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**Legislation in the member States  
of the Council of Europe  
in the field of violence against women**

**VOLUME I**

**ALBANIA to LUXEMBOURG**

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## Foreword

In 1995, the Group of Specialists on combating violence against women (EG-S-VL), working under the auspices of the Steering Committee for equality between women and men (CDEG) of the Council of Europe, decided to entrust a consultant (Ms Jill RADFORD, United Kingdom) with the preparation of a comparative study of the legislation in the member States of the Council of Europe in the field of violence against women.

A questionnaire was sent to all member States to obtain the relevant information. A draft analytical study was based on the answers to this questionnaire by Ms Jill Radford and submitted to the CDEG in 1997 together with the report of the Group of Specialists. This study was, however, never published for wide distribution as many member States had not answered the questionnaire and the information was considered to be incomplete. The CDEG also felt that it was very difficult to produce any meaningful comparisons between countries. Therefore, it was decided, instead of producing an analytical report, to gather as much information as possible from as many countries as possible but not to concentrate efforts on comparing different and often incomparable situations.

The present document, partly based on above-mentioned study, contains a country-by-country compendium. As of November 2002, contributions have been received from 39 of the 44 member States about the situation in their countries. In order to make the document easier to read, a similar presentation is used for all countries. This presentation is based on the original questionnaire.

The answers to the questionnaire reveal that it is now widely recognised by most member States that violence against women is a grave problem which concerns the society as a whole. The problem is, however, very difficult to evaluate properly, since violence often takes place in private and is frequently unreported and unrecorded and statistics need to be gathered. Many countries have reported that they have launched awareness-raising campaigns and/or changed their legislation in order to combat violence against women more efficiently. Several countries have introduced the possibility of using a restraining order, i.e. an order that prevents a violent person from contacting a protected person.

The answers also show that trafficking in human beings is a rapidly expanding phenomenon. This issue concerns all member States of the Council of Europe, either as countries of origin, transit or destination of trafficked persons. Several countries have adopted specific legislation to combat trafficking or intend to do so.<sup>1</sup>

Another striking development is that a number of countries have recently adopted laws in fields that previously have not been covered by legislation, e.g. sexual harassment in the workplace and some countries have introduced legislation against female genital mutilation. However, the answers clearly show that there is still a long way to go until

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<sup>1</sup> See "Trafficking in Human Beings – Compilation of the main legal instruments and analytical reports dealing with trafficking in human beings at international, regional and national levels" EG (2000) 2 volume I and volume II.

this phenomenon has been fully recognised and effective measures for eliminating it have been taken in all member States.

This publication is intended for all those who work towards combating violence against women. The Appendix at the end of Volume II contains some examples of good practice.

## **ALBANIA**

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Information provided by the Women and Family Committee, Council of Ministers, Republic of Albania in November 2000.

### **1.3 Rape/Sexual Assault**

Rape is defined as “violent, unlawful sexual intercourse with adult women”.

Sanctions: between 3 and 10 years imprisonment; rising to between 5 and 15 years if serious harm was caused (serious harm not defined); and rising again to between 10 and 20 years if death is caused or the woman commits suicide.

Unlawful sexual intercourse with vulnerable persons - adults with physical or mental incapacities, or someone unconscious. The requirement of violence is removed in this provision. Sanctions: between 5 and 10 years imprisonment, rising to between 5 and 15 years if injury is inflicted and to between 10 and 20 years if it resulted in death or suicide.

Unlawful sexual intercourse by threat to instantly use a gun – sanctions: between 5 and 15 years.

Unlawful sexual intercourse through abuse of authority (defined as relations of subordination or authority) - sanction: up to 3 years imprisonment. Note: violence is not specified in this provision.

Unlawful sexual intercourse in public is criminalised. Sanctions: fines or up to 1 year of imprisonment. Note: does not specify whether this is for one or both parties.

### **1.4 Child Sexual Abuse/Incest**

The Albanian penal code carries different sanctions for unlawful sexual intercourse with minors depending on the age of the minor, treating crimes against young women under 14 more seriously than crimes against young women between the ages of 14 and 18 and also according to whether the minor was seriously physically harmed. In relation to young women between 14-18 years of age, only “violent” unlawful sexual intercourse is criminalised.

Sanctions:

- against girls under 14 years of age: 5-15 years imprisonment, rising to between 10 and 20 years if violence is used or serious physical harm is inflicted; rising to not less than 20 years if death has been caused or the minor commits suicide;

- against girls between 14 and 18 years of age: 5-10 years imprisonment; rising to 10-15 years if harm is inflicted to the minor's health (not defined, so not clear if this is limited to physical harm or whether psychological harm would be included); the sanction rises to not less than 15 years if death has been caused or the minor commits suicide.

### Incest

Unlawful sexual intercourse between parents and children, brother and sister, other persons related in direct descent and persons related by adoption or guardianship. Note: this latter provision adds a social dimension to an otherwise biological definition. Sanction: up to 5 years imprisonment.

Gross indecency towards a child of either sex, under the age of 14 – sanction: up to 5 years imprisonment.

## **1.8 Prostitution**

Prostitution is criminalised. Sanctions: fines or up to 3 years imprisonment. Note: prostitution is not defined, and it is unclear whether it is the woman or both parties who are criminalised.

### Living on immoral earnings

"Forcing, mediating and receiving financial gain viz. prostitution is criminalised". Sanctions: fines or up to 5 years imprisonment. If a minor is involved, or violence is used against her, the sanction rises to between 5 and 10 years imprisonment.

### Brothel keeping

Managing, using, financing or letting premises for the purpose of prostitution is criminalised. Sanctions: fines or up to 10 years in prison.

## **1.13 Protection of pregnancy**

The termination of pregnancy is criminalised in the following circumstances:

- when it occurs without the woman's consent – sanction: fines or up to 5 years imprisonment;
- when it is carried out by unregistered practitioners and in unlicensed premises – sanction: fines and/or up to 2 years imprisonment or, if life is threatened or death occurs, up to 5 years imprisonment;
- providing a woman with the means or facilities for termination, aiding a woman: sanction - fines or up to 5 years imprisonment.

## ARMENIA

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The information was provided by the human Rights and Development Centre in July 2001. A new Criminal Code is being drafted and is expected to be adopted within the next year. The new Code of Criminal Procedure was adopted in January 1999.

### 1.1. Domestic Violence

Armenian law contains no specific provisions on domestic violence. Most instances of domestic violence violate the articles of the Criminal Code dealing with assault and criminal hooliganism. Assault laws are based almost exclusively on the seriousness of the injury rather than the nature of the assault.

#### Criminal Code

Domestic assault cases are usually charged under:

Article 109 - *intentional light injury* (causing intentional light injury) which has caused short-term health disorder is punishable by imprisonment for a period of up to two years or by correctional work for a period of up to one year.

Article 110 - *beating and torture* (deliberate striking or beating as well as other violent acts that result in physical pain, intentionally hitting or beating, or systematic beating) is punishable by correctional work for a period of up to one year or by fine in the amount of ten to twenty times the established minimum wage. Systematic beating: imprisonment up to four years.

Several other levels of assault that are less frequently applied to domestic violence:

Article 105 – *intentional serious injury*

Article 106 – *intentional medium injury*

Article 107 – *intentional serious or medium injury inflicted in a state of severe emotional agitation*

Article 108 - *serious or medium injury where the limits of necessary defense are exceeded*

Also applied is:

Article 222 – *hooliganism* (prohibits hooliganism, disruptive behaviour that violates public order) is punishable by imprisonment for a period of up to one year or by correctional work for the same period a period of up to one year or by fine in the amount of twenty to thirty times the established minimum wage.

## 1.2. Rape

Article 112

“Sexual relations with the use of physical force or threats or taking advantage of the helpless condition of the victim.”

Rape is punishable by three to seven years of imprisonment. Rape under aggravating circumstances (i.e. by a person who has previously committed the same crime, committed by a group of people, rape of a minor, resulting in especially heinous consequences) is punished with the penalty of imprisonment for a period of five to twenty-five years or by the death penalty.

### Administrative Code

The article most often applied is:

Article 172 – *minor hooliganism* punishable by fine in the amount of one and a half to three times the minimum established wage or by correctional work for a period of one to two months or by administrative detention for up to 15 days.

## 1.3. Trafficking in Women

Armenian law contains no specific provisions on trafficking in women. Most instances of trafficking violate the articles of the Criminal and Administrative Codes.

### Administrative Code

Article 179 – **prostitution** prescribes a fine in the amount of 50 to 100% of the minimal salary for a prostitute if detained for the first time, or a fine in the amount of 100 to 200% of the minimal salary if the prostitute is detained for the second (or subsequent) time.

Article 119 – people who are reported to have or who actually do have obvious symptoms of **sexually transmitted diseases** have to undergo appropriate medical treatment. Those who refuse to do so face administrative fines, or up to six months’ forced labour. The law also demands that persons with a sexually transmitted disease (STD) disclose the names of their partners and their contact information. In the 1990’s, neither the police nor the STD treatment facilities enforced this policy though. There are only three testing centres for HIV/AIDS, all located in Yerevan, but a lack of experience in using the required laboratory equipment means that, in practice, HIV/AIDS testing is not available to the public at large.

### Criminal Code

Article 226 – **prohibition of maintenance of brothels and pandering** punishes such activities with up to five years imprisonment. According to the Draft Criminal Code, maintaining dens of prostitution or pandering will be punished by a fine in the amount of 300-500 times the minimum salary, or with the restriction of freedom for a term of up to two years, or with detention for a term of three to six months, or with imprisonment for a term of up to five years.

Article 287 of the Draft Criminal Code provides the crime of “**Involvement in Prostitution**”: Forcing someone into prostitution, i.e. by violence or use of violence, abuse of dependent position, by blackmail, by threat to destroy or damage property, or dissemination of defamatory information about a person or his close relatives, or by deception. The crime is punished with a fine in the amount of 200-400 times the minimal salary, or with restriction of freedom for a term of up to two years, or with detention for a term of three to six months, or with imprisonment for a term of up to two years. The same actions committed by an organised group are punished with a fine in the amount of 300-500 times the minimal salary, or with restriction of freedom for a term of up to three years, or with imprisonment for a term of three to six years.

## AUSTRIA

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Information provided by the Federal Ministry of Economic Affairs and Labour in November 2000.

### **Introduction**

For many years there has been a broad political and social consensus to combat violence against women and children with numerous initiatives and measures. The general public has been made more aware of, and sensitive to, the problem of violence in the family by numerous publications, surveys, information campaigns and seminars.

### **1.2 Domestic violence**

The “Federal Act on Protection against Violence in the Family” came into force in May 1997. Law enforcement officers are authorised to expel the author of violent attacks or threats of violence from the home and the immediate surroundings in which the individual exposed to such acts, lives and to prohibit the expelled person from returning to the premises. The law on the protection against violence offers victims of violence better protection particularly by the fact that it is the offender who has to leave the home, and not the victim. Since the Federal Act on the Protection against Domestic Violence entered into force on May 1, 1997, 7114 prohibition orders have been issued by the police all over Austria until the end of 1999. In 1999, 2076 prohibition orders were issued.

Under the law enforcement regulations it is further possible to obtain an interim injunction. For the first time, precautions have been taken to ensure effective co-operation between the police and civil courts as well as intensive co-operation with victim protection organisations.

As the police are unable to cope with the problem of violence in the family alone but can only do so in co-operation with other authorities and victim protection organisations, so-called Intervention Centre against Domestic Violence were set up as a secondary measure and to ensure the efficient implementation of the law on protection against violence. These agencies actively offer their help and support to women who are victims and perform a networking function between all parties involved in any specific case of violence (police and judicial authorities, youth welfare authorities, homes for battered women, etc.).

On the initiative of the Federal Minister for Women Affairs the first “Intervention Agency against Violence in the Family” was set up in Graz in 1996. Currently there are Intervention Agencies, which are co-funded by the Federal Minister for Women’s Affairs

and Consumer Protection and the Federal Ministry of the Interior, in five provincial capitals in Austria.

Early in 1997, the Advisory Council for Fundamental Issues of Violence Prevention was set up at the Federal Ministry of the Interior. The Council consists of representatives of the ministries concerned and NGOs and has the task of advising the Federal Minister of the Interior on programmes for violence prevention and on the development of general strategies for more effective co-operation between police authorities and organisations for the protection of victims.

### 25-Point Catalogue of Measures of the Federal Government

In September 1997, the Federal Government drew up a 25-point catalogue of measures for the consolidation and further development of the previous measures and programmes for combating violence against women and children.

The following measures for combating violence in the family were taken:

#### Expansion of the services for the protection of victims:

- Setting-up of Intervention Centre against Domestic Violence against violence to counsel victims, help them claim services offered by the authorities and support them during court proceedings;
- Immediate help and social support for minors exposed to violence by extending the system of child protection and crisis centres, by providing psychological counselling services for children and young persons, by housing them in shared flats under the care of teachers trained in remedial education and by providing rehabilitation facilities and therapy appointments;
- Nationwide provision of tailor-made women and family counselling centres, emergency telephone numbers and homes for battered women;
- Setting up of a central reporting board for abuse with the youth welfare authorities;
- Production of a catalogue of symptoms providing a systematic description of social, psychological and physical features indicative of child abuse, sexual abuse or neglect;
- Creation of a curriculum for the further training of medical personnel;
- Optimisation of statutory mandates on action to be taken (requirement of confidentiality, duty to report an offence, authority to report an offence) by different professional groups confronted with violence;

- Support for children and the persons with whom they have a relationship of trust throughout criminal proceedings;

#### Working with offenders:

- Development and promotion of offender-related measures against violence and the setting-up of special “anti-violence centres”;

#### Penal law on sexual offences, trafficking in human beings, weapon law:

- Review of the severity of punishment and the extension of the statutes of limitation to match the special ignominy of offences against the mental, physical and sexual integrity of children and minors;
- Creation of programmes for the protection of victims of trafficking in human beings and the setting-up of counselling services and victim protection centres;
- Restriction of the sale of certain weapons, imposition of stricter conditions on the purchase and ownership of weapons, increased checks on the reliability of weapon owners (also with respect to the safe keeping of weapons).

#### Training and research

- Promotion of methods and models of non-violent education in the field of “parent education”;
- Intensified training of police personnel, public prosecutor, judges, teachers, social workers, nursery-school teachers, therapists, experts in leisure and social education;
- Review of the effects of the “Act Against Violence”, by employing methods of empirical social research and drawing on national and international experience in dealing with offenders and persons inclined to violence.

#### Raising public awareness and networking

- Reinforcement of the networking of governmental and non-governmental agencies involved in prevention, intervention and post-intervention at the regional, national and international level.

#### Violence in the media

- Promotion of non-violent and educationally valuable computer and video games and limitation of dissemination of texts and games which are violent or incite to violence in the mass media and through computer and video games of illustrations;

- Push for voluntary self-regulation of media professionals, producers, distributors, Internet providers at the national and the international level;
- Initiation of the drafting of an European or International “Convention for the Promotion of Media Culture and for the Protection of Children and Young Persons Against Injurious Media Programmes”;
- Requirement for those Internet providers keep their networks free of injurious content such as child pornography;
- Advertisement for the reporting point set up at the Ministry of the Interior to deal with reports of injurious content on the Internet.

### 1.3 Rape/Sexual Assault

Rape is subject to a sentence ranging from one up to ten years in prison if the perpetrator uses severe violence or threatens to use severe violence against the victim in order to force the victim to perform sexual intercourse or “a sexual act similar to sexual intercourse”. The application of mere (not severe) violence, deprivation of liberty or the threat of violence against a person is subject to a sentence ranging from six months to five years. If the offence leads to severe bodily injury or if the victim is humiliated or tortured in a particular manner, the length of the sentence will increase to 15 years, and if the victim dies to 20 years.

The offence of sexual coercion is realised if the victim is forced by violence or severe threats to perform a sexual act, which is not sexual intercourse, or any other comparable behaviour defined as rape.

In both cases the jurisdiction rests with the first-instance courts and is exercised by criminal courts consisting of two judges and two lay judges.

The amendment to the Penal law of 1996 stipulates that in penal proceedings on sexual offences the list of lay judges or the jury – according to the type of court – has to include a certain number of persons of the same sex as the victim. This is intended to minimise the distress caused to the victims of sexual offences when being questioned in court as well as to allow gender-specific perspectives to be taken more into account.

The amendment to the Code of Criminal Procedure of 1993 already ensured that the particular mental stress to which victims are exposed when giving evidence in criminal proceedings concerning sexual offences is taken into consideration. The victim is entitled to demand that a person enjoying her/his confidence be present during questioning or that the public be excluded; in special cases evidence can be given in a separate room.

### Rape in marriage

Since 1989 rape and sexual coercion have also been punishable as crimes in marriage and marital cohabitation. In cases of “minor severity” prosecution by the public prosecutor can only be filed for and withdrawn by application of the raped woman.

## **1.4 Child Sexual Abuse/Incest**

### Incest

Whoever seduces a person for sexual intercourse with whom he or she is related in a descending line shall be punished with imprisonment of up to three years. The consummation of sexual intercourse with a person who is related in a direct line is punishable with imprisonment of up to three years. Sexual intercourse with siblings is punishable with imprisonment of up to six months.

### Abuse of a position of authority

The misuse of a position of authority is punishable. Whoever misuses for sexual intercourse any minor (“minors” shall be persons who have not yet completed their 19<sup>th</sup> year of life), adopted child, stepchild or ward by using his/her position over a minor under his/her upbringing, education and training or supervision or who seduces the same to perform any illicit sexual practices on itself to sexually excite himself/herself or any third party shall be punishable with imprisonment of up to three years.

### Sexual abuse of minors

A reform of the criminal law on sexual offences came into force in October 1998. “Severe sexual abuse of persons under age” (children up to the 14<sup>th</sup> birthday) not only covers mere sexual intercourse, but also all “acts similar to intercourse”, which includes all forms of oral, vaginal or anal penetration for the satisfaction of the sexual urge (also with objects). Such acts will thus become subject to sentences of imprisonment ranging from one to ten years (15 years in case of injuries or pregnancies as a consequence of the offence, 20 years in case of death). Formerly the maximum prison sentence was five years.

“Sexual abuse of persons under age” is the new provision for less intensive sexual contacts and is punishable with imprisonment of six months up to five years. The offender will not be punished if the offender’s age does not exceed that of the minor by more than four years and the minor is not less than twelve years of age and no consequences have occurred (death, injury).

The Amendment to the Criminal Code 1998 made an important change in the respect that the statute of limitation will commence, particularly for sexual abuse on children, only when the victims come to full age in order to secure prosecution. The period of limitation will increase with the severity of the punishment and can be up to 20 years.

The less stressful hearing by video transmission to the courtroom is mandatory for victims up to 14 years of age.

The two-year model project “support through criminal proceedings for victims of sexual abuse on girls, boys and young people” is currently performed at courts by recommendation of the Minister for Women’s Affairs and Consumer Protection. The objective of this project is to better deal with the problem of secondary victimisation by protecting and supporting the victims who must give evidence as witnesses, by supporting and including persons of trust, by networking the institutions involved and by conducting research on support through criminal proceedings.

#### Pornographic images with persons under age

Whoever produces pornographic images with persons under age (pictorial illustrations of a sexual act on a person under age or a person under age on himself/herself, or on another person or with an animal that, when regarding the image, would give the impression that such a sexual act occurred during its production) or imports, conveys or exports such images for the purpose of dissemination, or offers, procures, hands over, shows or makes accessible in any other way such images, shall be subject to punishment with imprisonment of up to two years. When such a crime is committed for profit or as a member of a gang the term of imprisonment can be up to three years.

