8 The State party submits that the Public Prosecutor withdrew the charges against Mustafa Goekce on 6 December 2002 because it could not be proved with sufficient certainty that Mustafa Goekce was guilty of making criminal dangerous threats against his wife that went beyond the harsh statements resulting from his background. As regards the physical evidence, the State party maintains that it could

not be ascertained which spouse started the aggressive acts. The State party also submits that proceedings against Mustafa Goekce for causing bodily harm were discontinued because he had no criminal record and because it could not be excluded that Şahide Goekce had attacked her husband.

8.9 By judgement of 17 October 2003, the Vienna Regional Criminal Court ordered that Mustafa Goekce be placed in an institution for mentally deranged offenders for killing Şahide Goekce. According to the expert opinion obtained by the Court, Mustafa Goekce committed the offence under the influence of a jealousy psychosis that absolved him of criminal responsibility.

8.10 The State party notes that it is difficult to make a reliable prognosis as to how dangerous an offender is and that it is necessary to determine whether detention would amount to a disproportionate interference in a person's basic rights and fundamental freedoms. The Federal Act for the Protection against Violence within the Family aims to provide a highly effective yet proportionate way of combating domestic violence through a combination of criminal and civil-law measures, police activities and support measures. Close cooperation is required between criminal and civil courts, police organs, youth welfare institutions and institutions for the protection of victims, including in particular, intervention centres for protection against violence within the family, as well as rapid exchange of information between the authorities and institutions involved.

8.11 The State party points out that, aside from settling disputes, the police issue expulsion and prohibition to return orders, which are less severe measures than detention. Section 38a, paragraph 7, of the Security Police Act requires the police to review compliance with expulsion and prohibition to return orders at least once in the first three days. According to the instructions of the Vienna Federal Police Directorate, it is best for the police to carry out the review through personal contact with the person at risk in the home without prior warning at a time when it is likely that someone will be at home. Police inspectorates in Vienna must keep a domestic violence index file in order to be able to rapidly access reliable information.

8.12 The State party indicates that its legislation is subject to regular evaluation as is the electronic register of judicial proceedings. Increased awareness has led to significant law reform and enhanced protection of victims of domestic violence, such as the abolition of the requirement in section 107, paragraph 4, of the Penal Code that a threatened family member must authorize the prosecution of a perpetrator who has made a criminal dangerous threat.

8.13 The State party maintains that the issue of domestic violence and promising counterstrategies have regularly been discussed at meetings between the heads of the Public Prosecutor's Offices and representatives of the Federal Ministry of the Interior, including in connection with the case at issue. It also maintains that considerable efforts are being made to improve cooperation between Public Prosecutor's Offices and intervention centres against violence within the family. The State party also refers to efforts in the area of statistics made by the Federal Ministry of the Interior and its subordinate bodies.

8.14 The State party indicates that the Federal Act for the Protection against Violence within the Family and its application in practice are key elements of the training of judges and public prosecutors. Examples of seminars and local events on victim protection are given. Future judges are provided each year with information

on “violence within the family”, “protection of victims” and “law and the family”. Programmes cover the basics of the phenomenon of violence against women and children, including forms, trauma, post-traumatic consequences, dynamics of violent relationship, psychology of offenders, assessment factors of how dangerous an offender is, institutions of support, laws and regulations and the electronic registers. Interdisciplinary and comprehensive training has also been carried out.

8.15 The State party recognizes the need for persons affected by domestic violence to be informed about legal avenues and available counselling services. The State party reports that judges provide information at district courts free of charge once a week to anyone interested in the existing legal protection instruments. Psychological advice is also provided, including at the Hernals District Court. The State party also indicates that pertinent information is offered (posters and flyers in Arabic, German, English, French, Polish, Russian, Serbo-Croat, Spanish and Hungarian) at district courts. A toll-free Hotline for Victims has also been installed where lawyers provide legal advice around the clock free of charge. The State party further submits that women’s homes act as shelters where women victims of violence are offered counselling, care and assistance in dealing with public authorities. In domestic violence cases where an expulsion and prohibition to return order has been issued, police officers must inform persons at risk of the possibility of obtaining an interim injunction under section 382a of the Act on the Enforcement of Judgments. In Vienna, the person concerned is given an information sheet (available in English, French, Serbian, Spanish and Turkish).