The procurement for oneself and the possession of such images is punishable with imprisonment of up to six months or a penalty of up to 360 per diem rates (§ 207a of the Criminal code).

The term of “pictorial illustrations” contained in the provisions shall also include visual or data recordings such as CD-ROM, hard disks and diskettes. This therefore takes into account the new phenomenon of the dissemination of illustrations of child pornography on the Internet. The “possession” of illustrations of child pornography does not include the search for child pornography on the Internet according to prevailing legal opinion, which is therefore not punishable. However, if the document is saved and printed out, then this falls under the term possession. Dissemination is regarded as the input of illustrations of child pornography on the Internet as well as the setting of links to respective data.

The Internet has become a new medium for child pornography, breaking down the barriers to accessibility. In answer to the resultant increase in the dissemination and consumption, a reporting agency of Interpol for child pornography on the Internet was set up by the Ministry of the Interior in 1998. At the end of October 1998, a national action plan drawn up by experts for combating child pornography on the Internet was passed by the Austrian government.

## 1.5 Sexual Harassment

The “Federal Act on Equal Treatment of Women and Men in Working Life” is the law that covers sexual harassment. The law says that a person commits sexual harassment when showing behaviour that actually belongs to his/her sexual sphere and impairs another person’s dignity, is undesirable, inappropriate or offensive and creates an intimidating, hostile or humiliating working environment for the affected person, or if the fact that the affected person rejects or tolerates any behaviour on the part of the employer, superior or colleague that clearly belongs to his/her sexual sphere and such rejection or toleration expressly or implicitly forms the basis of a decision with negative effects on the access of such person to education, employment, further employment, promotion or remuneration, or the basis of any other disadvantageous decision regarding the affected person’s employment.

Since the Fourth Amendment to the Act on Equal Treatment, which came into force in May, 1998 it has been clarified that the offence of discrimination by sexual harassment will also be committed when the harassment occurs by “third parties” (i.e. colleagues, customers, guests or clients) and the employer is not at any fault concerning failure to lend assistance.

## 1.8 Prostitution

### Prostitution

The legal competence for prostitution lies with the provinces. The matter is therefore governed in nine different provincial laws.

The Viennese Act on Prostitution, for example, defines prostitution as the acquiescence of sexual acts on the own body or the performance of sexual acts for profit. Prostitution must not be solicited or performed by minors or persons for whom there are objections by curatorship authorities. Persons who wish to engage in prostitution must be registered as such.

### Trafficking in women

In Austria, trafficking in women is covered under the term “trafficking in human beings” (§ 217 Criminal Code):

*“Whoever brings a person to perform illicit prostitution, even if such person already commits prostitution, in another country than the one whose citizenship such person has or where such persons has his/her habitual place of residence, or procures such person for such purposes, shall be sentenced to imprisonment of six months to five years, and, if the crime is committed for profit, to imprisonment of one to ten years.*

*Whoever induces by deception a person to commit prostitution in another country than the one whose citizenship such a person has or where such person has his/her habitual place of residence or coerces such person by violence or dangerous threat to move to another country or conveys such person to another country by violence or by exploitation of such person's error shall be sentenced to imprisonment of one to ten years."*

In March 1997, "exploitative trafficking" was established in law as an act constituting a criminal offence. Anyone who "deceives persons about their opportunities as aliens of obtaining residence and legal gainful employment in a country and thus induces them to enter a country illegally and to pay or to undertake to pay for assistance in obtaining illegal entry", can now be punished with imprisonment of up to 3 years.

As this provision was not very useful in the fight against trafficking in human beings it was replaced by a new article in the Austrians Aliens law which entered into force on the 1<sup>st</sup> of July 2000 and which shall protect trafficked, smuggled and other unlawful resident aliens from exploitation. Art. 105 (new, "**exploitation of aliens**") states that people who exploit these aliens can be sentenced by court up to two years of imprisonment.

In combination with the provisions against human trafficking existing under criminal law, this provision is intended to enable effective action against criminal organisations and gangs which induce women, mostly under false pretences, to entrust themselves to these organisations and gangs.

The consistent battle against sexual exploitation of women has been given special attention in the past few years, particularly because of outside factors that result from Austria's geographical situation and its function as a transit and target country for trafficking in women.

If a prostitute has no legal status in Austria (no residence permit) the authorities can grant her a residence permit for humanitarian reasons if she is a victim of trafficking in women. Such residence permits may be granted to trafficked individuals (art; 217 of the Criminal Code) who are prepared to testify in court as witnesses and thus assure the prosecution of the perpetrator(s) or who intend to raise civil law claims against the perpetrator(s), for the period required for Such court proceedings.

In 1997 the Ministry of the Interior und the Ministry of Social Affairs and Generations established also an Intervention Centre for Victims of Trafficking in Women in Vienna that provides support to the women, especially to obtain a residence permit for humanitarian reasons. The Centre also provides emergency accommodation for the victims if law enforcement authorities apply lenient measures instead of pre-deportation detention.

The problems in connection with trafficking in women were put on the agenda for the first time in 1996 at Austria's initiative. The EU conference "Trafficking in Women for the Purpose of Sexual Exploitation" was hosted and organised by the Minister for Women's Affairs. In December 1997, a seminar on the issue of trafficking in women was

organised by the Federal Ministry of the Interior with the support of the Commission of the European Union.

### Sex tourism

Austria agrees to measures for the protection of children and young people in poor countries who are affected by sex tourism. As a result of the 1996 Amendment to the Criminal Code, it is now possible to punish sexual offences committed on children and young people outside of Austria according to Austrian law, irrespective of the law at the place where the offence was committed, if the offender is an Austrian and has his/her habitual place of residence in Austria.

### Support

For psychological, health and legal support as well as help in family-related problems, victims of trafficking are supported and helped by victim-protection facilities. The association “Lateinamerikanische Exilierte Frauen in Oesterreich” (LEFOe), a victim protection facility with its seat in Vienna, which is supported by the Federal Minister for Women’s Affairs and Consumer Protection and by the Federal Ministry of the Interior, provides counselling for female victims of trafficking. In Upper Austria there is the organisation MAIZ with focus on Latin American migrants and the Caritas project LENA with focus on Eastern European women. Since 1998 there has been an intervention agency for women as victims of trafficking, which is institutionalised within LEFOe.

### Migrants

Under the new Alien Act, which entered into force in January 1998, women migrants will gain more independence. The new Alien Act will grant protection not only to the victims of armed conflicts in their home countries, but also to the victims and witnesses of trafficking in human beings, who will receive *ex officio* residence permits for the purposes of criminal prosecution and the enforcement of claims under civil law. With this, an end is to be put to physical and mental threats and to the debt cycle many victims are forced into.

Moreover, the opportunities for female migrants to make a living in Austria have improved. Since the beginning of 1998 work permits can be granted under certain circumstances to foreigners with residence in Austria if they can no longer be expected to live together with their spouse owing to violence that has been threatened or committed by the same.

## **3.1 Support/ Protection**

Since the end of the 70s a continually expanding nationwide network of homes for battered women, counselling and information centres for women and emergency telephone numbers have been set up in Austria.

The Centre Against Violence Against Women is an NGO established in 1988. The main tasks are to provide shelter, counselling and support for women and children who suffer male violence. Other important issues are to prevent and to eliminate all forms of violence against women on the national and international level by providing training for different agencies (police forces, judges, hospital staff, social and health care services, unions, etc.), by providing information and carrying out public campaigns, by investigating and monitoring the existing (legal, social, etc.) measures, by international networking, etc. Official bodies support it.

The Intervention Centre against Domestic Violence in Vienna is a victim support institution that should serve as a core institution for the further fight against domestic violence. Intervention Centre against Domestic Violence offer safe accommodation, legal and psychological advice and support, they are pivotal and networking points, their task is to make domestic violence visible.

The Federal Minister for Women's Affairs and Consumer Protection together with the Federal Ministry of the Interior launched a long-term establishment of a nationwide structure of Intervention Agencies. Until the end of 1998, five Intervention Centre against Domestic Violence in total were opened in Austria.

## BELGIUM

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This information was supplied in November 2000 by the Department of Multilateral Relations at the Ministry of Employment and Labour.

### 1.1 Legislation relating to violence against women

Violence against women is covered by general legislation. Only sexual harassment receives specific treatment, in the legislation on combating discrimination. See the Law of 07/05/1999.

#### Relevant law and case law:

- Law of 24 November 1997 on combating violence between partners (*Moniteur Belge* (MB) of 6 February 1998);
- Law of 4 July 1989 amending certain provisions concerning the crime of rape (MB of 18 July 1989);
- Economic Reorientation Law of 4 August 1978 (MB of 17 August 1978);
- Law of 7 May 1999 on equal treatment for men and women with regard to working conditions, access to employment and promotion opportunities, entry to the professions, and supplementary social security schemes (MB of 19 June 1999);
- Crown Decree of 18 September 1992 on the protection of workers against sexual harassment in the workplace (MB of 7 October 1992);
- Crown Decree of 9 March 1995 on the protection of staff against sexual harassment in the workplace in administrative authorities and other departments of federal ministries and in some public-interest bodies (MB of 6 April 1995);
- Law of 13 April 1995 containing provisions on the suppression of traffic in human beings and child pornography (MB of 25 April 1995);
- Law of 30 October 1998 inserting an Article 442*bis* in the Criminal Code making harassment an offence (MB of 17 December 1998).

## 1.2 Domestic violence

In addition to the articles in the Criminal Code relating to assault and battery<sup>2</sup>, the Law of 24/11/1997 on combating violence between partners establishes an aggravating circumstance:

*“[The minimum penalty [laid down in Articles 398 to 405] shall be doubled in the case of imprisonment of up to five years, and increased by two years in the case of imprisonment for more than five years] if the victim of the offence is or has been the offender’s spouse or cohabiting partner and the offender has had a lengthy emotional and sexual relationship with them.”*

### Criminal law

Violence within the family does not exist as a specific offence in criminal law, but a family relationship between the perpetrator and the victim may constitute an aggravating circumstance. Depending on its form, various legal classifications are used. It all depends on the type of violence committed and its seriousness. Assault and battery, homicide and murder are classified as physical violence. Indecent assault and rape are classified as sexual violence. In certain cases, threats against a person may be treated as an offence.

In criminal cases generally, the Crown prosecutor may propose criminal mediation and may, in this context, ask perpetrators of violent acts to undergo treatment or training. In the event of criminal proceedings, the judge may impose immediate imprisonment, defer judgment or suspend the sentence, perhaps with probationary measures.

### Civil law

In cases involving married couples, the district judge may, at the request of one of the spouses, take “urgent and provisional” measures where harmony between the spouses is seriously disrupted (Article 233 of the Civil Code). In the event of domestic violence, the judge may arrange for a provisional separation. “Serious discord” may be recognised on the basis of a medical certificate.

In this context, the judge may suspend the obligation to cohabit and deny one of the spouses access to the other’s home. The district judge may, for example, assign the family home to a wife who has been the victim of violence and forbid the husband entry to the home on pain of expulsion by the police. If the husband disregards the order, he may be prosecuted for trespass. Similar provision has been made in respect of persons who are linked by a declaration of legal cohabitation.

Article 231 of the Civil Code states that “either spouse may request divorce for abuse, cruelty or serious verbal abuse by the other”. It is therefore clear that the definition given to sexual and physical violence may, if necessary, be interpreted in a wide sense and may be the basis for submitting a divorce petition on specific grounds.

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<sup>2</sup> Articles 398 to 410 of the Criminal Code.

Since divorce proceedings are sometimes very long, the president of the court of first instance may order urgent provisional measures on a summary application. These measures may relate to the person(s), means of subsistence or assets of the party concerned or children.

These measures are practically identical in substance to the urgent and provisional measures that the district judge may order under Article 223 of the Civil Code.

### Penalties for “public” violence and “private” violence

The Law of 24/11/1997 introduced the concept that commission against a spouse is an aggravating circumstance in offences under Articles 398 to 405 Criminal Code, which deal with voluntary homicide not classified as murder and with physical injury. “Spouse” is defined in wide terms and includes a person with whom one has had a relationship but from whom one is separated. This law gives the Crown prosecutor more options and powers with regard to flagrante delicto cases of spousal violence. It also repeals Article 413 of the Criminal Code, which recognised adultery as a mitigating provoking factor in spousal violence.

### Spousal rape

The Law of 4/07/1989 modifying certain provisions concerning the crime of rape. Spousal rape, like other forms of rape, is a criminal offence: the spousal element is an aggravating circumstance. Rape carries the same penalties inside or outside marriage.

## **1.3 Rape/sexual abuse**

The Law of 4/07/1989 amending certain provisions concerning rape provides that Article 375 of the Criminal Code is worded as follows:

### Definition of rape

*“Any act of sexual penetration, of whatever nature and by whatever means, committed in respect of a person who has not given consent, constitutes rape. In particular, consent does not exist where the act employed violence, duress or trickery, or was made possible by the victim’s infirmity or physical or mental disability. Any person committing rape shall be punished by five to ten years’ imprisonment.”*

This very wide definition includes, *inter alia*: oral or anal sexual relations and penetration by means of various objects.

### Various degrees of rape<sup>3</sup>:

The following are aggravating factors:

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<sup>3</sup> Penal Code

- the victim was a minor aged over sixteen years;
- the victim was a child aged over fourteen years and less than 16 years;
- the victim was a child under fourteen years;
- the victim was a child aged under ten years;
- the victim died as a result of the rape;
- the victim was subjected to physical torture or illegal confinement before or during the rape;
- the victim was particularly vulnerable on account of pregnancy, illness, infirmity or a physical or mental disability or was threatened with a weapon or an object resembling a weapon;
- the rape was committed by an ascendant, brother or sister of the victim or a person in a similar position within the family, a person habitually or occasionally cohabiting with and exercising authority over the victim, a person abusing authority or facilities conferred by his duties, or a doctor, surgeon, obstetrician or health officer caring for the child.

#### Definition of consent

There is no specific definition of consent in this area: the judge assesses the facts.

#### Evidence

There are no restrictions on evidence in criminal law (witness statements, DNA analysis, evidence gathered using the sexual assault kit, etc).

#### The victim's sexual history

The judge has sole discretion as to what facts are relevant and what further measures are necessary to discover the truth.

#### The competent court

The committal division ("chambre du conseil") decides if there are extenuating circumstances allowing the offence to be treated as less serious and referred to the criminal court; otherwise the case is sent to the assize court.

The principle of equality between men and women is reflected in the composition of the court, the judiciary being open to women and the number of woman judges constantly growing; generally speaking, sexual cases are assigned to a chamber of three judges, at least one of whom, in many cases, is a woman.

#### Penalties

The factors taken into account include the age of the victim, whether the offence was a repeat one, the number of victims, whether or not the perpetrator had authority over the

victim (parent, teacher, doctor, etc). The criminal policy department in the Ministry of Justice maintains statistics.

### The police

The police services responsible for investigating and instigating proceedings in rape cases do not all contain women, but the police officer will preferably, and subject to staff availability, have received special training.

### Women doctors

There is no provision for using women forensic medical examiners only, but the doctor called in reassures the victim as much as possible and explains his/her role. They are required to have listening skills, patience and consideration. The victim may be accompanied by a doctor of her choice.

## **1.4 Child sexual abuse/incest<sup>4</sup>**

The law adopted by the Senate on 16 November 2000 on criminal-law protection of minors extended the aggravating considerations of perpetrator status to include *“the brother or sister of the child victim or any person in a similar position within the family or any person habitually or occasionally residing with and exercising authority over the child victim”*.

The Law of 13/04/1995 on sexual abuse of minors, the Crown Decree of 16/06/1995 on the functions and powers of the Centre for Equal Opportunities and Action on Racism with regard to combating international traffic in human beings and on implementation of Article II.5 of the Law of 13/04/1995 dealing with traffic in human beings and child pornography.

In cases of this type the judge may make an order barring the perpetrator from the home.

### The age of majority

The age of majority is set at 18 years by Article 100<sup>ter</sup> of the Criminal Code (under the Criminal-Law Protection of Minors Act). In the case of indecent assault (without violence), consent is set at 16 years.

### Evidence by children

The Criminal-Law Protection of Minors Act legalised recorded giving of evidence, or video-conferencing where a minor is required to appear personally.

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<sup>4</sup> Idem

### Therapeutic assistance between reporting the offence and the trial

Care for the victim is a responsibility of the federal state. The victim reception service may intervene provisionally to provide psychological support for the victim during the trial. Therapeutic assistance is a matter for each Community.

### Indecent assault<sup>5</sup>

“Any indecent assault without violence or threats on or involving a child of either sex aged under 16 years shall be punished by five to ten years’ imprisonment.” “Any indecent assault committed with violence or threats on persons of either sex shall be punished by six months’ to five years’ imprisonment”.

Aggravating circumstances are set out in the Criminal Code, and are linked in particular to the victim’s age and the status of the perpetrator. The maximum penalty is twenty to thirty years’ imprisonment.

## **1.5 Sexual harassment**

For purposes of the Law of 7/05/1999 on equal treatment for men and women<sup>6</sup>, sexual harassment in the workplace is automatically treated as discrimination on the basis of gender.

“Sexual harassment refers to any form of verbal, non-verbal or physical behaviour of a sexual nature in respect of which the guilty party knows or ought to know that it is an affront to women and men in the workplace”.

This definition is identical to the definition in the Crown Decree of 18/09/1992 protecting workers against sexual harassment in the workplace (private sector and similar) as well as the Crown Decree of 9/03/1995 protecting staff against sexual harassment in the workplace in public administration, other departments of federal ministries and some public-interest bodies.

The 1999 law repeals Part V of the Economic Reorientation Act of 4/08/1978, but only in matters coming under the federal legislator. It is for each of the federated authorities to adopt the necessary provisions in the areas which come under its jurisdiction, but until it does so Part V applies. The act treats sexual harassment as a form of sex discrimination and provides for a partial reversal of the burden of proof.

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<sup>5</sup> Articles 372 to 377

<sup>6</sup> Law of 7/05/1999 on equal treatment for men and women with regard to working conditions, access to employment and promotion opportunities, entry to the professions, and supplementary social security schemes.

### Moral harassment

Belgium also has provisions covering moral harassment. Article 442 *bis* of the Criminal Code provides that:

“Anyone who harasses another person although they know, or ought to know, that it will perturb that person shall receive from 15 days’ to two years’ imprisonment and a fine of 560 to 3,000 francs, or only one of these penalties.”

This offence can only be prosecuted on a complaint by the person alleging harassment.

## **1.7 Pornography**

The Law of 13/04/1995 on traffic in human beings and child pornography inserted Article 383*bis* in the Criminal Code, which article was then amended by the Criminal-Law Protection of Minors Act of 16 November 2000. During parliamentary discussion of the act, the Minister of Justice stated that Article 383*bis* is also applicable to pornography in cyberspace.

*“Article 383 bis (1) ... Anyone who displays, sells, offers for rental, distributes or supplies items, videos, photographs, slides or other visual material showing pornographic sexual positions or acts directly or indirectly involving minors (whether under or over the age of 16) or anyone who, for trade or distribution, produces, possesses, imports or causes to import such material or supplies it to a carrier or distributor shall be sentenced to prison and fined between five hundred (€12.38) and ten thousand francs (€247.89).*

§2. Whoever knowingly possesses items, videos, photographs, slides or other visual material referred to in section 1 shall be imprisoned for between one month and twelve months and shall be fined between one hundred (€2.48) and one thousand Francs (€24.79).

## **1.8 Prostitution**

The Law of 13/04/1995 similarly replaced Articles 379 and 380 *bis* of the Criminal Code, which were later amended by the Criminal-Law Protection of Minors Act.

Article 379 of the Criminal Code makes it a sexual offence to “*incite, encourage or assist depravation, corruption or prostitution of a minor of either sex for another’s sexual pleasure*”.

Article 380<sup>7</sup> makes it an offence:

- *to entice or detain an adult person, even with his or her consent, with a view to sexual immorality or prostitution for another's sexual pleasure;*
- *to maintain a house of ill-repute or prostitution;*
- *to sell, rent or make available for prostitution rooms or any other premises with the purpose of making abnormal profit;*
- *to exploit in whatever way the sexual immorality or prostitution of another person;*
- *to use, directly or indirectly, fraudulent manoeuvres, violence, threats or any form of constraint;*
- *to take advantage of a person's particular vulnerability on account of his or her illegal or precarious administrative situation, pregnancy, illness, infirmity or physical or mental disability;*
- *to entice or detain for another's sexual pleasure, either personally or through an intermediary, any minor (and not only, as previously, a minor aged under sixteen years), even with his or her consent, for the purpose of sexual immorality or prostitution;*
- *to maintain, either personally or through an intermediary, a house of ill-repute or prostitution in which minors engage in prostitution or sexual immorality;*
- *to sell, rent or make available to a minor, for the purposes of sexual immorality or prostitution, rooms or any other premises with a view to making abnormal profit;*
- *to exploit, in whatever manner, the sexual immorality or prostitution of a minor;*
- *to obtain the sexual immorality or prostitution of a minor by giving, offering or promising material or financial inducements;*
- *to be (voluntarily) present at the sexual immorality or prostitution of a minor.*

### Traffic in women

Belgium has adopted a specific law on the suppression of traffic in human beings: the Law of 13 April 1995 on the suppression of traffic in human beings and child pornography.

The offence of trafficking in human beings is defined in Article 1 of the law. It is not limited to trafficking in human beings for the purpose of sexual exploitation, but deals with trafficking for the purpose of economic exploitation generally.

The principal ingredient in the offence of trafficking is "taking advantage of an alien's particular vulnerability". This is treated as an aggravating circumstance in sexual exploitation, and thus in traffic in women.

### Police action to combat traffic in women

A co-ordinated multidisciplinary policy for combating traffic in human beings has been drawn up and implemented. This co-ordination exists on several levels:

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<sup>7</sup> Previously Article 380 *bis*

## A. Federal level

- a.1 The inter-departmental policy co-ordination unit to combat traffic in human beings (see Crown Decree of 16 June 1995);
- a.2 a policy co-ordination and development role on traffic in human beings has been entrusted to the Centre for Equal Opportunities and the Fight against Racism (an independent public service): Article 11§3 of the Law of 13 April 1995 and the Crown Decree of 16 June 1995;
- a.3 a special mission entrusted to a national judge on combating traffic in human beings and to one of the members of the Board of Principal Crown Prosecutors (see “COL 12”);
- a.4 a central unit within the Central Office of the Gendarmerie (this will become a special unit within the future federal police force);
- a.5 a central office on traffic in human beings within the Aliens Office, with responsibility for co-ordinating and managing the implementation of directives on granting provisional residence permits to victims of traffic in human beings. The Ministry of Justice also issued policy guidelines on investigating and prosecuting traffic in human beings and child pornography on 31 May 1999 (entered into force on 1 September 1999). These:
  - are intended to standardise the approaches adopted by judicial districts and to strengthen co-operation and consultation between the different agencies dealing with traffic in human beings (with improved gathering, sharing and circulation of information);
  - confirm the role of the Principal Crown Prosecutor’s Office, define the role of the liaison member of each district prosecutor’s office, establish priorities in the area of investigation and prosecution, state that the victims’ interests should be taken into consideration and draw attention to the financial and fiscal approach.

## B. Judicial district/Region/locality:

- b.1 Each district prosecutor’s office has a liaison member of staff who specialises in traffic in human beings (there is frequently a similar judge at labour courts);
- b.2 the liaison member organises regular co-ordination meetings in each district with the district police services, with the appropriate inspection services and, at least once a year, with the special assistance and support centres for victims of traffic in human beings;
- b.3 many districts have special police/gendarmerie brigades or welfare-inspection services dealing with traffic in human beings;
- b.4 a special reception centre accommodating, assisting and supporting victims of traffic in human beings (NGO) per Region.

### Procurement

Belgium has adopted an abolitionist approach with regard to prostitution: prostitution is not a crime, but exploitation of it is. Accordingly, the Criminal Code penalises procurement. Trafficking in human beings for the purpose of sexual exploitation may be considered a form of procurement aggravated by the offence of trafficking in human beings.

Under the Law of 13 April 1995 the offence of procurement ceased to apply to a prostitute's spouse living on her earnings. In practice, there are few prosecutions for procurement. The problem of evidence is often raised.

### Measures for assisting exploited women

Belgium has drawn up a humanitarian policy for dealing with the victims of traffic in human beings.

This policy is based on:

- creating/recognising three special reception centres, with NGO status, for assisting and supporting victims of traffic in human beings. The centres arrange psycho-social, medical, administrative and legal assistance for victims;
- provision for granting temporary residence permits to victims of traffic in human beings, plus a work permit and welfare assistance (circulars of 7.07.1994 and 13.01.1997);
- the Law of 13 April 1995 allows the Centre for Equal Opportunities to take part in court proceedings involving offences under the Law of 13 April, and the Crown Decree of 16 June 1995 (Art. 11) provides for an authorisation procedure so that the special reception centres will have the same legal right.

The policy is evaluated annually.

### Repatriation

There is no specific policy on repatriation in cases involving trafficking in human beings. When victims are discovered and repatriation proceedings begun a temporary residence permit is granted. Arrangements for definitive legalisation of residence were also set out in the directives of 7/07/94 and 13/01/97.

Voluntary or forced repatriations (when appeals have run their course) are organised in co-operation with the reception centres and the IOM.

There is no specific naturalisation option for victims of trafficking in human beings. They have access to the same legal provisions as those in force for foreigners who have been legally resident on the territory for a specific period.

### **1.10 Female genital mutilation**

The offence of (ritual) sexual mutilation of women or girls, even with their consent, was introduced into Belgian law (Article 409 of the Criminal Code) by the Criminal-Law Protection of Minors Act, adopted by the Senate on 16 November 2000.

### **1.11 United Nations Conventions**

Belgium has ratified the Convention on the Elimination of all Forms of Discrimination Against Women, as well as the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others.

## **3.0 Effectiveness of legislation**

### Extension of the extra-territorial jurisdiction of Belgian courts

Any person, Belgian or not, who is apprehended in Belgium and has committed the offences of indecent assault or rape of a minor (any minor, and not just a minor aged under 16, as previously), or sexual mutilation of a minor in another country may now also be prosecuted in Belgium. Currently they may be prosecuted for exploitation of sexual immorality, prostitution, pornography or trafficking in human beings.

## **3.2 Role of non-governmental organisations in legal proceedings**

Under the Law of 24/11/1997 on domestic violence, *“any charitable corporation or any association which has possessed legal personality for at least five years at the date of the facts and whose aims, as stated in its statutes, are to prevent spousal violence by appropriate dissemination of information and to provide assistance to the victims of spousal violence and their families, may, with the victim’s agreement, take part in legal proceedings under Article 401, paragraph 3 of the Criminal Code.”* The victim may withdraw at any point; this has the effect of ending the proceedings.

### Special support to women and girls in giving evidence

The measures described below concern the provisions adopted as regards the various institutional parties with a view to encouraging victims to give evidence.

### Reception of victims

Article 46 of the Law of 5/08/1992 (Police Work Act) requires the police to “provide assistance to the victims of crime, in particular by providing them with any information necessary”.

Article 46 has been supplemented by instructions in a circular from the Ministry of the Interior. This states that assistance to crime victims consists in giving practical help,

providing information and guiding the victims towards specific bodies for help or assistance.

Members of the gendarmerie and the police are issued with an information file on police assistance to victims of violence and attend a basic instruction course on violence. Some police stations have received grants for installing suitable reception facilities where victims of violence can be attended to and questioned in a calm environment. In order to qualify for the grant, a station must have put a member of its staff through the necessary training in specialised interview techniques for questioning victims.

A 1996 agreement provides for equipping gendarmerie stations with this kind of reception facility and for special training.

#### Improved reception of victims in prosecutors' offices and courts

Victim reception services at prosecutors' offices were introduced in 1993 and since 1/01/1996 each judicial district has also had such a service.

On 30/08/1996, the federal government instituted "legal services centres", one per judicial district, to improve the efficiency of justice, develop a human approach and improve access to paralegal services.

Since 1997, the training programme for judges and prosecutors has included special training on physical and sexual violence. In 1998, this training was added to the basic programme for trainee judges so that all trainees in the country now receive such training.

#### The Sexual Assault Kit (SAK)

The Sexual Assault Kit is a tool for proper judicial investigation of alleged sexual offences. It is intended to avoid secondary victimisation of the victim by ensuring that he or she is considerately treated by the police, the gendarmerie, the forensic medical examiner and the prosecutor's office. In addition to all the above-mentioned recommendations and directives, the SAK contains carefully chosen medical instruments, specially designed for collecting evidence of sexual violence. This evidence enables the offence, and the suspect's guilt or innocence, to be scientifically demonstrated. Accordingly, the medical examination follows a standard challenge-proof procedure so that the victim does not have to undergo any further examination. Another advantage is that victims are less frequently called as witnesses during the trial. The information from the police report, the medical report and analysis of the medical evidence is considered sufficient.

After the statement procedure, victims also receive an information guide on how their complaint will be dealt with and the organisations that they can contact for additional assistance. This recognises victims' need to be informed about the criminal procedure.

## Medical certificates

Victims often contact doctors because they require health care not only for physical injuries but also for psychosomatic problems resulting from the violence that they have experienced. Doctors are asked to inform victims of their rights, encourage them to report offences and collect evidence, within the limits of their powers. A booklet and model medical certificates have been designed for this purpose. If patients do not want to make a complaint, the doctor may nevertheless, with their agreement, complete a medical form that patients may use if they decide to make a complaint later.

In addition, the Criminal-Law Protection of Minors Act has legalised the use of recorded examination of under-age victims or witnesses in criminal proceedings concerning sexual offences or serious abuse, and, where a minor is required to appear personally, the use of video-conferencing.

### **3.1 Main problems and new solutions**

Encouraging victims of violence to act, defy the taboos and speak up and providing them with the information to help them do this is a basic problem. While previous programmes were more focused on the services dealing with victims, an awareness-raising campaign<sup>8</sup> was developed in 1999 for the victims themselves. The campaign's message was "Don't put up with violence! Break the silence before it breaks you". It was targeted at young people and adults, men and women. The campaign leaflet tells victims what organisations they can contact.

Another problem is the shortage of reception and support facilities and encouraging women to use them. Provision exists in Belgium and an evaluation update is currently being carried out at federal level. Documentation has been produced to provide victims with the best possible guidance. *Inter alia*, the material explains what violence covers, reviews the legislation, offers advice on how to react in certain violent situations and gives addresses of aid organisations at regional level and information about the facilities and assistance provided. The guides are updated regularly and are available on the Ministry of Employment and Labour web-site and elsewhere.

Assistance may be divided into "drop-in" and residential. "Drop-in" social-welfare provision includes:

- "first-aid" posts for making statements and receiving information, advice and guidance;
- support: therapy, discussion groups, long-term care, group activities;
- welfare activities: training, information for the wider public, awareness-raising.

Residential welfare assistance includes private juvenile-welfare institutions, reception centres for children, reception centres for women, and refuges. A refuge is an unmarked

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<sup>8</sup> Posters in stations, advertisements in cinemas and on television, leaflets in post offices and pharmacies.

house which provides accommodation for abused women and their children and which applies strict confidentiality rules; this gives victims safe haven and support, making it more realistic for them to leave their partners.

Finally, it is crucial to assess the difficulties regularly and co-ordinate the solutions. The National Forum on Victim Assistance was set up to do this in 1996. The forum brings together six ministries and nine other bodies representing the federal level and the federated entities. Among other things it has drawn up a victim's charter, a key document for victims' rights. It is also important to have a clear, up-to-date picture covering prosecutions and sentences, and Belgium is developing improved judicial statistical tools which in turn will help improve provision.

A network of co-ordinators on violence against women exists at provincial level. Their task is mainly to provide information for the agencies dealing with victims (the police, justice system, medical and social assistance) and to make them aware of the various forms of assistance that have been developed.

Other activities at regional level are aimed at reducing the potential for violence. They are part of the fight against repeat offending – averting sexual reoffending by helping offenders to control their deviant sexual behaviour. Therapy is provided for all types of sexual offending: rape, incest, paedophilia. Offenders attend of their own accord, or with the encouragement of family or friends, or under a probation order.

The Law of 13/04/1995 on sexual abuse of minors makes release from prison conditional on attending counselling or therapy. In addition, under the Law of 5/03/1998 on conditional release, such release requires a prior opinion from a specialist counselling and treatment service for sexual offenders and sets out the arrangements for supervision of and support to sexual offenders.

### **3.4 Violence against women – an obstacle to equality**

Action on violence has been incorporated into policy on equal opportunities. Equally, as noted under the section on it, sexual harassment is automatically treated as a form of sex discrimination for purposes of the 1999 act.

### **3.9 Refugee status**

In the granting of refugee status, Belgium applies the 1951 Geneva Convention on the status of refugees. This does not specifically list gender as a factor in persecution. In practice, however, the Belgian institutions responsible for examining asylum requests interpret the Geneva Convention in a broad manner.

Well-founded fear of gender-based persecution may be accepted under the heading of membership of a particular social group, as referred to in Article 1 (A)2 of the convention. Refugee applicants alleging serious persecution on the sole basis of their

female gender are then treated as a social group and their asylum requests may be granted on that basis.

## **BULGARIA**

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Information taken from a summary of Bulgarian legislation.

### **Introduction**

The principle of equality of rights of all Bulgarian citizens was incorporated into the constitution in 1991 and this has been subsequently elaborated in domestic legislation. Bulgarian penal law is based on the principle of equality of all before the law, and equal opportunity to defend these rights in court should they be violated. Thus the Bulgarian penal code provides a basis for combating violence against women and men.

### **1.1 Legislation Relating to Violence Against Women**

The constitution guarantees all individuals the right to life and attempts upon human lives are deemed very serious crimes. Crimes against the person include murder, which carries a sentence of between 10 and 20 years imprisonment; and infliction of bodily harm is punished with sentences of between 3 and 10 years, depending on the severity of the victim's injury.

Rape and forced prostitution are the only forms of gender based violence recognised in law. Apart from these there are no laws specifically prohibiting violence against women.

### **1.2 Domestic Violence**

Included in the generic "crimes against the person". However the summary also refers to "*violence in the family*", and recognises that its victims are the weaker members of the family, namely women and children. It is recognised that this area is one of the most difficult to monitor as it is usually not reported, the victims remaining silent.

### **1.3 Rape/Sexual Assault**

Rape of a person of the female sex is criminalised – sanction: 3-10 years imprisonment. The draft new penal code envisages raising the upper limit.

### **1.4 Child Sexual Abuse/Incest**

The sexual abuse of any person under 14 is criminalised - sanctions: up to 3 years imprisonment; rising to up to 5 years when force is used; and from between 1 and 6 years, if advantage is taken of the victim's helplessness, or the victim is reduced to such a condition or if this a repeat offence, or it is a particularly grave offence.

## **1.8 Prostitution**

The proposed sanctions for forced prostitution are between 3 and 10 years for forcible prostitution of women and minors, or for using premises for this purpose. The new draft penal code includes provisions for pimps.

### **1.11 International Conventions**

Bulgaria is party to the International Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of others.

The Bulgarian Constitution provides that the international instruments which Bulgaria is party to shall be considered part of domestic legislation and shall supersede any domestic legislation.

### **1.13 Protection of pregnancy**

Bulgaria has special provisions to protect pregnant women from violence i.e. abortion outside licensed health establishments. The sanction is 3-5 years imprisonment, if offenders have had no higher education or have put to death the foetuses of 2 or more women or such acts have been committed for a second time. Abortion without the consent of the mother carries a sanction of 2-5 years imprisonment and if as a consequence the death of the pregnant woman follows, the sanction is increased to between 3 and 10 years.

## CROATIA

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Information provided by the Commission of the Government of the Republic of Croatia for the Issues of Equality in May 1999 and in November 2000.

### 1.1 Legislation on Violence Against Women

The adoption of the new Criminal Act (abbr. "CA") that came into force on 1 January 1999 brought some changes to the Croatian legal system affecting to some extent the position of women as well.

The law regulates the criminal offence of racial and other discrimination (Article 174, paragraph 1 of the Criminal Acts reads: "Whoever violates fundamental human rights and freedoms recognised by the international community on the basis of race, gender, colour, nationality or ethnic origin shall be sentenced to imprisonment from six months to five years."). It therefore provides for the principle of prohibition of discrimination, including gender-based discrimination proclaimed by the Constitution of the Republic of Croatia.

Changes were also made to the group of criminal offences which were, by the adoption of the Criminal Act called "criminal offences against dignity and morality" and which are now classified as "criminal offences against sexual freedom and sexual gender distinction (i.e. in the description of such offences men were pre-determined as perpetrators and women as victims). Such principle was abandoned and the principle of gender neutrality was adopted meaning that now both a man and a woman may appear both as perpetrator and as victim of a criminal offence.

Several amendments to the legislation concerning violence against women are, during 2000/2001, in the process to be passed.

### 1.2 Domestic Violence

In the Republic of Croatia there is no separate law that would regulate the issue of domestic violence. The provisions of the Criminal Act and the Family Act regulate these matters.

Chapter XVI of the Criminal Act contains a group of offences jointly referred to as "Criminal offences against Marriage, Family and Youth." This group of offences includes the following offences: bigamy (Art. 206 CA), enabling the conclusion of an illicit marriage (Art. 207 CA), violating family obligations (Art. 208), non-compliance of maintenance obligations (Art. 209 CA), removal of a child or minor (Art. 210 CA), change of a family situation (Art. 211 CA), abandoning of a child (Art. 212 CA), abuse and neglect of a minor (Art. 213 C), cohabitation with a minor (Art. 214), prevention and failure to implement measures for the protection of a child or a minor (Art. 215). The sentences range from a fine

(e.g. for non-compliance of maintenance obligations) to a five-year prison sentence (e.g. grievous bodily harm inflicted on a child minor).

Article 118 of the Family Act (III Part - Protection of Rights and Welfare of the Child) specifies that: "*Violent behaviour of a spouse or of any adult member of a family shall be prohibited.*" Violation of this article is sanctioned by Art. 362 of the Family Act with 30 days imprisonment.

### 1.3 Rape/Sexual Abuse

The principle of neutrality also applies to the criminal offences of rape defined in Art. 188 of the CA, sexual intercourse with an incapacitated person (Art. 190 CA), and sexual intercourse as a result of abuse of authority (Art. 191 CA).