8.16 The State party submits that the authors of the present communication give abstract explanations as to why the Federal Act for the Protection Against Violence in the Family as well as practice regarding detentions in domestic violence cases and prosecution and punishment of offenders allegedly violate articles 1, 2, 3 and 5 of the Convention. The State party considers that it is evident that its legal system provides for comprehensive measures to combat domestic violence adequately and efficiently. The State party maintains that Şahide Goekce was offered numerous forms of assistance by the State in the case at issue.

8.17 The State party further submits that detention is ordered when there are sufficiently substantiated fears that a suspect would carry out a threat if he/she were not detained. It maintains that mistakes in assessing how dangerous an offender is cannot be excluded in an individual case. The State party asserts that, although the present case is an extremely tragic one, the fact that detention must be weighed against an alleged perpetrator’s right to personal freedom and a fair trial cannot be overlooked. Reference is made to the case law of the European Court of Human Rights that depriving a person of his or her freedom is, in any event, *ultima ratio* and may be imposed only if and insofar as this is not disproportionate to the purpose of the measure. The State party also contends that, were all sources of danger to be excluded, detention would need to be ordered in situations of domestic violence as a preventive measure. This would reverse the burden of proof and be in strong contradiction with the principles of the presumption of innocence and the right to a fair hearing. Protecting women through positive discrimination by, for example, automatically arresting, detaining, prejudging and punishing men as soon as there is suspicion of domestic violence, would be unacceptable and contrary to the rule of law and fundamental rights.



8.18 The State party maintains that it would have been possible for the author to file a complaint at any time against the Public Prosecutor for his/her conduct pursuant to section 37 of the Public Prosecutors Act. Furthermore, Şahide Goekce did not avail herself of any of the various available avenues of redress. Her failure to authorize the prosecution of Mustafa Goekce for making a criminal dangerous threat in December 1999 and the fact that she largely refused to testify and asked the Court not to punish her husband resulted in his acquittal. Şahide Goekce claimed that her allegations regarding the August 2000 incident were made while she was in a state of confusion as a result of depression and again, the Public Prosecutor determined that there was no adequate basis to prosecute Mustafa Goekce. The State party further submits that the facts that were available concerning the incident of 8 October 2002 did not indicate that Mustafa Goekce should be detained either. The Public Prosecutor was unaware that Mustafa Goekce was in possession of a firearm. Lastly, the State party submits that it could not be deduced from police reports and other records that there was a danger that Mustafa Goekce would actually commit the criminal act.

8.19 The State party summarizes its position by asserting that Şahide Goekce could not be guaranteed effective protection because she had not been prepared to cooperate with the Austrian authorities. In light of the information available to the public authorities, any further interference by the State in the fundamental rights and freedoms of Mustafa Goekce would not have been permissible under the Constitution.

8.20 The State party asserts that its system of comprehensive measures<sup>3</sup> aimed at combating domestic violence does not discriminate against women and the authors' allegations to the contrary are unsubstantiated. Decisions, which appear to be inappropriate in retrospect (when more comprehensive information is available) — are not discriminatory *eo ipso*. The State party maintains that it complies with its obligations under the Convention concerning legislation and implementation and that there has been no discrimination against Şahide Goekce as a woman.

8.21 In the light of the above, the State party asks the Committee to reject the present communication as inadmissible; *in eventu*, to reject it for being manifestly ill-founded and, *in eventu*, to hold that the rights of Şahide Goekce under the Convention have not been violated.

#### **Authors' comments on the State party's request for a review of admissibility and submission on the merits**

9.1 By their submission of 30 November 2006, the authors argue that neither the children of the victim nor the authors intended to have statutory provisions reviewed by the Constitutional Court — a motion that would be deemed inadmissible. They would have lacked standing to bring such an action before the Constitutional Court. The authors note that the main focus of the communication is that legal provisions were not applied — not that those provisions should be amended or repealed. Furthermore, the authors claim that their suggestions for improvements to the existing laws and enforcement measures could never be realized by means of a constitutional complaint. Therefore, bringing a constitutional complaint should not

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<sup>3</sup> To illustrate the effectiveness of the measures, which are applied, the State party submits the statistics on prohibition orders to enter the common home and other legal measures.

be regarded as a domestic remedy for purposes of article 4, paragraph 1, of the Optional Protocol.

9.2 The authors consider that it is inadmissible at this stage for the State party to introduce an argument concerning the remedy of “associated prosecution” in light of the fact that the State party was given two earlier opportunities to comment on the question of admissibility, besides which this remedy would be costly and would not bring any effective relief. The authors are of the view that the Optional Protocol and the rules of procedure of the Committee as well as general legal principles (“ne bis in idem”) do not provide for reversing the admissibility decision of 27 January 2006.