Rape, Art. 188:

*(1) Whoever forces another person into sexual intercourse or into any other equalised sexual act, either by use of force or by making threats to that person's life and health or to the life and health of a person close to him/her shall be sentenced to imprisonment from one to ten years.*

*(2) Whoever commits a criminal offence referred to in Paragraph 1 above in a particularly cruel or humiliating way, or if the same victim was forced into several sexual intercourses or any other equal sexual acts by several perpetrators shall be sentenced to imprisonment of at least three years.*

*(3) If the criminal offence referred to in Paragraph 1 above resulted in the death of the raped person or in grievous bodily harm inflicted on him/her or in serious damage to his/her health, or if the raped female person got pregnant as a result of the rape, the perpetrator shall be sentenced to imprisonment of at least three years.*

*(4) If the criminal offence referred to in Paragraph 2 above resulted in the consequences referred to in Paragraph 2 above, the perpetrator shall be sentenced to imprisonment of at least five years.*

*(5) If the perpetrator is married to the person who is the victim of a criminal offence referred to in Paragraph 1 above, the criminal proceedings shall be instituted on motion.*

Sexual intercourse with an incapacitated person, Art. 189

*(1) Whoever has sexual intercourse or any other equal sexual act with a person taking advantage of his/her mental illness, mental derangement, inadequate mental development, another serious mental disturbance or any other state making the victim unable to offer resistance, shall be sentenced to imprisonment from six months to one year.*

*(2) Whoever commits a criminal offence referred to in Paragraph 1 above in a particularly cruel or humiliating way, or if the same victim was forced into several sexual intercourses or any other equal sexual acts by several perpetrators shall be sentenced to imprisonment from six months to ten years.*

*(3) If the criminal act referred to in Paragraph 1 above resulted in the death of the person subjected to sexual intercourse or to any other equal sexual act or in grievous bodily harm inflicted on him/her or in serious damage to his/her health, or if the female victim got pregnant as a result of the offence, the perpetrator shall be sentenced to imprisonment from one to ten years.*

*(4) If the criminal offence referred to in Paragraph 2 above resulted in the consequences referred to in Paragraph 3 above, the perpetrator shall be sentenced to imprisonment of at least three years."*

#### Forced sexual intercourse, Art. 190

*Whoever forces another person into sexual intercourse or any other equal sexual act by serious threats with a particularly grave harm shall be sentenced to imprisonment from three months to five years.*

#### Sexual intercourse as a result of abuse of authority, Art.191

*(1) Whoever, by means of abuse of his/her authority, forces another person into sexual intercourse or to any other equal sexual act, such another person being in a relationship of dependency because of his/her difficult material, family, social, health situation or other difficult situation or circumstances, shall be sentenced to imprisonment from three months to three years.*

*(2) Any teacher, educator, parent, adoptive parent, guardian, step-father, step-mother or other person who, by means of abuse of his/her authority or relationship towards him/her forces an under-age person placed in his/her care for the purpose of teaching, educating, warding or attendance into sexual intercourse or into any other equal sexual act, shall be sentenced to imprisonment from six months to five years."*

### **1.4 Child sexual abuse/Incest**

The group of criminal offences against sexual freedom and sexual morality in the Criminal Act includes the following offences: sexual intercourse with a child (Art. 192 CA), acts of indecency (Art. 193 CA), satisfaction of lust in front of a child or a minor (Art. 194), procuring (Art. 195 CA), exploitation of children or minors for pornography (Art. 197 CA), incest (Art. 198 CA).

Sexual Intercourse with a child, Art. 192

*(1) Whoever commits sexual intercourse or any other equal sexual act with a child, shall be sentenced to imprisonment from one to eight years.*

*(2) Whoever commits forced sexual intercourse or any other equal sexual act with a child (Art. 188, par. 1) or with an incapacitated child (Art. 189, par. 1), shall be sentenced to imprisonment of at least three years.*

*(3) Whoever commits, by means of abuse of his/her authority, sexual intercourse with a child, shall be sentenced to imprisonment from one to ten years.*

*(4) Whoever commits a criminal offence referred to in Paragraph 1, 2 and 3 above in a particularly cruel or humiliating way, or if the same victim was on the same occasion subjected to several sexual intercourses, or any other equal sexual acts by several perpetrators, shall be sentenced to imprisonment of at least five years.*

*(5) If the criminal offence referred to in the Paragraphs 1, 2 and 3 above resulted in the death of the child or in grievous bodily harm inflicted on the child or in serious damage to the child's health, or if the female child got pregnant as a result of the offence, the perpetrator shall be sentenced to imprisonment of at least five years, or to long-term imprisonment.*

Acts of Indecency, Art. 193

Whoever, in cases referred to in Art. 188 to 192 of this Act when such offences were even not attempted at all, commits just an act of indecency, shall be sentenced to imprisonment from three months to three years.

Satisfaction of lust in front of a child or a minor, Art. 194

Whoever, in front of a child or a minor, performs actions intended for satisfaction of his/her or another person's lust, or whoever incited a child to perform in front of him/her or another person such actions, shall be sentenced to imprisonment from three months to three years.

Procurement, Art. 195

*(1) Whoever, for the purpose of gaining profit, arranges or makes possible to another person, the provision of sexual services, shall be sentenced to a fine or imprisonment of no more than one year.*

*(2) Whoever, for the purpose of gaining profit, by means of force or threats or false pretences, forces or persuades another person to provide sexual services, shall be sentenced to a fine or to imprisonment of no more than three years.*

*(3) If the offence referred to in Paragraph 1 and 2 above is committed with a minor, the perpetrator shall be sentenced to imprisonment from six months to five years.*

*(4) If the offence referred to in the Paragraphs 1 and 2 above is committed with a child, the perpetrator shall be sentenced to imprisonment from one to eight years.*

*(5) It shall be irrelevant for an offence from this article whether the person procured has already engaged in prostitution or not.*

Exploitation of children or minors for pornography, Art. 196

*(1) Whoever takes photographs of a child or a minor, or exploits them as objects for making audio-visual material, or other articles of pornographic nature, or sells, distributes or releases such material, or induces a child to participate in a pornographic show, shall be sentenced to imprisonment from one to five years.*

*(2) The articles and resources referred to in Paragraph 1 above shall be seized.*

Familiarising a child with pornography, Art. 197

*(1) Whoever sells, gives, shows, makes available by public presentation or otherwise texts, pictures, audio-visual or other articles of pornographic nature to a child or performs a pornographic show to such child, shall be sentenced to a fine or imprisonment of no more than one year.*

*(2) The articles and resources referred to in Paragraph 1 above shall be seized.*

Incest, Art. 198

*(1) Whoever has sexual intercourse or performs an equal sexual action with a blood relative of direct line or with the brother or sister, shall be sentenced to a fine or imprisonment of no more than one year.*

*(2) Whoever commits the offence from Paragraph 1 above with an under-age person, shall be sentenced to imprisonment from six months to five years.*

*(3) Whoever commits the offence from Paragraph 1 above with a child, shall be sentenced to imprisonment from one to eight years.*

## **1.8 Prostitution**

Article 178 of the Criminal Act regulates the criminal offence of international prostitution:

*(1) Whoever persuades, procures or encourages another person to provide sexual services for the purpose of gaining profit in a state other than the state whose resident or national the said person is, shall be sentenced to imprisonment from three months to three years.*

*(2) Whoever, by means of force, threats or false pretences, forces or makes another go to a state in which he/she does not have residence or nationality for providing sexual services for appropriate charge, shall be sentenced to imprisonment from six months to five years.*

*(3) If the offence referred to in Paragraph 1 and 2 above is committed against a child or a minor, the perpetrator shall be sentenced to imprisonment from one to ten years.*

*(4) It shall be irrelevant for the existence of a criminal offence referred to in this Article whether the person being persuaded, procured, encouraged, forced or induced by false pretences to prostitution has already engaged in such activities or not.*

### **1.13 Protection of pregnancy**

Art. 97 CA states:

*(1) Whoever, in violation of regulations on termination of pregnancy, assists a pregnant woman, with her consent, to start performing an abortion, performs an abortion on her or assists her in performing an abortion, shall be sentenced to imprisonment from six months to three years.*

*(2) Whoever starts performing or performs an abortion on a pregnant woman without her consent, shall be sentenced to imprisonment from one to eight years.*

*(3) Whoever commits an offence referred to in Paragraph 1 above after the tenth week from conception, shall be sentenced to imprisonment from six months to five years.*

*(4) Whoever commits an offence referred to in Paragraph 2 above after the tenth week from conception, shall be sentenced to imprisonment from three to ten years.*

*(5) If the offences referred to in Paragraphs 1 and 2 above resulted in the death or in severe damage to the health of the women concerned, the perpetrator shall be sentenced to imprisonment from one to eight years.*

*(6) If the offences referred to in Paragraphs 3 and 4 above resulted in the death, or in severe damage to health of the women concerned, the perpetrator shall be sentenced to imprisonment of at least five years.*

## CYPRUS

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Information provided by the Ministry of Justice and Public Order in November 2000.

### **Introduction**

Under the law dealing with violence there is no discrimination between men and women and protection towards children victims is reinforced.

In Cyprus women enjoy equal protection of the law and have equal rights with men for work of equal value. (Equal Pay between Men and Women for Work of Equal Value, Law No. 158 of 1989). Women also have the same rights as men to property, inheritance and family income. (Spouses Property Relation, Law 232 of 1991) Moreover, men and women alike have the same rights regarding causes for divorce.

### **1.1 Legislation Relating to Violence Against Women**

Cyprus is one of the few countries to have enacted a law dealing specifically with domestic violence. The main aims of the law are to condemn as any act of violence within the family and express its abhorrence for such inhuman behaviour by raising substantially the penalties provided by law for ordinary acts of violence. However, the main object of the law is to provide protection to victims (married persons and children) by excluding the offending party from the marital home.

In 2000, a new law on Violence in the Family (Prevention and Protection of the Victims) was adopted.<sup>9</sup>

### **1.2 Domestic Violence**

In 1994, a law was enacted for the prevention of domestic violence and the protection of victims. Soon after the enactment of the law certain difficulties were encountered in the implementation of the law and a process started for its amendment. An amending bill was prepared in which a number of new provisions were included, such as to take the victim's statement by electronic means, to use such statements as the evidence of the witness in chief which was subjected to cross-examination, the setting up of a fund for financial assistance to victims and witnesses, both in the court and outside. However, when the amending bill was sent to the House of Representatives, it was held that it would be better, owing to the extensive amendments proposed, to prepare a new law to repeal and replace the old law. Thereafter, a new bill was prepared which was enacted in July 2000.

The new law has been completely restructured. Briefly, part II deals with the meaning and the scope of violence and part III with the appointment of family counsellors and

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<sup>9</sup> Law No. 119(1)/2000

committees. Part IV introduces new provisions regarding the taking of statements by the use of audiovisual electronic means. Statements obtained by the use of these means may be produced in evidence without any need to re-examine the witness in chief, which, however, is available for the other side for cross-examination. Part V contains provisions for speedy trial and for the protection of the witness from harassment or intimidation.

Section 17 deals with the admissibility of the evidence of a psychiatrist to whom a child patient during psychiatric treatment refers to incidents of ill treatment by any person. Such evidence requires, however corroboration by independent evidence. It is a new provision and it constitutes an exception to the hearsay rule.

Under section 18, the court is empowered to provide protection to victims and witnesses of violence by taking their evidence in such a way as to direct confrontation with the accused, but without depriving the accused of his right to examine the witness. The use of screens, close circuit television links and other means producing the same effect may achieve this.

Under section 19, the court may interfere and give directions regarding the mode of cross-examination with the view to avoid bullying the witness.

Section 19 and 20 make the spouse a compellable witness if the victim of domestic violence is another member of the family. It is interesting to note that in an indirect way, the spouse is a compellable witness even when the violence is directed against the spouse and this is done in the presence of children, because in such a case the violence is deemed to be exercised against the child.

Sections 21 to 25 deal with the issue of restraining orders. These provisions were carried forward from the old law.

Part VII contains new provisions regarding the establishment of a fund for assistance to victims of violence.

Section 31 and 32 provide for the establishment and operation of shelters for victims. Any person who harasses a person residing in a shelter commits an aggravated offence and is sentenced to up to 5 years of imprisonment. If the harassment or intimidation of a victim of violence or of a witness of domestic violence takes place elsewhere, the harassment or intimidation constitutes an offence punishable with 3 years of imprisonment.

Finally, it is an offence under section 34 to disclose the identity of the victim or of the offender that may lead to the identification of the victim. This is an absolute prohibition and covers practically any person who acts contrary to the provision in this section.

#### **1.4 Child Sexual Abuse/Incest**

When committed against a female child of the family, this is criminalised by s6 of the Family Violence Law:

*"when committed against a daughter, granddaughter or sister under the age of 18 or against a mentally retarded daughter, granddaughter or sister"*

The latter has no age limit. Sanction: life imprisonment.

The offence of incest is currently under revision. Under a draft law for the amendment of the Criminal Code the offence would be extended to cases, which are now outside the existing law. Under the Criminal Code (section 145) the offence of incest is only committed by a man against his granddaughter, daughter, sister and mother.

## **1.8 Prostitution**

The number of migrant workers has increased during the recent years and the Government is taking the necessary measures to prevent exploitation of such workers. In the draft law under consideration for the prevention of exploitation of women and children, there is a specific provision regarding the rights of women artists who are forced into prostitution by their employers.

## **1.10 Female Genital Mutilation**

Genital mutilation is unknown in Cyprus. However, a specific provision will be made in a new law under preparation aiming to protect women and children from exploitation. The express prohibition of such cruel and inhuman practices would amount to a condemnation by the Republic of such practices.

## **1.11 International Conventions**

Cyprus has ratified all international human rights instruments. There were no reservations in the ratification of the Covenant on the Elimination of All Forms of Discrimination against Women.

## **2.0 Sentencing**

### **2.1 Sentencing Domestic Violence**

The Violence in the Family Law 1994 lists offences stating that when they are committed within the family, they are treated as particularly aggravated and consequently the penalty contained in the penal code may be increased to reflect this. The table below indicates this change in (presumably) the maximum sentence (This table provides limited information regarding sentencing regarding violence against women in other contexts).

Indecent assault on females	Increase 2 -> 5 years imprisonment
Indecent assault on males	Increase 2 -> 5 years imprisonment
Defilement of girls under 13 years	Remains life imprisonment
Attempted defilement of girls under 13 years	Increase from 3 ->7 years imprisonment
Defilement of girls 13 - 16 years	Increased from 2 -10 years imprisonment
Defilement of idiot or imbecile (sic)	Increased from 2 -12 years imprisonment
Unnatural offence	Increased from 5 -10 years imprisonment
Unnatural offence with violence	Increased from 14 years to life imprisonment
Attempted unnatural offence	Increased from 7 -10 years imprisonment
Grievous bodily harm	Increased from 7 -10 years imprisonment or to the fine or both
Common assault	Increased from 1 -12 years imprisonment or to the fine or both
Wounding and similar acts	Increased from 3 -4 years imprisonment
Rape	As above
Incest committed against daughter, granddaughter or sister under the age of 19 years or against a mentally retarded daughter, granddaughter or sister	Prison for life

### Suspended sentences and probation

The court however may suspend sentences and specify a supervision order - see below.

The court also has the power, with the permission of the accused, place him on probation *"with the requirement that he shall submit himself to treatment for self control by specialists to such behaviour or with other requirements as the court may consider necessary for preventing the repetition of such acts of violence" s7.*

## **3.1 Support/Protection**

### Inhibition orders

Inhibition orders may be made against a person accused of an offence of violence that orders him not to enter or stay in the marital home in the following circumstances:

- He has a history of repeated acts of violence against members of his family or at least has 2 convictions in the last 2 years for similar offences;
- The violence caused such actual, physical, sexual or psychological injury to endanger the life, corporal integrity or sexual or psychological health of the victim; or
- The accused refused to submit himself to treatment for self-control as required.

The conditions of an inhibition order may be varied at an enquiry hearing in which all parties affected by it may make representation; the accused may apply for its revision or

revocation. If the accused owns more than half the property, the court inquires into accommodation for the accused. If he owns less than half, this is delegated to a family counsellor.

### Corroboration

The reporting of the attack to an appropriate person within 24 hours of the attack constitutes corroboration of the victim's evidence. Appropriate persons include: a police officer; family counsellor; welfare officer; doctor who examines the victim; member of the advisory committee; member of the Association of the Prevention of Violence in the family; any member of the close environment of the victim.

### Criminal process

The court, upon application by police, may issue a warrant for the arrest of anyone accused of violence as defined in the Act. The accused is brought before the court to be charged within 24 hours or to issue a remand order. Investigation and trial follow without delay. The court may, before the trial, either direct the detention or release on surety of the accused or his compliance with any terms the Court imposes for the protection of members of his family including an order prohibiting him from visiting or harassing any member of his family.

The Attorney General may consent to trial by a senior court, despite the fact he may not face a seven-year sentence - the usual criteria.

### Ordering a child victim to leave the home

During the trial of violence against a minor, the court may order the minor to leave the home and reside at a place of safety. An interim order may be applied for by police, prosecutor, family counsellor, or by any person acting on the child's behalf or sworn statements by the victims. It lasts until the case is determined.

### Witness protection

Under the new Law dealing with Domestic Violence, a victim may with confidence report the case to the family counsellor who would take all measures and steps for bringing the case before the court.

The court may order that the evidence of the victim or witnesses may be heard in camera, or that the whole trial may be, or may give such directions necessary for the protection of victims or other persons without prejudicing the accused's rights to a fair trial.

No information may be published in the press that would lead to the identification of the victim.

Family Counsellors, are appointed:

- To receive complaints of violence and carry out investigations;
- To advise, counsel, and mediate any problems in the family that are likely to lead to, or have led to, the use of violence;
- To make arrangements for an immediate medical examination of the complainant;
- To take all necessary steps for the commencement of criminal proceedings against the perpetrator;
- To carry out investigations into the accommodation/financial affairs of the family and the perpetrator, if an inhibition order is being considered;
- To carry out any other function assigned.

Family counsellors may seek the protection of the police/any government officer in carrying out their duties. In carrying out investigations, family counsellors have the same powers as investigating police officers.

The family counsellor may take advice from the multidisciplinary group when an act of violence against a person under 18 is reported.

#### Multidisciplinary Advisory Committee

Established under this Act for the prevention and combat of violence in the family, the committee's remit is to:

- Monitor the problem of violence in the family in Cyprus;
- Inform and enlighten the public and professionals using the media, conferences, seminars and re-education programmes;
- Promote research;
- Promote services necessary to deal with all aspects of violence in the family;
- Monitor the effectiveness of related services and the application and enforcement of the relevant legislation.

The committee members have knowledge and experience in matters relating to violence in the family and are selected from public and private sectors. Ministry of Health, Justice and Public Order, Social Welfare, Legal Service and Police select appointees from the public sector. Private sector appointees are selected by associations/organisations involved in combating family violence. In cases where the

victim is under 18, the committee will include a child psychologist, a pediatrician, a clinical psychologist, a welfare officer and any other persons possessing qualification considered necessary.

### Training of the police

Members of the police are being trained to deal with special cases and to understand reported cases of domestic violence. In fact such cases are, where possible, referred to women.

The major objective of the training programmes is to increase the participants' capabilities to assist women and children victims of violence and/or rape, and to advance their knowledge and skills in the handling of such cases. Topics covered in these courses include the following:

- Assisting/treating rape victims
- Assisting/treating women victims of violence
- Assisting/treating abused children
- Visits to other related agencies
- Victimology
- The relevant laws and their enforcement
- Domestic violence: causes, cycle, effects, characteristics of victims and victimizers, prevention, myths and reality
- Abnormal behaviour

All courses are presented by professionals in their respective fields (sociologists, psychologists, criminologists, lawyers, psychiatrists, and social workers).

During each training programme great effort is taken to demystify the stereotypical perceptions held by participants with regard to violence against women and children. This is achieved through a gradual process that includes introduction, suggestion, challenge, and confrontation. A pre- and post-training attitude questionnaire is administered to monitor any attitudinal or other learning changes. Although in class experiences indicate some levels of resistance, information collected from independent non-police agencies that are concerned and involved with violence against women and children indicate significant improvements both in attitudes as well as in assistance and treatment provided in such cases.

A “miniature” (ten hours) training session on domestic violence has been designed and incorporated in basic police training curricula in the Cyprus Police Academy.

Although police personnel are instructed not to mediate between the parties in cases of domestic violence, knowing and teaching basic mediation techniques is believed to be a useful social skill that could be utilised in the future as part of the healing process in some cases. Therefore, the police of Cyprus have invested in the mastery of mediation skills by some of its personnel.

Police officers are instructed to investigate each case thoroughly and in great detail, and to always seek corroborating evidence. Due to the nature of most incidences of violence against children and women, all reasonable measures are taken to provide and secure privacy. In cases of domestic violence against a spouse, police are advised to refrain from asking direct questions about the causes of the violent behaviour (e.g. "What did you do to your spouse that triggered the violent response?"); instead, they are advised to ask more general questions (e.g. "What happened between you two?") that can elicit the same information without indirectly blaming the victim.

Violence against women is of great importance to the police of Cyprus at the top level. Internal police circulars memoranda which remind and instruct police personnel on how to deal with cases of violence against women have been /are issued by the Chief of Police.

The most recent circular was issued by the Chief of Police in October 1997 and focused on domestic violence. The note highlighted the basic and most important elements of the relevant legislation, and instructed police personnel to follow a set of guidelines whenever dealing with cases of domestic violence. The major points of the guidelines mentioned in the note are the following:

- Immediate response and priority to cases of domestic violence
- Respect and secure privacy of the victim, and be very sensitive concerning confidentiality
- Provide for medical support and examination
- Collection of corroborating testimony and other evidence
- Cooperation with victim support services to arrange a shelter for the victim if necessary
- Be objective and neutral. Avoid forcing the victim (or imposing on, or suggesting to the victim) as to what course of action should be taken (e.g. file a complaint or simply warn the offender/victimizer)
- Attention paid to the offence committed and not to the triggering event (excuse)
- Refer the victim to the Social Welfare Department, to a telephone hotline operated by the Association for Prevention and Response to Domestic Violence, and to other agencies or specialists.
- Refrain from "playing" family counsellor, psychologist, social worker, or mediator
- Inform the victim about her rights and give options and alternative routes of action
- Respect the victim's decision

The underlying strategy behind these directions is that the police officer's role in such cases is to broaden the victim's horizons by providing new additional information, and to empower the victim by offering so-called "psychological first aid".

### Support services

The police of Cyprus co-operates with the Association for Prevention and Response to Domestic Violence that operates a twenty-four hour telephone hotline, and can provide temporary shelter for women.

The family ties in Cyprus are still very strong and the likelihood of a woman being rendered homeless because she is ill treated by her husband is very remote. However in the event of such a case, the Social Services would find a safe place for her to stay, if she cannot stay with relatives or if she has no relatives.

## CZECH REPUBLIC

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Information provided by the Ministry of Foreign Affairs in November 2000.

### 1.1 Legislation Relation to Violence Against Women

There is no specialised legislative instrument governing violence against women. Protection of personal integrity against violent attacks is laid down in law. The protection of women is an integral part of criminal law, social and family law, and the civil code.

As a response to a general rising crime rate, the criminal law and crime prevention programmes are being gradually overhauled. One concern in the overhaul is women as victims of crime.

### 1.2 Domestic Violence

Domestic violence is not a Czech legal term and is included under the protection of personal integrity against violent attacks and freedom of movement.

A typical crime committed within the family or household and motivated by a sexual or other personal relationship is *murder* under Section 219, paragraph 1 of the Criminal Code:

*“A person who intentionally kills another person shall be liable to imprisonment for a term of ten to fifteen years.”*

Paragraph 2 enumerates aggravating circumstances that justify tighter sanctions:

*“The offender shall be liable to imprisonment for a term of twelve to fifteen years or to an exceptional penalty if he commits the act defined in paragraph 1*

- (a) against two or more persons,*
- (b) in a particularly cruel or torturous manner,*
- (c) repeatedly,*
- (d) against a pregnant woman,*
- (e) against a person below the age of fifteen years,*
- (f) against a public official in the course of the execution of his official duties or for reasons connected with the execution of his official duties,*
- (g) against another person for reasons of race, nationality, political opinion, religion or because the person has no religion, or*
- (h) with the intention to obtain considerable gain or to conceal or facilitate another crime, or for any other particularly condemnable reason.”*

“*Particularly cruel*” murder means an uncommonly brutal assault, with prolonged agony and excessive injuries. The murderer may use several instruments or mechanisms to make the victim suffer as much as possible. The “particularly cruel” classification is the method of commission.

Unlike the term “particularly cruel” which characterises the actions of the murderer, the term “*particularly torturous*” characterises the feelings of the victim, namely the particularly strong and increasing suffering due to starvation, thirst or slow strangling. Both terms are not mutually exclusive; certain murders have been classified as “particularly cruel” as well as “particularly torturous.”

Statistics show that most victims of murder motivated by personal relations are women aged eighteen years and over.

Another crime typically committed within the family or household (related family members and unrelated persons residing together in a household) is *bodily harm* under Sections 221 and 222 of the Criminal Code:

- “(1) *A person who intentionally injures another person shall be liable to imprisonment for a term not exceeding two years.*
- (2) *The offender shall be liable to imprisonment for a term of one year to five years, ...*  
*c) if by such an act he causes grievous bodily harm.*
- (3) *The offender shall be liable to imprisonment for a term of three to eight years, if by the act defined in paragraph 1 he causes death.” (Section 221)*
- “(1) *A person who intentionally causes grievous bodily harm to another person, shall be liable to imprisonment for a term of two to eight years.*
- .....
- (3) *The offender shall be liable to imprisonment for a term of five to twelve years if by the act defined in paragraph 1 .... he causes death.” (Section 222)*

The offenders are typically tried for combined charges of bodily harm and *maltreatment of a ward* under Section 215 of the Criminal Code. Besides children, the victim may be any other person in the offender’s custody, irrespective of the legal basis for such custody (law, court order, contract). There are no limitations as to the category of persons who can be prosecuted on this charge (parents, teachers, trainers, wardens, nurses....).

- “(1) *A person who maltreats a person with whose custody or education he has been entrusted shall be liable to imprisonment for a term of six months to three years.*
- (2) *The offender shall be liable to imprisonment for a term of two to eight years,*  
*a) if he commits the act defined in paragraph 1 in a particularly cruel manner or against more than one person, or*  
*b) if the contravention has continued for a prolonged period of time.”*

“*Maltreatment*” is defined as a prolonged period of rough and cruel treatment. The necessary condition is that the victim feels wronged by such treatment. For adjudication purposes, the “prolonged period” is a flexible criterion applied with regard to the severity

of the victim's suffering. In any case, maltreatment causing or intended to cause severe suffering or serious injury is classified as particularly dangerous to society and carries stricter penalties.

Domestic crime patterns include *restriction/deprivation of personal liberty* (Section 231 and 232 of the Criminal Code):

- “(1) *A person who without authority restricts another person in the enjoyment of personal liberty shall be liable to imprisonment for a term not exceeding two years.*
- (2) *The offender shall be liable to imprisonment for a term not exceeding three years if he commits the act defined in paragraph 1 with the intention to facilitate another crime.*
- (3) *The offender shall be liable to imprisonment for a term of two to eight years if he commits the act defined in paragraph 1 as a member of an organised group.*
- (4) *The offender shall be liable to imprisonment for a term of three to ten years if by the act defined in paragraph 1 he causes grievous bodily harm, death or any other particularly serious consequence.” (Section 231)*

- “(1) *A person who deprives another person of personal liberty shall be liable to imprisonment for a term of three to eight years.*
- (2) *The offender shall be liable to imprisonment for a term of five to twelve years, if by the act defined in paragraph 1 he causes grievous bodily harm, death or any other particularly serious consequence.” (Section 232)*

The legislation cited above is designed to protect freedom of movement. “Restriction” means obstacles that are difficult to overcome; the actual duration of this situation is immaterial. “Deprivation” means a prolonged period of *de facto* imprisonment.

Another violent crime with strongly personal elements is *complicity in suicide* under Section 230 of the Criminal Code:

- “(1) *A person who incites another person to suicide or aids another person in committing suicide shall be liable to imprisonment for a term of six months to three years, provided that the suicide was committed or attempted.*
- (2) *The offender shall be liable to imprisonment for a term of two to eight years if he commits the act defined in paragraph 1 against a person below the age of eighteen years, against a pregnant woman or a mentally ill or retarded person.”*

“Incitement” or “aid” is the decisive criterion in determining the charges. A person who uses force to make another person commit suicide is tried on murder charges.

### 1.3 Rape/Sexual Assault

Section 241, paragraph 1 of the Criminal Code, Act No. 140/1961 Coll. As amended (hereinafter referred to as the “Criminal Code”) defines **rape** as performance of sexual

intercourse with a woman through force or the threat of force or taking sexual advantage of a defenseless woman:

*“A person who through force or threat of force performs sexual intercourse with a woman without her consent or takes advantage of her defenselessness to perform such an act shall be liable to imprisonment for a term of two to eight years.”* (Section 241, paragraph 1)

This legislation distinguishes between female victims below and above the age of sexual consent (“statutory” and “forcible” rape) and takes into account the physical and other consequences of rape. A rape of a female below the age of fifteen years resulting in serious physical or mental harm carries a maximum twelve-year sentence of imprisonment:

*“The offender shall be liable to imprisonment for a term of five to twelve years,*  
*a) if by the act defined in paragraph 1 he causes grievous bodily harm, or*  
*b) if he commits the act against a female under fifteen years old.”* (Section 241, paragraph 2)

If the rape has lethal consequences, the maximum prison term is fifteen years:

*“The offender shall be punished by imprisonment for a term of ten to fifteen years, if by the act defined in paragraph 1 he causes death.”* (Section 241, paragraph 3)

The rape legislation provides for situations when the offender through force or threat of force makes a woman perform sexual intercourse with another man. The offender’s gender is regarded as immaterial. Out of 346 rape cases reported by the Ministry of the Interior in, the first half of 1998, 238 victims were aged 18 years and over.

“Force or threat of force” is defined as use of physical force by the offender with the intention to overcome or prevent serious resistance of the victim and perform sexual intercourse. The use of force in other forms of sexual assault does not fall under the rape legislation; it is commonly classified as **extortion** under Section 235 of the Criminal Code:

- “(1) A person who through force, the threat of force or the threat of any other serious harm makes another person perform, omit or tolerate any actions, shall be liable to imprisonment for a term not exceeding three years;*  
*(2) The offender shall be liable to imprisonment for a term of two to eight years,*  
*if he commits the act defined in paragraph 1 as a member of an organised group,*  
*a) if he commits the act together with two or more persons,*  
*b) if he commits the act with a weapon,*  
*c) if by the act he causes grievous bodily harm or considerable damage”* (i.e. minimum monthly wage multiplied by 100),  
*d) if he commits the act against a witness or expert witness or interpreter for any reason relating to the discharge of their official duties, or*

- e) *if he commits the act against another person for reasons of race, nationality, political opinion, religion or because the person has no religion.*
- (3) *The offender shall be liable to imprisonment for a term of five to twelve years if by the act defined in paragraph 1 he causes death or damage of a large extent.” (i.e. minimum monthly wage multiplied by 500).*

Rape in marriage is criminalised, but there is a specific requirement that the injured party's consent is needed to open the prosecution when the accused is her husband or common law husband. This requirement does not exist in other offences of violence.

#### 1.4 Child Sexual Abuse/Incest

##### Sexual abuse

The legislation distinguishes between sexual abuse in general, cases where the abused girl-child is given to the abuser or pimp in return for money or other compensation or cases of sexual abuse within the family.

The first situation is classified as particularly dangerous to the society and carries stricter sanctions. (Section 241, paragraph 2.) The second situation is basically defined in Section 242, paragraph 1 of the Criminal Code as performance of sexual intercourse with a person below the age of fifteen years or other forms of sexual abuse of such person. Stricter sanctions are tied to the victim's dependent status or grave consequences of abuse. (Section 242, paragraph 2 and 3):

- “(1) A person who performs sexual intercourse with a person under fifteen years of age or otherwise sexually abuses such person shall be liable to imprisonment for a term of one to eight years.*
- (2) The offender shall be liable to imprisonment for a term of two to ten years if he commits the act defined in paragraph 1 against a person under his supervision, taking advantage of the person's dependent status.*
- (3) The offender shall be liable to imprisonment for a term of five to twelve years if by the act defined in paragraph 1 he causes grievous bodily harm,*
- (4) The offender shall be liable to imprisonment for a term of ten to fifteen years, if by the act defined in paragraph 1 he causes death.” (Section 242)*

The words “*otherwise sexually abuses*” in paragraph 1 mean major violations of the victim's sexual sphere for the abuser's sexual excitement. “*Taking advantage of the victim's dependent status*” means that the victim's opinions are limited due to a certain degree of dependence on the abuser. The simplest case is *de facto* dependence; e.g. the abuser has the custody of the victim.

Section 243 provides less stringent sanctions for the sexual abuse of victims above the age of fifteen years:

*“A person who, taking advantage of the dependent status of a person under eighteen years of age or a person under his supervision, performs extramarital sexual intercourse with such person or otherwise sexually abuses such person taking advantage of his/her dependent status, shall be liable to imprisonment for a term not exceeding two years.”*

Dependent status of the victim is the decisive criterion for categorisation of sexual abuse in police statistics.

Sexual abuse charges are thus based on several separate sections of the Criminal Code according to the age/gender of victim-offender relation.

### Incest

The relevant legislation includes Section 245 of the Criminal Code criminalising incest – sexual intercourse between relatives in the direct line or between siblings:

*“A person who performs sexual intercourse with a relative in the direct line or with a sibling shall be liable to imprisonment for a term not exceeding two years.”* (Section 245)

Cases of rape or sexual abuse of a relative in the direct line or a sibling are tried on a combination of charges under Section 241 or 242 and Section 245.

The crimes mentioned above belong to Chapter 8 of the Criminal Code – Crimes against Individual Liberty and Human Dignity. The typical aggravating circumstances are that the offender committed the crime (attempted crime) as an organiser, member of an organised group or a conspiracy.

### Traffic in Children

A person who entrusts another person with the custody of a child-girl in return for money or other compensation commits traffic in children under Section 216a of the Criminal Code:

- “(1) A person who, in return for a compensation, entrusts another person with the custody of a child for the purpose of adoption, exploitation of child labour or for any other purpose, shall be liable to imprisonment for a term not exceeding three years or to a financial punishment.*
- (2) The offender shall be liable to imprisonment for a term of two to eight years, if he commits the act defined in paragraph 1 as a member of an organised group, or*
- a) if by such act he obtains substantial gain.*
- (3) The offender shall be liable to imprisonment for a term of three to ten years if by the act defined in paragraph 1 he causes grievous bodily harm, death or any other serious consequence.”*

The Criminal Code protects all children irrespective of gender. For the purpose of the section 216a, the term “child” means a person under 18 years old (Section 216b).

### Limited Criminal Liability

Persons below the age of 18 years have limited criminal liability. In sentencing juvenile offenders, deprivation of liberty must be limited to one half of the prison terms normally imposed on adults. In any case, the prison term should not exceed ten years (Section 79 of the Criminal Code):

- "(1) In sentencing juveniles, the prison terms provided in this Code shall be reduced to a half. The prison term shall not be longer than five years and shorter than one year.*
- (2) A juvenile who commits a crime which carries an exceptional penalty under this Code and, due to the extremely condemnable method of commission or extremely condemnable motive or extremely grave and irredeemable consequences, is classified as a crime particularly dangerous to society, shall be liable to imprisonment for a term of five to ten years if the penalties laid down in paragraph 1 are not deemed sufficient to achieve the purpose of punishment."*

These sentencing rules apply in all criminal cases involving juvenile offenders.

## **1.5 Sexual Harassment**

### Sexual Harassment at Work

The operative labour legislation (Labour Code, Act No. 65/1965 Coll. As amended) says that sexual harassment is unacceptable:

*"Nobody may use his/her rights arising from labour relations to the detriment of any other party to labour relations."* (Section 7, paragraph 2)

An explicit workplace harassment ban will be introduced in line with EU regulations, namely the resolution of the Council on Protection of Dignity of Women and Men at Workplace from 29 May, 1990, the recommendation of the Commission on protection of Women and Men at Workplace from 27 November, 1991 followed by the declaration of Council on Enforcement of the Commission declaration from 27 December, 1991.

The Czech and Moravian Trade Unions Chamber (umbrella association of worker's unions in the Czech Republic) have not to date registered any workplace harassment case; Czech employers, trade unions and workers lack practical experience in dealing with this form of misconduct. On the other hand, several leading corporations with foreign participation have included anti-harassment clauses in their staff regulations. For example, Article 8.1 of SPT TELECOM staff Regulations says:

*"Any conduct that creates an intimidating or offensive work environment is unacceptable. The employer shall regard any implicitly sexual, racial or otherwise undesirable or discriminatory remarks as a form of conduct inconsistent with decency and good civil relations, and thus inconsistent with the present Staff Regulations."*

*“A misdemeanor is committed by a person who*

- a) damages another person’s reputation through insult or exposure to public ridicule,*
- b) negligently injures another person,*

### Sexual Harassment outside the Workplace

Sexual harassment outside the workplace falls in the category of *“breaches of good civil relations”* under Section 49 of the Act on Misdemeanors No. 200/1990 Coll. As amended:

- b) intentionally violates good civil relations through threats of bodily harm, minor injury, false accusation of a misdemeanor, willful and wanton acts, or other gross misconduct.”* (paragraph 1)

The only available penalty is a fine not exceeding CZK 3,000 (section 237 of the Criminal Code):

*“(2) The penalty for misdemeanours under paragraph 1(a) shall be a fine not exceeding CZK 1,000 and the penalty for misdemeanours under paragraph 1(b) shall be a fine not exceeding CZK 3,000.”*

Harassment cases with criminal elements are classified as *oppression* (Section 237 of the Criminal Code):

*“A person who takes advantage of another person’s dependent status or distress to make such person perform, omit or tolerate any actions, shall be liable to imprisonment for a term of not exceeding six months.”*

Criminal harassment cases involving the use of force are classified as *extortion* under Section 235 of the Criminal Code.