9.3 The authors note that the State party refers to actions taken and legal provisions that entered into force years after the murder of Şahide Goekce.

9.4 The authors submit that the observations of the State party place the burden and responsibility for dealing with the violent husband on the victim and place the blame on her for not having taken appropriate action. The authors assert that this position demonstrates how little the authorities understand about the dynamics of partner violence, the dangerous situation of the victim and the power that the perpetrator has over the victim, whom he ended up killing.

9.5 The authors note that the State party acknowledged every violent incident that took place. However, the authors maintain that the State party did not describe some of the details accurately. The authors claim that it was Mustafa Goekce who stated that Şahide Goekce had had an epileptic fit — the explanation for the bruising on her neck — and that he comforted her.

9.6 The authors dispute the State party’s contention that Şahide Goekce asked the Court not to punish her husband or denied that he had threatened to kill her. They claim that the record of the interrogation shows that Mustafa Goekce repeatedly said that he would kill Şahide Goekce. Moreover, Şahide Goekce only once refused to testify against her husband and the reason for there being no further criminal proceedings was that the Public Prosecutor did not initiate them. As to the State party’s assertion that Şahide Goekce played down the incidents before the Youth Welfare Office, the authors submit that Şahide Goekce would have been afraid of losing her children and of the social and cultural contempt for a woman of Turkish descent whose children had been taken away.

9.7 The authors point out that the State party admits that Mustafa Goekce repeatedly ignored the interim injunction issued by the District Court of Hernal. The authors criticize the police for not having taken seriously the information that they received from the brother of Mustafa Goekce about the weapon.

9.8 The authors argue that the State party has not taken responsibility for the failures of the authorities and officers. They submit that when making a determination about detaining Mustafa Goekce, the State party should have conducted a comprehensive assessment of how dangerous Mustafa Goekce would become. Furthermore, the State party should have considered the social and psychological circumstances of the case. The authors consider that the exclusive use of civil remedies was inappropriate because they do not prevent very dangerous violent criminals from committing or repeating offences.

9.9 The authors draw attention to flaws in the system of protection. One such flaw is that the police and public prosecutors are unable to communicate with each other rapidly enough. Another such flaw is that police files regarding domestic violence are not made available to the officers who operate the emergency call services. The authors also complain that systematically coordinated and/or institutionalized communication between the Public Prosecutor's Office and the Family Court does not exist. They also maintain that government funding remains inadequate to provide extensive care for all victims of domestic violence.

9.10 The authors refer to an exchange of information between representatives of the police and a representative of the Intervention Centre shortly after Şahide Goekce was killed, during which the Chief of Police admitted to deficits in the emergency call service. The authors state that in the instant case, Şahide Goekce called this service a few hours before she was killed, yet no patrol car was sent to the scene. While the Chief of Police requested representatives of the Intervention Centre to instruct victims about the information that they should provide to the police, the authors argue that it would not be reasonable to expect victims of violence to provide in an emergency all information that may be relevant considering their mental state. Furthermore, regarding the instant case, German was not Şahide Goekce's mother tongue. The authors maintain that the authorities should gather data about dangerous violent offenders in a systematic manner that can be retrieved anywhere in an emergency.

9.11 The authors submit that it is incorrect to claim that Şahide Goekce did not avail herself of the available avenues of redress. In 2002, the year she was killed, Şahide Goekce repeatedly tried to obtain help from the police — but she and her family were not taken seriously; often their complaints were not recorded. Further, the authors argue that several physical attacks by Mustafa Goekce were known to the police but not adequately documented such that the information could be retrieved for use in assessing how dangerous he might become. The authors maintain that the potential for violence on the part of a spouse who does not accept being separated from the other spouse/family is extremely high. In the specific case of Şahide Goekce, her spouse was unreasonably jealous and unwilling to accept a separation, which constituted a high risk that was not taken into account.

#### **The State party's supplementary observations**

10.1 By its submission of 19 January 2007, the State party provides detailed information about the so-called "associated prosecution", whereby a private party takes over the prosecution of the defendant. The State party submits that the requirements are more stringent than those that apply to the Public Prosecutor in order to prevent chicanery. Under this procedure, a person whose rights have allegedly been violated through the commission of a crime becomes a private party to the proceedings.

10.2 The State party indicates that Şahide Goekce was informed of her right to "associated prosecution" on 14 December 1999, 20 September 2000 and 6 December 2002.

10.3 The State party also submits that Şahide Goekce would have been entitled to bring a complaint under section 37 of the Public Prosecutor's Act (Staatsanwaltschaftsgesetz) to either the head of the Public Prosecutor's Office in Vienna, the Senior Public Prosecutor's Office or the Federal Ministry of Justice, had

she considered the official actions of the responsible Public Prosecutor to have been unlawful. There are no formal requirements and complaints may be filed in writing, by e-mail or by fax or telephone.

10.4 The State party indicates that an interim injunction for protection against domestic violence may be sought by persons who live or have lived with a perpetrator in a family relationship or a family-like relationship under section 382b of the Act on the Enforcement of Judgments, when there have been physical attacks, threats of physical attacks or any conduct that severely affects the mental health of the victim and when the home fulfils the urgent accommodation needs of the applicant. The perpetrator may be ordered to leave the home and the immediate surroundings and prohibited from returning. If further encounters become unacceptable, the perpetrator may be banned from specifically defined places and given orders to avoid encounters as well as contact with the applicant so long as this does not infringe upon important interests of the perpetrator. In cases where an interim injunction has been issued, the public security authorities may determine that an expulsion order (Wegweisung) is also necessary as a preventive measure.

10.5 The State party states that interim injunctions can be issued during divorce proceedings, marriage annulment and nullification proceedings, during proceedings to determine the division of matrimonial property or the right to use the home. In such cases, the interim injunction is valid for the duration of the proceedings. If no such proceedings are pending, an interim injunction may be issued for a maximum of three months. An expulsion and prohibition to return order expires after 10 days but is extended for another 10 days if a request for an interim injunction is filed.

### **Review of admissibility**

11.1 In accordance with rule 71, paragraph 2, of its rules of procedure, the Committee has re-examined the communication in light of all the information made available to it by the parties, as provided for in article 7, paragraph 1, of the Optional Protocol.

11.2 As to the State party's request to review admissibility on the grounds that Şahide Goekce's heirs did not avail themselves of the procedure under article 140, paragraph 1, of the Federal Constitution, the Committee notes that the State party has not introduced new arguments that would alter the Committee's view that, in light of its abstract nature, this domestic remedy would not be likely to bring effective relief.

11.3 As to the State party's argument that Şahide Goekce, as a private individual, would have been free to bring an action, known as "associated prosecution" against her husband after the Public Prosecutor decided to drop the charges against him, the Committee does not regard this remedy as having been de facto available to the author, considering that the requirements for a private individual to take over the prosecution of the defendant are more stringent than those for the Public Prosecutor, that German was not Şahide Goekce's mother tongue and, most importantly, that she was in a situation of protracted domestic violence and threats of violence. Moreover, the fact that the State party introduced the notion of "associated prosecution" late in the proceedings indicates that this remedy is rather obscure. Accordingly, the Committee does not find the remedy of "associated prosecution" to be a remedy that Şahide Goekce would have been obliged to exhaust under article 4, paragraph 1, of the Optional Protocol.

11.4 As to the State party's contention that Şahide Goekce would have been entitled to bring a complaint under section 37 of the Public Prosecutor's Act, the Committee considers that this remedy — designed to determine the lawfulness of official actions of the responsible Public Prosecutor — cannot be regarded as a remedy which is likely to bring effective relief to a woman whose life is under a dangerous threat, and should thus not bar the admissibility of the communication.

11.5 The Committee will proceed to consideration of the merits of the communication.

### **Consideration of the merits**

12.1.1 As to the alleged violation of the State party's obligation to eliminate violence against women in all its forms in relation to Şahide Goekce in articles 2 (a) and (c) through (f), and article 3 of the Convention, the Committee recalls its general recommendation 19 on violence against women. This 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 that "[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".

12.1.2 The Committee notes that the State party has established a comprehensive model to address domestic violence that includes legislation, criminal and civil-law remedies, awareness-raising, education and training, shelters, counselling for victims of violence and work with perpetrators. However, in order for the individual woman victim of domestic violence to enjoy the practical realization of the principle of equality of men and women and of her human rights and fundamental freedoms, the political will that is expressed in the aforementioned comprehensive system of Austria must be supported by State actors, who adhere to the State party's due diligence obligations.