## **3.1 Support/Protection**

### Financial assistance by the state to crime victims

Financial assistance by the state to crime victims was introduced by Act No. 209/1997 Coll. on the provision of financial assistance to crime victims (hereinafter referred to as the “Financial assistance Act”). The definition of “crime victim” in Section 2 includes natural persons *“who have suffered injury as a consequence of a crime”* and natural persons for whose maintenance the aforesaid person is responsible:

*“The term “victim” shall include also survivors of a victim who died as a consequence of the crime, provided that the deceased maintained or was obliged to maintain them.”* (paragraph 2)

Under Section 2, paragraph 3, the purpose of the lump-sum payment is to help the victim in the initial period of hardship caused by the criminal injury. The legislator stresses that the scheme is open only to victims injured by crimes under the Criminal Code:

*“For the purpose of assistance under the present Act, the term “crime” means acts constituting crimes or attempted crimes under the Special Part of the Criminal Code.”* (Section 2, paragraph 4)

The financial assistance is payable to Czech citizens and stateless persons possessing long-term or permanent residence permits (Section 3, paragraph 1). The eligibility of foreign nationals is subject to promulgated international treaties binding on the Czech Republic (Section 3, paragraph 2). Eligibility for assistance is further subject to procedural criteria specified in Sections 4-6:

*“The assistance shall be payable in cases where full compensation for the criminal injury or damage resulting from the death of the victim has not been provided.”* (Section 4)

*“The assistance shall be payable in cases where the guilt of the person who committed the crime that caused the injury has been determined by a judgment of conviction or acquittal on grounds of insanity.*

*If such judgment has not been delivered or is not final or if the criminal prosecution has not been instituted because the perpetrator is unknown or cannot be notified about the charges if there are legal obstacles to the criminal prosecution, the assistance shall be payable provided that an examination conducted by the law enforcement authorities has established beyond all reasonable doubt that the crime as a consequence of which the victim suffered injury was committed.”* (Section 5)

*“The state shall not provide assistance, if the victim*

- a) is a co-defendant in the criminal proceedings concerning the crime as a consequence of which he suffered injury, or was an accomplice in such crime,*
- b) did not express consent with the criminal prosecution of the perpetrator, provided that such consent is necessary for the criminal prosecution to be instituted or proceed or if the victim withdrew his consent, or*
- c) failed to provide the necessary assistance to the law enforcement authorities, namely failed to report the crime in respect of which he claims compensation or, in his position as a witness in the criminal proceedings, exercised the right to deny testimony on the grounds of his relation to the offender.*

*The state shall not provide assistance in cases where the injury as measured in the standard units is not assessed at 100 units and over.”* (Section 6)

The standard injury assessment list is in Decree of the Ministry of Health, Ministry of Justice, Social Security Office and Central Trade Unions Council No. 32/1965 Coll. on compensation for injury and limited capacity to earn sufficient livelihood, as amended. These thirty-year-old rules, based on substantially lower expenditures for health services and supplies, will shortly be replaced by new legislation reflecting the rising trend in medical care prices after 1989.

The Financial Assistance Act specifies the amount of compensation for loss of earnings, medical expenses, funeral expenses and maintenance expenses (Section 7, paragraph 1). The damages awarded to the victim in the criminal procedure (Section 7, paragraph 2) are the key to calculation of financial assistance. The amount of financial assistance is the differential between the award and the documented expenses. The assistance may be obtained repeatedly (Section 7, paragraph 3).

The primary condition is that the application for assistance should be filed with the Ministry of justice within one year of the crime (Section 9). This is a strict time limit.

The Financial Assistance Act specifies the particulars of the application and the powers of the responsible government and law enforcement authorities to verify the data given in such applications. An important rule is that law enforcement authorities must inform victims about the availability of financial assistance.

### Witness protection

The State Assistance Act thus provides in Section 163a, paragraph 1, and Section 100, paragraph 1 and 2, of the Code of Criminal procedure, Act No. 141/1961 Coll. as amended:

*“Criminal prosecution for crimes....of bodily harm under Section 221, 223 and 224,....restriction of personal liberty under Section 231, paragraph 1, extortion under Section 235, paragraph 1 of the Criminal Code conducted against a person in respect of whom the victim, in his position as a witness, has the right to deny testimony (Section 100, paragraph 2), and criminal prosecution for the crime of rape under Section 241, paragraph 1 conducted against a person who is, or was at the time of commission, a spouse or partner of the victim, if the actions of such person otherwise constitute any of the crimes cited above, shall be instituted and the instituted criminal prosecution shall proceed only with the consent of the victim. If there are several victims of one crime, the consent of one of them shall suffice.” (Section 163a, paragraph 1)*

- “(1) A relative of the person charged in the direct line, his/her sibling, adoptive parent, adoptive child, spouse and partner shall have the right to deny testimony; if several persons are charged and the witness has any of the relationships cited above to one of them, he/she shall have the right to deny testimony in respect of the other persons charged only if the testimony regarding such other persons is inseparable from the testimony regarding the person to whom the witness is related.*
- (2) A witness shall have the right to deny testimony if the testimony would be self-incriminating or would expose to criminal prosecution his relative in the direct line, his sibling, adoptive parent, adoptive child, spouse or partner or any other family members or persons having a similar degree of relationship to the witness, provided that the witness has the reasonable grounds for regarding any harm caused to such persons as harm caused to himself.” (Section 100)*

Criminal prosecution in such cases is waived or is not instituted at all:

*“criminal prosecution shall not be instituted, and if has already been instituted, shall not proceed and must be waived...”*

f) *if the criminal prosecution is subject to the consent of the victim and such consent is not given or is withdrawn (Section 163a).....”* (Section 11, paragraph 1)

#### Other Services

NGOs provide services to crime victims, including accommodation in asylum houses, medical and psychological assistance (being available to accompany the victim during the trial, etc.). There were five non-governmental victim crisis centres existing in the Czech Republic. The number of clients for 1997 reached 3,832.

Asylum houses in the Czech Republic are operated by the government, communities and non-governmental organisations. The founders are mostly non-profit organisations, (civic association, churches), aided and advised by the Ministry of Labour and Social Affairs. Non-governmental organisations receive regular grants from the state to meet the operating costs.

There are 54 asylum houses for mothers in the Czech Republic, with a total capacity of 771 places. The following table shows the size of facilities run by the government, communities and NGOs:

Type of facility	Number	Capacity	Capacity per facility
Government-run	5	25	5
Non-governmental	22	468	21-22
Community	27	278	10-11

In practice, these establishments are few and, for the most part, absolutely full. Without a child, a maltreated woman has little chance of admission.

In state-run establishments, the admission of mothers with children is subject to an administrative order. In community establishments, the competent district Office sets the prices of accommodation and basic care.

The Government is now working on a new social welfare system, a network of interlinked services with emphasis on prevention.

## DENMARK

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The Information was provided by the Department of Gender Equality in November 2000.

### **Introduction**

The Minister of Gender Equality has established a working group together with the Ministry of Justice, The Ministry of Social Affairs, The Ministry of Health and the Ministry of Domestic Affairs to work on the issues of violence against women and trafficking in human beings. The working group shall give recommendations for initiatives to combat violence against women and trafficking. NGOs and experts are involved in the work of this group.

### **1.1 Legislation Relating to Violence Against Women**

The Criminal Code was amended in 1994. The provisions in the amended legislation concern "physical offences of a grave character but psychological impact and the insult to the victim's conceptions of honour, moral, or chastity are not included".

The main aims of the Plan of Action to Combat Violent Crime are to increase sentences for repeat offenders convicted of violent offences; to facilitate access to justice; and encourage reporting of violent crime, by offering some protection to victims and witnesses. Persons considered to be especially susceptible to violence are defined by profession and include taxi drivers, visiting medical staff and staff of 24 hour shops and petrol stations.

In 1995/1996 the National Commissioner of Police carried out an interview-based survey on violence in the street, in the home and at the workplace. Not since 1987 had a survey on violence been carried out which is comparable with the surveys of 1995/1996.

The overview of the result shows that there has been stagnation/a decrease in violent crime, not least in domestic violence. Furthermore there is a clear connection between income-based position and risk of domestic violence.

### **1.2 Domestic Violence**

Specific figures on cases of domestic violence are not collected in Denmark, although some research (Rapport om vold mod kvinder i Danmark (1992) has been completed.

The survey 1995/1996 shows that women in the highest income brackets are seldom exposed to domestic violence.

There are no specific laws in place to deal with domestic violence; domestic violence is classified with other offences of violence in the Criminal Code. Women are critical of legal

response to domestic violence; the burden of proof is too hard and there is no system of compensation for women.

The National Commissioner of Police have in guidelines to the local police authorities announced that a case of domestic violence should not be given up if there are objective signs of violence, even if the victim will not press charges against the offender.

Information from the National Organisation of Women's Crisis Centres (LOKK, 1999) shows that there are 34 crisis centres around the country dealing with victims of domestic violence. These are partly based on public service and partly voluntary. The number of residents on the centres is approximately 200 women and the same number of children. Even if the group of women who has been exposed to physical violence is in all ages from 18 to 60, around 80 % of the women living at the centres are under the age of 40 years.

### 1.3 Rape/Sexual Assault

Denmark's statistics show:

Year	Reported rape cases	Other sexual offences committed by heterosexuals, including offences against children
1992	481	2246
1993	499	2288
1994	556	2106

There has been no research into the extent of unreported rapes and sexual assaults.

#### Legal Definitions

The Danish Criminal Code criminalises:

- Rape;
- Sexual intercourse forced by other unlawful compulsion than assault;
- Sexual intercourse by exploitation of another person's mental disease or deficiency or other state of dependency;
- Sexual intercourse with children under 18 years;
- Offences against decency.

Maximum and minimum penalties for the perpetrator for individual crimes vary with the grossness of the crime. There have been no changes to these laws in the last 10 years but in 1989 witness protection rules were adopted:

- The right to close the doors during interrogation of the injured party in proceedings relating to rape and sexual assault;

- The injured party's right to legal representation in all sexual crimes has been extended to include the investigation, trial and claims for compensation with legal fees being paid by the State.

However, in the opinion of the police, these measures have had no impact.

Other initiatives include:

- Police training, including psychology to improve their interrogation of people in crisis;
- As far as possible, the injured party is given the option to be interrogated by a woman police officer;
- Police have a duty to inform the injured party of her right to legal representation and to provide a booklet containing information on her rights;
- The police have begun profiling rape: details of the act itself and the circumstances of the perpetrator and victim. The aim is to increase police efficiency and effectiveness and prevention of rape.

Crisis centres and Women's Centres also offer advice and support to women. In 1989 the Crime Prevention Council produced a booklet on preventing rape, and 150,000 copies have been distributed. "Information spots" followed this up on television. The impact of these measures has not been evaluated.

Women's organisations do not think women obtain justice, protection and redress from the justice system because: the burden of proof is too hard and compensation payments are too low.

#### **1.4 Child Sexual Abuse/Incest**

Legal Definitions

The Danish Criminal Code forbids sexual relationships with a child less than 16 years of age; sexual relationships with a person under 18 years are forbidden if the person is an adopted child, entrusted for education and upbringing. Producing, selling or possession of child pornography is forbidden. Victims of sexual abuse have the right to legal representation during the case. There is more understanding of the problem and more co-operations between professional agencies (investigation, trial and compensation claims).

Women's organisations are not satisfied with present law: the burden of proof is too hard.

In recent years, added attention has been given to incest. Material, including videos, has been produced for schools and social workers, but so far has not been evaluated. Support

services: shelters, self help groups, counselling groups exist for women and girls victimised by sexual abuse.

## **1.5 Sexual Harassment**

Sexual harassment is included in civil legislation prohibiting "different treatment on account of sex" in the *Act on Equal Opportunity between Men and Women*. It is not seen as a criminal offence. If sexual harassment has the nature of criminal assaults against employees it will, subject to circumstances, imply a violation of the Criminal Code. Women's organisations do not consider this to be an adequate legal framework.

The purpose of the *Act on Equal Status for Women and Men* of 30 May 2000, dealing with gender equality in the public administration and in connection with occupational and general activities, is to promote gender equality and to "counteract sexual harassment". Persons who are exposed to sexual harassment may be awarded compensation. In relation to the compensation special regard shall be paid to whether a relationship of dependence has existed between the person who has been exposed to the harassment and the person who exercised it.

The Joint Industrial Council, which includes both sides of the labour market, provides advice and support on this problem. The Council discusses and approves staff conditions, including sexual harassment and how to deal with it. The Danish Confederation of Trade Unions, The Danish Employers' Confederation and the Union of Commercial and Clerical Employees have written an advice booklet on dealing with sexual harassment. The trade unions have encouraged every workplace to develop prevention programmes.

### **1.10 Female Genital Mutilation**

#### Legal Definitions

There is no specific offence. It can be included within the criminal offence of physical damage. A physician guilty of gross or repeated negligence or carelessness in the performance of his duties is liable to a fine or imprisonment.

The Health Board has no reports of cases. They have support services integrated into health care and the Danish Refugee Council also offers support, education and information on the issue. The Health Board does not consider that prevention programmes are needed.

## ESTONIA

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Information provided by the Deputy Secretary General in the field of European integration, Ministry of Social Affairs, in November 2000.

### **Introduction**

Since 1998, violence against women has been recognised in Estonia as an expression of uneven distribution of power between men and women.

Violence against women has not yet been a subject of thorough studies. The only study conducted was a pilot survey on violence against women in May 2000. The results of this survey show that two thirds of the women (102 women were asked) had been subject to violence after their 16th birthday. Only one third of these women reported the incident of violence to the police and only one third of them were satisfied with the police reactions. The main reasons why women did not present themselves to police were fear of vengeance, feeling of shame, fear of publicity, distrust of the police.

The situation described in this overview will change after the adoption of the new Criminal Code and Code of Criminal Procedure. These codes are much more elaborate than the previous codes which were enacted at the time of the Soviet Union. The new codes take into account many of the recent trends in criminal law and procedure as well as the trends in society. The drafts of these codes are going to be analysed from a gender and violence against women perspective. Another act, which will considerably change gender issues in Estonia, is the Gender Equality Act, which should be passed in 2001. These draft laws are referred to where appropriate.

### **1.2 Domestic Violence**

Estonian Criminal Code does not make any distinction between domestic and other types of violence. The only provision that directly relates to domestic violence, though not physical, can be found in the Code of Administrative Offences – “disturbance of peace in the living premises”.

Estonia has not enacted any special legislation on domestic violence. Domestic violence falls into the category of ordinary violence, *i.e.* crimes against the person. Although no distinction is made between violence in public and private spheres, the police do not perceive of domestic violence as a crime that deserves particular attention. Due to their indifferent attitude, a number of domestic violence cases may not have reached the court. On the other hand, the victims may have caused this attitude to develop by their behaviour in situations of violence. The victim and the perpetrator often make peace with each other and the proceedings have to be cancelled.

The Criminal Code's articles on bodily injury, torture and acts of violence that seem to encompass all types of physical violence are inefficient, due to the abovementioned police attitudes and a few shortfalls in the laws regulating procedural actions.

A woman who has been subject to violence that has not caused serious injuries has to initiate the criminal proceedings herself. These private charges demand payment of a deposit and basic legal knowledge or legal assistance, which is out of reach for many women.

Another problem with sentencing domestic violence is evidence. Despite the fact that no type of evidence has a pre-determined value for the court, the state prosecution tends not to bring those cases before the court where the only evidence against a man or a husband is the word of a woman. As the police have neither information nor schooling to deal adequately with domestic violence cases, they often fail to gather relevant evidence. This results in charges being dropped either by the prosecutor or by the court.

If a woman kills her abusive husband or partner, the provisions on homicide in a provoked state or homicide in excess of limits of self-defence apply. Homicide committed in a provoked state which is inflicted suddenly as a result of violence or grave insult by the victim, is punishable with up to four years of imprisonment. Homicide committed in excess of the limits of self-defence is punishable with detention or up to two years of imprisonment. Provoked state and exceeding the limits of self-defence are mitigating circumstances. The court may alleviate the punishment or replace it with an other type of punishment or leave the woman unpunished.

### **1.3 Rape/ Sexual Assault**

Sexual crime is a crime against the person. There are different types of sexual assaults; 'ordinary' rape, rape under aggravating circumstances and the satisfaction of sexual desire in an unnatural manner. The definition of rape includes only ordinary, "classic" penetration. Oral and anal rape is included in the satisfaction of sexual desire in an unnatural manner.

According to the definition of the Estonian Criminal Code, it is considered that rape, satisfaction of sexual desire in an unnatural manner and pederasty have taken place when the acts described in the Code have been committed by violence or threat of violence or by taking advantage of the helpless situation of the victim.

#### Rape

Rape is defined in the Criminal Code as sexual intercourse with a woman by violence or threat of violence or by taking advantage of the helpless situation of the victim. Rape is punishable with 2 to 5 years of imprisonment.

### Rape under Aggravating Circumstances

Rape is punishable with 3 to 10 years of imprisonment if it is committed by a person who has previous a criminal record for rape, a group of persons, against a minor or if the rape causes the victim a permanent or life-threatening bodily injury.

Rape is punishable with 8 to 15 years of imprisonment if it is committed against a child or if the rape results in serious consequences for the victim.

### Satisfaction of Sexual Desire in an Unnatural Manner

Satisfaction of sexual desire in an unnatural manner by violence or threat of violence or by taking advantage of a helpless situation of the victim is punishable with up to 5 years of imprisonment. The same act, if it is committed with the knowledge that the victim is under the age of 16 years, is punishable with 2 to 6 years of imprisonment.

### **Rape in Marriage**

In theory, the Criminal Code's rape provision encompasses marital rape as well as rape between non-married people, but there have not been any criminal proceedings on rape in marriage.

The court that consists of one judge and two lay judges usually decides the rape cases. The court session may be held *in camera*.

## **1.4 Child Sexual Abuse/ Incest**

Estonian law differentiates between a child, a minor and an adult. A person is an adult when she/ he has reached the age of 18 years. A minor is a person between the ages of 7 and 18. Sexual abuse and rape of a child and minor is usually considered an aggravating circumstance.

The age of consent under Estonian law is 14 years. Sexual intercourse with a female under the age of 14 is punishable by law (see 1.3).

Child sexual abuse can be punishable under the provisions of rape and satisfaction of sexual desire in an unnatural manner. Sexual intercourse intentionally committed by an adult with a female under the age of 14 years is punishable by detention or up to 4 years of imprisonment.

Indecent sexual acts intentionally committed against a person under the age of 16 years are punishable with detention or up to 4 years of imprisonment.

The Criminal Code contains several provisions relating to child prostitution. Inducing a minor to engage in prostitution and pandering and pimping a minor are criminal acts punishable by law (see 1.8).

In recent years, sexual as well as physical and mental abuse of children has been a subject of increasing interest. The police have opened special child interrogation rooms in two major cities. Interrogation of a person younger than 15 years takes place in the presence of a psychologist or a teacher. If necessary, the parents of the child are also present. The same procedure applies both to preliminary investigation and to criminal court procedure.

A procedure for the removal of abusers from the household has not been legally specified, except for the custody procedure. In practice, very often it is the child who has to leave home.

The network of social institutions and non-governmental organisations dealing with abuse of children has developed rapidly in recent years, but the legal measures have lagged behind. Current measures are not adequate in dealing with child abuse.

## **1.5 Sexual Harassment**

Estonian law does not define or criminalise sexual harassment. Sexual harassment is defined in the draft Gender Equality Act that is hoped will be passed 2001.

## **1.7 Pornography**

Acquisition, storage, transport, transfer, dissemination, exhibition or rendering available in any other manner works depicting minors in erotic or pornographic situations is punishable with a fine, detention or up to 1 year of imprisonment.

Dissemination or exhibition of works depicting minors in erotic or pornographic situations, or rendering such works available to minors in any other manner is punishable with 1 to 3 years of imprisonment.

To manufacture a work or a copy of a work depicting a minor in erotic or pornographic situations, without using the minor as an object of erotic or pornographic activity is punishable with detention or up to 3 years of imprisonment.

To use a minor as an object for erotic or pornographic activity for the purpose of manufacturing a work depicting erotic or pornographic situations is punishable with 2 to 5 years of imprisonment.

The exhibition outside specialised businesses of works that contain pornography or promote violence or cruelty is punishable with a fine.