12.1.3 In the instant case, the Committee notes that during the three-year period starting with the violent episode that was reported to the police on 3 December 1999 and ending with the shooting of Şahide Goekce on 7 December 2002, the frequency of calls to the police about disturbances and disputes and/or battering increased; the police issued prohibition to return orders on three separate occasions and twice requested the Public Prosecutor to order that Mustafa Goekce be detained; and a three-month interim injunction was in effect at the time of her death that prohibited Mustafa Goekce from returning to the family apartment and its immediate environs and from contacting Şahide Goekce or the children. The Committee notes that Mustafa Goekce shot Şahide Goekce dead with a handgun that he had purchased three weeks earlier, despite a valid weapons prohibition against him as well as the uncontested contention by the authors that the police had received information about the weapon from the brother of Mustafa Goekce. In addition, the Committee notes the unchallenged fact that Şahide Goekce called the emergency call service a few hours before she was killed, yet no patrol car was sent to the scene of the crime.

12.1.4 The Committee considers that given this combination of factors, the police knew or should have known that Şahide Goekce was in serious danger; they should have treated the last call from her as an emergency, in particular because Mustafa

Goekce had shown that he had the potential to be a very dangerous and violent criminal. The Committee considers that in light of the long record of earlier disturbances and battering, by not responding to the call immediately, the police are accountable for failing to exercise due diligence to protect Şahide Goekce.

12.1.5 Although, the State party rightly maintains that, it is necessary in each case to determine whether detention would amount to a disproportionate interference in the basic rights and fundamental freedoms of a perpetrator of domestic violence, such as the right to freedom of movement and to a fair trial, the Committee is of the view, as expressed in its views on another communication on domestic violence, that the perpetrator's rights cannot supersede women's human rights to life and to physical and mental integrity.<sup>4</sup> In the present case, the Committee considers that the behaviour (threats, intimidation and battering) of Mustafa Goekce crossed a high threshold of violence of which the Public Prosecutor was aware and as such the Public Prosecutor should not have denied the requests of the police to arrest Mustafa Goekce and detain him in connection with the incidents of August 2000 and October 2002.

12.1.6 While noting that Mustafa Goekce was prosecuted to the full extent of the law for killing Şahide Goekce, the Committee still concludes that the State party violated its obligations under article 2 (a) and (c) through (f), and article 3 of the Convention read in conjunction with article 1 of the Convention and general recommendation 19 of the Committee and the corresponding rights of the deceased Şahide Goekce to life and physical and mental integrity.

12.2 The Committee notes that the authors also made claims that articles 1 and 5 of the Convention were violated by the State party. The Committee has stated in its general recommendation 19 that the definition of discrimination in article 1 of the Convention includes gender-based violence. It has also recognized that there are linkages between traditional attitudes by which women are regarded as subordinate to men and domestic violence. At the same time, the Committee is of the view that the submissions of the authors of the communication and the State party do not warrant further findings.

12.3 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 on the Elimination of Discrimination against Women is of the view that the facts before it reveal a violation of the rights of the deceased Şahide Goekce to life and physical and mental integrity under article 2 (a) and (c) through (f), and article 3 of the Convention read in conjunction with article 1 of the Convention and general recommendation 19 of the Committee and makes the following recommendations to the State party:

(a) Strengthen implementation and monitoring of the Federal Act for the Protection against Violence within the Family and related criminal law, by acting with due diligence to prevent and respond to such violence against women and adequately providing for sanctions for the failure to do so;

(b) Vigilantly and in a speedy manner prosecute perpetrators of domestic violence in order to convey to offenders and the public that society condemns domestic violence as well as ensure that criminal and civil remedies are utilized in

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<sup>4</sup> See paragraph 9.3 of the Committee's views on communication No. 2/2003, A.T. v. Hungary.

cases where the perpetrator in a domestic violence situation poses a dangerous threat to the victim; and also ensure that in all action taken to protect women from violence, due consideration is given to the safety of women, emphasizing that the perpetrator's rights cannot supersede women's human rights to life and to physical and mental integrity;

(c) Ensure enhanced coordination among law enforcement and judicial officers and also ensure that all levels of the criminal justice system (police, public prosecutors, judges) routinely cooperate with non-governmental organizations that work to protect and support women victims of gender-based violence;

(d) Strengthen training programmes and education on domestic violence for judges, lawyers and law enforcement officials, including on the Convention on the Elimination of All Forms of Discrimination against Women, general recommendation 19 of the Committee, and the Optional Protocol thereto.

12.4 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 German language and widely distributed in order to reach all relevant sectors of society.

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