Sale, rental or lending of works or copies of works which contain pornography or promote violence or cruelty or the transfer thereof to minors in any other manner or exhibition thereof to minors or transmission of television or radio broadcasts which contain pornography or promote violence or cruelty or transmission of advertising of

such works by persons who have the right to transmit television or radio broadcasts in Estonia is punishable by a fine or detention.

The previous two acts, if they are committed for the second time, are punishable by detention or up to 1 year of imprisonment.

## **1.7 Prostitution**

The provisions relating to prostitution are placed in the Criminal Code's chapter on crimes against public order.

A proprietor who gives another person the permission to engage in unlawful prostitution or other activities prohibited by law in his/her residential or non-residential premises is punishable with a fine, detention or up to 5 years of imprisonment.

A person who induces a minor to engage in prostitution, or exploitation of a minor in prostitution is sentenced to 2 to 5 years of imprisonment.

Pandering or pimping is punishable with up to 1 year of imprisonment.

A person who panders or pimps a person of 18 to 21 years of age is sentenced to 1 to 3 years of imprisonment.

Pandering or pimping is punishable with 3 to 7 years of imprisonment if it is committed by the use of violence or other enforcement measures, against a minor, against two or more persons or by a person who has a previous criminal record for the same act.

### Trafficking in Human Beings

Estonia is a party of the International Agreement for the Suppression of the "White Slave Traffic" and International Convention for the Suppression of the Traffic in Women and Children. These international instruments are a constituent part of the Estonian legal system and have superior powers over the laws of the Republic of Estonia.

Estonian law does not deal with trafficking in women, except for the explicit provision of the Criminal Code on sale and purchase of children. Sale and purchase of children is punishable with up to 7 years of imprisonment.

Unlawful transportation of a person over the Estonian border is a crime against the state and is punishable with up to 3 years of imprisonment.

Unlawful deprivation of liberty is a crime against the person and is punishable with up to 5 years of imprisonment.

Forced prostitution is punishable under the articles concerning pandering or pimping of the Criminal Code.

The draft Criminal Code contains a chapter on crimes against individual liberty that contains articles on deprivation of liberty and enslavement.

The Estonian police have started to organise special units to deal with trafficking in women and to improve the co-operation between the Estonian police and Interpol and Europol. In 1998, a drug and prostitution division was established within the criminal police of Tallinn.

Estonia actively takes part in the European Union's "STOP" programme. The objective of the programme is to analyse the causes of prostitution and examine problems connected with prostitution.

### **1.8 Obscene phone calls/ telephone sex**

Obscene phone calls and telephone sex are not punishable under Estonian law

### **1.9 Female Genital Mutilation**

Female genital mutilation could be punished under the Criminal Code as an act of causing bodily injury (depending on the circumstances either causing permanent or serious bodily injury). This issue is not relevant in the Estonian society as there are no ethnic groups that practice female genital mutilation.

### **1.10 International Conventions**

The Republic of Estonia is a party of the Convention on the Elimination of All Forms of Discrimination against Women.

### **1.11 Protection of Pregnancy/Pregnant Women**

Termination of pregnancy against the will of the pregnant woman is punishable with 2 to 6 years of imprisonment.

A gynaecologist who, at the request of a pregnant woman, terminates the pregnancy later than is permitted by law is sentenced to a fine or the deprivation of the right to operate in the particular field.

The termination of a pregnancy at the request of the pregnant woman by a person without the corresponding right derived from the law on abortion is sentenced to a fine or up to two years of imprisonment.

A person who without the corresponding right derived from the law on abortion terminates, at the request of a pregnant woman, a pregnancy which has lasted for more than 21 weeks is sentenced to up to 4 years of imprisonment.

Sterilisation of a person against his or her will is punishable with 2 to 6 years of imprisonment.

The transfer of a foreign ovum or an embryo created there from to a woman in violation of the Artificial Insemination and Embryo Protection Act, or an unsanctioned arrangement of the transfer of a foreign ovum or an embryo created there from, is punishable with a fine or the deprivation of the right of employment in a particular position or the operation in a particular field.

The following acts performed during artificial insemination of a woman or *in vitro* preservation of human embryos are punishable with a fine, the deprivation of the right of employment in a particular position or operation in a particular field or up to 3 years of imprisonment, if such acts involve:

- 1) Artificial fertilisation of an ovum with sperms selected on the basis of the sex chromosome, except for the cases where a gamete is selected in order to avoid the transmission of a serious sex-related inheritable disease to the child;
- 2) Substitution of the nucleus of a fertilised ovum by a somatic cell of another embryo, foetus or living or dead person in order to create a human embryo with genetic information identical to the embryo, foetus or living or dead person;
- 3) Fusion of embryos with different genetic information in order to create a single cell if at least one of the embryos is a human embryo, or fusion of a human embryo with a cell which contains genetic information different from the cells of the embryo and which may develop further together with the embryo, or
- 4) Creation of an embryo by fertilisation of a human ovum with animal sperm or animal ovum with human sperm.

### 3.3 Main Problems

As the issue of violence against women has not yet been widely discussed in society nor within the legal profession, the enforcement and interpretation of laws, as well as the police and court practice in these cases are too narrow and do not take fully into account the specific nature of violence against women.

The main problem concerning the enforcement of the existing legislation is the lack of confidence in the police. Victims of violence do not trust the police and do not believe that the police could solve their problems, put an end to the violence, find the rapist etc. This results in a situation where most violence is not reported to the authorities.

The lack of confidence can be an outcome of police attitudes, *e.g.* the police do not take domestic violence seriously, the criminal procedure during preliminary investigation as well as in the court is very painful for the victim. The victim often has to give testimony to several police officers and at several times and the victim may often be confronted with the offender.

There are no specialist police units to deal with violence against women but some Estonian police officers have received education on violence against women.

Women's non-governmental organisations are not allowed to participate in legal proceedings as participants possessing procedural rights.

### **3.9 Granting Refugee Status**

The status of a refugee is awarded only if a person has a reasonable fear of persecution on the ground of race, religion, nationality, membership of particular social group or political opinion. Persecution based on sex is not recognised as a ground for granting refugee status.

## FINLAND

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The report on Finland is based on information received from the Office of the Ombudsman for Equality and the Ministry of Justice in November 2000.

### Introduction

#### Statistics of Violence Against Women

##### The Prevalence on Violence

The Council for Equality and Statistics of Finland carried out during autumn 1997 an extensive statistical survey of men's violence against women<sup>10</sup>. The questionnaire was mailed to 7100 women aged between 18 and 74, of whom 5000 returned an answer (the response rate was 70.3). The survey showed that violence is common in partner relationships and even after a relationship has ended.

According to the survey:

- 40 % of women have been victims of physical or sexual violence or threats from a man/men at some time in their life after their 15<sup>th</sup> birthday, 14 % during the past twelve months;
- 52 % of women have been victims of sexual harassment after their 15<sup>th</sup> birthday, 20 % during the past twelve months;
- 22 % of all married or cohabiting women have been victims of physical or sexual violence by their present spouse/partner, 9 % during the past twelve months;
- 50 % of all married and cohabiting women have experienced violence or threats by their ex-partners;
- 10 % of the victims had reported the most serious incidents to the police;
- 12 % of the victims had sought help for domestic violence;
- 6 % of the violent men had sought help because of their own violent behaviour.

In Finland, on average 27 women per year die as a consequence of domestic violence. In 1997, altogether 9300 cases of domestic violence were reported to the police.

#### The Cost of Violence

The Council for Equality and Statistics of Finland have recently carried out a study of the costs of violence against women in Finland<sup>11</sup>. It shows that violence against women

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<sup>10</sup> Markku Heiskanen, Minna Piispa: *Faith, Hope, Battering*, Statistics of Finland, and Council for Equality. Justice 1998:12, Helsinki; the publication is available in Finnish and English

<sup>11</sup> Minna Piispa, Markku Heiskanen: *The Price of Violence – The costs of violence against women in Finland*. Statistics Finland, Justice 2000:14, Council for Equality, Equality Publications 2000:6, Helsinki; the publication is available in Finnish and is being translated into English.

causes annually direct costs of at least 300 million Finnish marks (FIM). When taking into account indirect costs, they are estimated to rise to at least one billion marks. These costs were studied in regard to health care, social services and the judicial system. According to the studies made, nowhere near all cases of violence come to the knowledge of the authorities. Only one third of the women who had experienced violence had sought help from the authorities or bodies specialised in helping victims, and thus a part of the problem and its costs still remain hidden.

## 1.2 Domestic Violence

Marital rape was criminalised in Finland in 1994 and the major part of domestic violence became an offence subject to public prosecution in 1995.

### Restraining Order

The Act on Restraining Order came into force on 1 January 1999 (issued on 4.12.1998/898). A restraining order means that in order to protect the life, health, freedom or peace of a person, another person, for instance the former spouse or an adult child extorting money from his/her elderly parent, can be ordered not to contact the protected person. A basic restraining order means that the person on whom it has been imposed may not meet the protected person or try to contact that person. An extended restraining order signifies that the person is also forbidden to be in a certain area, such as in the vicinity of the home or workplace of the person being protected. The application for a restraining order is submitted to the police or the district court; the order is imposed for a maximum of one year at a time. The punishment for a breach of the restraining order is a fine or imprisonment not exceeding one year. In 1999, over 1000 restraining orders were imposed.

## 1.3 Rape/Sexual Abuse

New legislation on sex offences came into force at the beginning of 1999.

### Chapter 20: *Sex Offences*

#### Section 1: Rape

- (1) *A person who coerces another into sexual intercourse by the use or threat of violence shall be sentenced for rape to imprisonment for at least one year and at most six years.*
- (2) *A person shall also be punished for rape if he/she takes advantage of the incapacity of another to defend himself/herself and has sexual intercourse with him/her, after rendering him/her unconscious or causing him/her to be in such a state of incapacity owing to fear or another similar reason.*
- (3) *An attempt is punishable.*

## Section 2: *Aggravated rape*

- (1) *If, in the rape,*
- (1) *grievous bodily injury, serious illness or a state of mortal danger is inflicted on another;*
  - (2) *the offence is committed by several people, or especially hard mental or physical suffering is caused;*
  - (3) *the offence is committed in a particularly brutal, cruel or humiliating manner, or*
  - (4) *a firearm, edged weapon or other lethal instrument is used or a threat of other serious violence is made,*  
*and the rape is aggravated also when assessed as a whole; the offender shall be sentenced for aggravated rape to imprisonment for at least two and at most ten years.*
- (2) *An attempt is also punishable.*

## Section 3: *Coercion into sexual intercourse*

- (1) *If the rape, in view of the slightness of the violence of threat and the other particulars of the offence, is deemed to have been committed under mitigating circumstances, the offender shall be sentenced for coercion into sexual intercourse to imprisonment for at most three years.*
- (2) *A person who coerces another into sexual intercourse by a threat other than that referred to in section 1 (1) shall also be punished for coercion into sexual intercourse.*
- (3) *An attempt is punishable.*

## Section 4: *Coercion into a sexual act*

- (1) *A person who by violence or threat coerces another into a sexual act other than that referred to in section 1 or into submission to such an act, thus essentially violating his/her right of sexual self-determination, shall be sentenced for coercion into a sexual act to a fine or to imprisonment for at most three years.*
- (2) *An attempt is punishable.*

## Section 5: *Sexual abuse*

- (1) *A person who abuses his/her position and entices one of the following into sexual intercourse, into another sexual act essentially violating his/her right of sexual self-determination, or into submission to such an act,*
  - (1) *a person younger than eighteen years of age, who in a school or other institution is subject to the authority or supervision of the offender or in another comparable manner subordinate to the offender;*
  - (2) *a person younger than eighteen years of age, whose capacity to autonomously decide on his/her sexual behaviour is because of his/her immaturity and the age difference of the parties essentially weaker than that of the offender, where the offender blatantly takes advantage of the immaturity;*

- (3) *a patient in a hospital or other institution, whose capacity to defend himself/herself is essentially impaired owing to illness, handicap or other infirmity; or*
- (4) *a person who is especially dependent on the offender, where the offender blatantly takes advantage of the dependence,*  
*shall be sentenced for sexual abuse to a fine or to imprisonment for at most four years.*
- (2) *A person shall also be punished for sexual abuse if he/she takes advantage of the incapacity of another to defend himself/herself or to make or express a decision, owing to unconsciousness, illness, handicap or other helplessness, and has sexual intercourse with him/her, or gets him/her to perform a sexual act essentially violating his/her right of sexual self-determination or to submit such an act.*
- (3) *An attempt is punishable.*

#### **1.4 Child Sexual Abuse/Incest**

Chapter 20 of the Finnish Penal Code concern Sex Offences and Chapter 17 offences against public order.

##### **Chapter 20 Sex offences**

###### *Section 6: Sexual abuse of a child*

- (1) *A person who has sexual intercourse with a person younger than sixteen years of age or by touching or otherwise performing a sexual act on a person younger than sixteen years of age, the said act being conducive to impairing his/her development, or gets him/her to perform such an act, shall be sentenced for sexual abuse of a child to imprisonment for at most four years.*
- (2) *However, an act referred to in paragraph (1) shall not be deemed sexual abuse of a child if there is no great difference in the ages or the mental and physical maturity of the persons involved.*
- (3) *A person shall also be punished for sexual abuse of a child if he/she commits an act referred to in paragraph (1) with a person over sixteen but younger than eighteen years of age, if the offender is the parent of the child or, if living in the same household with the child, the offender is in a position comparable to that of a parent.*
- (4) *Attempt is punishable.*

###### *Section 7: Aggravated sexual abuse of a child*

- (1) *If, in the sexual abuse of a child,*
  - (1) *the victim is a child whose age or stage of development are such that the offence is conducive to causing special injury to him/her;*
  - (2) *the offence is committed in an especially humiliating manner; or*
  - (3) *the offence is conducive to causing special injury to the child owing to the special trust he/she has put in the offender or the special dependence of the child on the offender,*

*and the offence is aggravated also when assessed as a whole, the offender shall be sentenced for aggravated sexual abuse of a child to imprisonment for at least one and at most ten years.*

- (2) *An attempt is punishable.*

Section 8: *Buying sexual services from a younger person*

- (1) *A person who, by promising or giving remuneration, gets a person younger than eighteen years of age to have sexual intercourse or to perform another sexual act shall be sentenced for buying sexual services from a young person to a fine or to imprisonment for at most six months.*

- (2) *An attempt is punishable.*

Chapter 17 Offences against Public Order

Section 22: *Incest*

- (1) *A person, who has sexual intercourse with his/her child or other descendant, his/her parent or other ascendant, or his/her sibling, shall be sentenced for incest to a fine or to imprisonment for at most two years.*

- (2) *A person who has had sexual intercourse with his/her parent or other ascendant while under 18 years of age and person who has been coerced or unlawfully enticed into the sexual intercourse shall not be punished for incest.*

## 1.7 Pornography

The following provisions of the Penal Code as amended in 1998 may be applicable:

Chapter 17, Section 18: *Distribution of obscene pictures*

- (1) *A person, who offers for sale or for hire, distributes, or to that end manufactures or imports, pictures or visual recordings depicting children, violence or bestiality in an obscene way, shall be sentenced for distribution of obscene pictures to a fine or to imprisonment for at most two years.*

- (2) *The provisions in section 17 (2) apply also to the pictures and visual recordings to in this sections.*

This penal provision does not apply in case by “Depiction of obscenity referred to in the section” is to be deemed justified in view of journalistic value or obvious artistic merit of the film or recording.

Chapter 17, Section 19: *Possession of obscene pictures of children*

*A person, who unlawfully has in his/her possession a photograph, video tape, film or other visual recording, based on reality, depicting a child having sexual intercourse or in a comparable sexual act, or depicting a child in another obviously obscene way, shall be*

*sentenced for possession of obscene pictures of children to a fine or to imprisonment for at most six months.*

*Section 21: Unlawful marketing of obscene material*

- (1) *A person who, for gain, markets an obscene picture, visual recording or object which is conducive to causing public offence, by*
- (1) *giving it to a person under 15 years of age;*
  - (2) *putting it on public display;*
  - (3) *delivering it unsolicited to another; or*
  - (4) *openly offering it for sale or promoting it by advertisement, brochure or poster or by other means causing public offence, shall be sentenced for unlawful marketing of obscene material to a fine or to imprisonment for at most six months.*
- (2) *A person who, in the manner referred to in paragraph (1) (4), offers for sale or promotes an obscene text or sound recording which is conducive to causing public offence shall be punished for unlawful marketing of obscene materia.*

## **1.8 Prostitution**

*Chapter 20, Section 9: Pandering*

- (1) *A person who, in order to gain benefit to himself/herself or to someone else,*
- (1) *keeps a room or other premises where sexual intercourse or other comparable sexual acts are offered for remuneration;*
  - (2) *otherwise takes advantage of the performance of such an act by someone else;*  
*or*
  - (3) *entices or intimidates another to such an act,*  
*shall be sentenced for pandering to a fine or to imprisonment for at most three years.*
- (2) *An attempt is punishable.*

## **3.1 Support/Protection**

### Measures to Prevent and Address Violence Against Women

In the 1990s, the Council for Equality had a sub-committee whose task was to deliberate measures to prevent and eliminate violence against women. The sub-committee took initiatives and made proposals to reform the legislation dealing with the issue, to develop the service system, to help victims and perpetrators of violence, to increase statistics and research and to improve information and education regarding the issue. Thanks to the work of the sub-committee, the existence of violence against women was recognised and it ceased to be a taboo.

The Government's Equality Programme (1997 – 1999) stressed the need to undertake a project dealing with the prevention of violence against women.

In accordance with the Government's Equality Programme, the Ministry of Social Affairs and Health started in the beginning of 1998 two national projects:

- 1) A project to prevent violence against women;
- 2) A project to prevent prostitution.

The National Research and Development Centre for Welfare and Health carry out these projects (STAKES) during the period 1998 – 2002. The minister responsible for equality affairs leads the undertaking and the steering group consists of representatives of the relevant ministries.

The project to prevent violence against women aims to develop research, statistics and legislation on the matter. It monitors the implementation of relevant legislation and develops international co-operation in the field. The objective is to draw up a national action programme to prevent violence against women. The project develops vocational and further education and work methods with the object of creating a multiprofessional cooperation model. Cooperation between the police, social welfare and health care, judicial authorities and service providers is needed to break the vicious circle of violence.

The purpose is also to develop and improve services for women and children who have been victims of violence. The help offered must be locally coordinated and special attention must be paid to the security of the victims. The project develop also furthers programmes and treatment for violent men.

The project is divided into sections focused on seven sub-areas:

- Development of the service network;
- Production of study materials and guides;
- Development of research;
- Reforms of legislation;
- Information;
- Prevention of violence at workplaces;
- Prevention of violence against immigrant women.

There are at the moment twelve multi-professional teams operating in different parts of the country that inform, educate and produce new models of treatment for local needs.

The arrangements for helping the victims of violence in Finland comprise 23 shelters for battered family members, the “Rape Crisis Centre Tukinainen” that provides therapy and legal assistance, and a national Crime Victim Telephone providing first aid for victims of violence and crime. Furthermore, there are discussion and therapy groups meeting at shelters and municipal family counselling clinics for women who have been subjected to violence, as well as discussion groups and treatment programmes for men who want to stop of their violent behaviour.

The Academy of Finland has granted FIM 10 million for a research project called *Power, violence and gender* to be carried out between 2000 and 2003.

## FRANCE

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This information was supplied by the Women's Rights Department of the Ministry of Employment and Solidarity in November, 2000.

### **Introduction**

The Ministry for Women's Rights has since 1986 maintained a national telephone helpline (green number, free calls) for the victims of sexual violence. In 1989 and 1990 various measures for the prevention of physical and sexual violence towards women were adopted; awareness-raising campaigns aimed at alerting public opinion to domestic violence, the establishment of a national telephone helpline for the victims of domestic violence and (in 1992) the creation of action committees within the *départements* to combat violence to women.

These committees, established by a government circular in 1989 and revitalised in 1992 and 1996, work in partnership, under the supervision of the *département* chief administrators, with the institutions and associations concerned to draw up plans of action to assist women who are the victims of violence. These committees are run and co-ordinated by the special adviser on women's rights for each *département*.

### **1.1 Legislation Relating to Violence Against Women**

Since 1992, France has passed various laws specifically aimed at preventing violence towards women. It has, in fact, been acknowledged that such legislation against violence was of great symbolic significance in expressing the abhorrence of society towards it. Previously, apart from certain provisions relating to public morals, there was no legislation specifically dealing with violence towards women, such actions being prosecuted within the general scope of legislation relating to assault and unlawful wounding. There was no legislation expressly prohibiting sexual harassment or domestic violence. Although the vast majority of victims are, unquestionably, women, the law made no distinction between male and female victims.

The protection of victims has been developed in three ways:

- Simplification of proceedings for recovering compensation;
- The banning of certain types of behaviour, such as sexual harassment and domestic violence;
- Evolution of case law.

Jurisprudence has also provided better protection for victims of violence as the result of particular cases; thus rape in marriage was held to be unacceptable (1971), and subsequently became punishable as an offence.

The circular of 11 September 1996 urges the network of regional delegates and heads of *département* missions to continue to make particular efforts within this sector.

The joint circular of the Head of Social Action and the Women's Rights Department of 30 May 1997, addressed to the *département* chief administrators, has made it possible to make surveys of the extent of prostitution within the *départements* and to identify the local initiatives that have been taken over the last few years.

## 1.2 Domestic Violence

In 1985, when the Penal Code was being reformed, consideration was given to whether specific provisions should be introduced to cover acts of violence between spouses.

The new Penal Code (Book II) consequently lays down aggravated penalties for "deliberate offences against the person [committed] by the spouse or cohabitee of the victim or the former spouse or former cohabitee".

According to the national criminal records office, the conviction figures for deliberate offences against spouses or cohabitees rose to 4677 in 1996, the last year for which figures are available. Between 1994 and 1996 this figure rose six-fold.

This increase is caused by the new classification of such actions under the new Penal Code. It should be pointed out that the highest increase is in deliberate acts of violence resulting in Total Incapacity to Work (TIW) of under 8 days (600% higher). These variations would appear to be caused both by an increase in the acts of violence recorded and greater support for women by the support agencies as a whole.

In order to reinforce the protection of victims, it has also been suggested that greater use be made of the civil law, and in particular its provisions concerning the occupation of the matrimonial home in cases of violence outside the scope of any divorce or judicial separation proceedings. Courts can make emergency orders for "the protection of the spouses' interests". Used hitherto for financial issues, these provisions could nevertheless be extended to cover the matrimonial home when this issue takes on an urgent character, as is the case in situations of domestic violence.

As an awareness-raising and prevention strategy, a photographic report on domestic violence was prepared, for the first time in France, in 1997. This document, which took two years to complete, is used to support the awareness-raising campaigns of regional delegates and the special advisers on Women's Rights within the *départements*.

An inter-departmental government circular on the fight against domestic violence to women was issued on 8 March 1999. In part one it reviews the legislation on physical and sexual domestic violence against women; in part two it describes the inter-agency partnership necessary to deal with this violent phenomenon; while in part three it details the responses offered to victims in terms of refuge and treatment by the police force, the

Gendarmerie units and the justice services. The final part summarises the measures for assuming responsibility for victims of violence and securing compensation for them in private.

A government working party under the Ministry of Justice was set up in 1999 to deal with violence against women. Its tasks were to evaluate the legislation in force, to carry out a comparative analysis with that of European countries, to appraise current legal practice, to identify innovative actions adopted by some courts in order to make these more widespread and to improve co-ordination between the various civil and criminal procedures. This partnership, which has been strengthened over the past year, should make further progress following the decisions made on 8 March 2000 by the interdepartmental committee for women's rights and equality.

Furthermore, in the matter of accommodation and housing for women who are victims of violence, a joint circular from the Secretaries of State for Housing and for Women's Rights, dated 8 March 2000, was sent to the *département* chief administrators, asking them to give priority to the particular needs of women in great distress, including women heads of household and women who had been the victims of domestic violence with their children, in drawing up the next *département* action plans for disadvantaged persons.

#### Awareness-raising

Information and awareness-raising brochures have been compiled inter-departmentally for police officers, gendarmes, health workers and social workers who have to deal with domestic violence situations. These guides, which were jointly signed and issued by the government departments concerned, responded to the following objectives:

- To remove acts of violence from their private, inter-personal context in order to view the problem globally;
- To explain the mechanism and gravity of acts of violence;
- To enable women to exercise their rights by urging professionals to inform women, and by enabling women to establish proofs of the offences committed;
- To instil in professionals preventive attitudes, particularly in relation to re-offending.

These documents, which were originally issued in 1994 and 1995, have been widely circulated and re-edited. They are being updated in view of the National Conference dealing with Violence against Women in 2001.

The National Conference on Violence will be held in Paris in January 2001. It will deal with all aspects of abuse to which women are victims: physical, sexual, verbal, psychological or economic. They form part of the continuing European campaign of 1999-2000: "Violence against women – zero tolerance" five years on from the Conference on Women held in Beijing, and will receive extensive media coverage.

### 1.3 Rape/Sexual Assault

Rape and sexual assault are included in the Penal Code not under the provisions relating to morality, but within the heading “Offences against the Person”. The difficulties relate to:

- Definition and proof;
- Procedures which place victims in the “position of defendants”;
- The requirement for victims to submit to psychiatric examinations aimed at establishing the truth of their allegations, such examinations being so very onerous and accusatory as to constitute one of the main obstacles to the laying of complaints and securing convictions for psychological, physical or sexual violence.

The Law of 1832, while making rape punishable by a term of imprisonment of ten to twenty years, failed to define it. Jurisprudence has defined rape as *“unlawful coitus with a woman in the certain knowledge that she does not consent to it”*.

Those three constituent elements rendered the definition very restricted:

1. “Coitus”: rape could consequently only be committed by a man against a woman;
2. The “unlawful” nature of the act meant that it could only be committed by a man against a woman who was not his spouse/partner;
3. “Lack of consent on the part of the woman”: this could result from a number of circumstances – physical restraint, surprise, deception, duress, hypnosis, or even a change in the woman’s mental faculties.

The Law of 1980, amended in 1994, gives a more precise definition of rape:

*“any act of sexual penetration, of whatever nature, against the person of another, using violence, coercion, threat or surprise, is rape”*.

#### Rape in marriage

Before 1980, rape in marriage did not constitute an offence. The Law of 1980, while by no means excluding it, imposed no punishment in respect of it. Evidential difficulties included:

- The reluctance of women to disclose such violence within the home;
- Social pressure, which considered that conjugal duty gave one spouse the right to force the other to have sexual intercourse.

In 1990, a decision of the Criminal Chamber of the Court of Cassation recognised the existence of rape in marriage (the Law of 1980 had sought to recognise only the

psychiatric scarring caused by an attack on the dignity of the victim, whether or not she was married), in the following terms:

*“the willingness of spouses to hold in common and share everything that relates to their physical intimacy in no way entitles one of them to force upon the other by violence an act to which that other does not consent”.*

However, the circumstances of the case might lead one to fear that this was an *ad hoc* judgment. The 1990 decision acquired a more general application in 1992, when it was the basis for deciding a case in which the spouses were living under the same roof without either of them having taken out proceedings for judicial separation. The facts at issue were *“sexual acts perpetrated against the wishes of the wife”* without any violence.

The examining judge held that:

*“the effect of marriage is to legitimise sexual intercourse and the wife may not plead her lack of consent or the aggression which accompanied normal sexual acts to support her allegation of being the victim of rape”.*

The High Court quashed this decision, clearly stating that rape in marriage existed and was not to be tolerated, observing that:

*“the presumption of consent between spouses to sexual acts carried out within the intimacy of conjugal life is only valid in the absence of proof to the contrary”.*

#### **1.4 Child Sexual Abuse/Incest**

Sexual assault of minors of under fifteen by an adult, without violence, coercion, threat or surprise, is punishable with two years of imprisonment and a fine of 200,000 francs. Since 1 February 1994, this offence, in conjunction with the payment of a sum of money, has been punishable in France when committed abroad, irrespective of whether it constitutes an offence in the country concerned or whether the victim has made a complaint (suppression of “sex tourism”).

Incest is an offence under French criminal law. The legislation in force imposes higher penalties for sexual assaults by “a legitimate, natural or adoptive ascendant on a minor or an adult”. Several articles of the Penal Code regard the fact that the aggressor is an ascendant as an aggravating factor in cases of sexual assault, rape or gross indecency committed with violence or surprise against a person of over fifteen.

In the reform of the Penal Code adopted in 1992 and which entered into force in 1994, the relationship between the victim and the perpetrator of a sexual assault remains an aggravating factor “when it is committed by a legitimate, natural or adoptive ascendant”, both in cases of sexual assaults other than rape and sexual assaults of a minor of [under] fifteen without coercion, threat or surprise or on a minor of over fifteen.

## Revisions

The most significant innovation is the adoption of the Law of 17 June 1998 on the Prevention and Punishment of Sexual Assaults and the Protection of Minors.

This instrument creates an additional new penalty for the perpetrators of sexual assault (a), a status of under-age victim (b) and aggravated penalties in cases of sexual assaults of minors (c).

### **a) Creation of an additional new penalty: the sociological-judicial monitoring of perpetrators of sexual assault:**

Sex offenders can now, on their release from prison, be made the subject of a supervision and care order, together with an order for treatment, if the court reports so recommend.

This sentence may not be served in prison, whatever the reason for imprisonment. The law, however, requires the convicted person to begin treatment as soon as his detention begins. A refusal to follow a course of treatment at the outset of his detention will deprive him of remission.

Detention must take place in a specialised establishment that will provide for suitable medical and psychological monitoring.

The Law confers the responsibility for supervising the carrying out of a treatment order on a doctor co-ordinator.

The convicted person must satisfy the sentencing judge that he will fulfil his obligations and follow the course of treatment. Should he fail to comply, the same judge can sentence him to a term of imprisonment.

In order to facilitate the identification and tracing of sex offenders, a national automated genetic fingerprinting file of convicted persons has been established.

### **b) The creation of a status of under-age victim: Main points**

A *guardian ad litem* must be appointed when the protection of the minor's interests is not completely assured by his legal representatives.

The minor's evidence may be tape-recorded so as to spare him the trauma of having to repeat over and over again the details of the assault.

Certain associations may act as complainant on behalf of abused children in defending or befriending them.

A third party may be present when under-age victims are giving evidence in order to assist them: he/she may be a psychologist, or a doctor, or a member of the family, or a *guardian ad litem*.

A decision to discontinue proceedings in relation to certain offences committed against a minor must be supported by reasons and notified in writing.

A medical-psychological report may be prepared in relation to a minor in order to appreciate the nature and extent of the harm suffered.

It is possible to claim a complete refund from the public health insurance for treatment given as the result of sexual assault.

Through this series of measures France is complying with its international undertakings, such as the United Nations Convention of 2 December 1949 for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others, the European Convention on Human Rights and Fundamental Freedoms of 4 November 1950, Articles 34 and 36 of the United Nations Convention on the Rights of the Child of 20 November 1989 concerning protection from sexual exploitation, kidnapping, selling or trafficking in children, together with any form of exploitation and, more recently, the declaration and the plan of action adopted by a number of States, including France, at the Stockholm Congress.

**c) Reinforcement of the prevention of sexual abuse of minors: Creation of new crimes**

It is an offence to make certain pornographic documents available to minors: in particular digital videos, etc.; video cassettes, video CDs, electronic games. Offences are liable to one year's imprisonment and a fine of 100,000 F, 2 years' imprisonment and a fine of 200,000 F where deception is involved.

A specific offence of initiatory ragging is created: "*the forcing of one person by another, with or without his consent, to submit to or commit humiliating or degrading acts at demonstrations or meetings in an educational and socioeducational context*" (6 months' imprisonment and a fine of 50,000 F). Legal persons (associations of former pupils', teaching establishments, travel companies, etc.) can be held vicariously liable for an offence of initiatory ragging.

The campaign against sex tourism is reinforced, in particular by the possibility of holding legal persons vicariously liable; for example, travel agencies, which can be prosecuted for procurement or sex tourism.

Rape is punishable with a term of imprisonment of 15 to 30 years, depending on the circumstances. The statutory time limits for making a complaint have been increased to 10 years, time running from the reaching of the age of majority for assaults against minors by ascendants or persons in authority.

## 1.5 Sexual Harassment

In 1992, two pieces of legislation were passed, one within the framework of the 1992 reform of the Penal Code, the other on the initiative of the Secretary of State for Women's Rights. The second, which deals specifically with "the abuse of authority in sexual harassment at work", has been integrated into the Work Code. While both texts share a common aim – the suppression of sexual harassment within working relations – they use different means.

The Penal Code forbids "the harassment of one person by another" and defines harassment. It specifies the elements of the offence: orders, threats and coercion. It states the aim to which they are directed: to obtain favours of a sexual nature. It sets within a specific context the abuse of authority which such conduct comprises.

The penalties are a term of imprisonment of one year and a fine of 100,000 francs.

The right to work prohibits the abuse of authority in matters sexual within working relations and penalises sexual harassment in a working context. The Law seeks to prevent any act of punishment, dismissal or discrimination taken by a line manager or employer who, abusing the authority which his position bestows, has given orders, issued threats, used coercion or imposed any kind of pressure on an employee in order to obtain sexual favours.

This legislation is also aimed at developing prevention. The chief executive is required to take measures to this effect and staff regulations, within the context of health and safety, must contain provisions relating to the abuse of authority in sexual matters.

The Law allows the victim to benefit from the support of trades unions and associations that have been registered for at least five years. These may initiate proceedings, provided that they have the written consent of the party concerned. Hearings may take place *in camera* or in Judge's Chambers on the application of either of the parties. The Law applies to all working environments within the private sector, to public servants, and to domestic employees, to nannies and to caretakers.

## 1.5 Exhibitionism/Outrage to public morals

Sexual exhibitionism is listed in the section of the Penal Code relating to sexual assault.

Punishable by: one year of imprisonment and a fine of 100,000 francs, plus various additional penalties.

Sexual exhibitionism in the presence of minors is punishable by a term of imprisonment of five years and a fine of 500,000 francs (seven years' imprisonment and a fine of 700,000 francs if it involves minors of under fifteen).

## 1.6 Pornography

A decree prohibits the public distribution of obscene messages and the sending or delivering of such unsolicited messages to the recipient's home. (punishable by fine).

The photographing, filming or transmission of any pornographic image or representation of a minor for distribution is punishable with a term of one year of imprisonment and a fine of 300,000 francs (three years' imprisonment and a fine of 500,000 francs if the minors are under fifteen).

The manufacture and distribution of pornographic messages that are likely to be seen by minors is punishable with a term of three years' imprisonment and a fine of 500,000 francs.

The Ministry of Justice presides over a commission whose task it is to supervise and inspect publications intended for children and young people.

The Ministry of the Interior has power to ban:

- the offer, distribution or sale to minors of under eighteen of any kind of publication constituting a risk to young persons by reason of its licentious or pornographic nature;
- the public display of such publications;
- the advertising of such publications.

No sales outlet having as its principal activity the sale of publications for which sale to minors is prohibited may be situated within 100 metres of an educational establishment.

## 1.7 Prostitution

Criminal treatment:

France has been a contracting party to the 1949 United Nations Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of others since 1960.

In accordance with the terms of that Convention, to which France has reaffirmed its permanent commitment, prostitution is not prohibited by law. Only outward manifestations of prostitution constituting a threat to public order are unlawful.

The provisions of the new Penal Code, which entered into force on 1 March 1994, concerning procurement and associated offences, show a sharp increase in efforts to combat procurement (an increase in penalties and a broadening of the scope of the offence).

Thus, ordinary procurement, as defined by Article 225-5 (aiding and abetting in the prostitution of another for purposes of gain, corrupting a person for purposes of prostitution) is punishable with a term of imprisonment of 5 years and a fine of 1,000,000 F (as opposed to 3 years and 500,000 F previously).

Similar penalties are laid down for patterns of behaviour which under Article 225-6 would give rise to an inference of living off immoral earnings (habitual relations with a prostitute without being able to justify one's life style, acting as agent between prostitute and pimp, obstruction of actions to combat prostitution). This would amount to a presumption of living off immoral earnings through mere cohabitation.

Article 225-7 re-enacts the cases of aggravated procurement provided under the abbreviated Penal Code, maintaining the term of imprisonment applicable (10 years, with an automatic period of unconditional imprisonment) and providing a penalty of 10,000,000 F instead of 1,000,000.

In addition, there is a new aggravating feature relating to the particularly vulnerable state of the person engaging in prostitution.

The offence of running a brothel, as set out in Article 225-10, now carries a penalty of 10 years' imprisonment (with an automatic period of unconditional imprisonment) and a fine of 5,000,000 F.

Two new criminal offences are set out in Articles 225-8 and 225-9: procurement as part of an organised ring, punishable with 20 years' imprisonment (with an automatic period of unconditional imprisonment) and a fine of 20,000,000 F; and procurement using torture and acts of brutality, punishable by life imprisonment (with an automatic period of unconditional imprisonment) and a fine of 30,000,000 F.

New additional penalties of temporary or permanent deportation are laid down by Article 225-21.

There is also provision for legal persons to be held vicariously liable for acts of procurement (Article 225-12). The penalties are: a fine (for which the maximum is five times as much as for individuals), together with a number of deterrent penalties, such as dissolution, confiscation of assets, temporary or permanent closure.

Soliciting is still an offence. Article R625-8 of the Penal Code prohibits any form of soliciting another with a view to inciting that other to have sexual intercourse. It carries a maximum fine of 10,000 F together with additional penalties.

These changes in penalties are an indication of the intention of parliament not to relax its attitude towards procurement and are reflected in the action of the police force and the Gendarmerie.

The police force has three units specialising in the fight against procurement. They are the central office to combat trafficking in human beings, the anti-procurement brigade under the regional head of the Paris police, and the anti-procurement brigade under the regional head of the Marseilles (13) police, comprising a total of about 90 officers.

In addition, the fight to combat procurement is one of the tasks assigned to the robbery units of the regional branches of the police force.

In matters of public security, officers are more specifically engaged in the fight to combat procurement within specialised units.

The Gendarmerie participates in gathering information and the cases are handled by the staff of the Sections or Research Brigades.

Some 500 people are arrested every year for procurement in every shape and form (direct procurement, escort agencies, massage salons, etc.).

The funding, which was increased from 25.5 million francs in 1995 to 28.4 million francs in 2000, for organisations working locally in combating prostitution and befriending and rehabilitating former prostitutes should continue over the foreseeable future.

## **1.8 Obscene phone calls/telephone sex**

Such calls are categorised in more general terms as “malicious telephone calls constituting a breach of the peace”.

Penalties: one year of imprisonment and a fine of 100,000 francs.

## **1.9 Female Genital Mutilation**

In the past, in French law, the question of sexual mutilation appeared “delicate” in that it seemed to bring two fundamental notions into conflict with each other: the respect for other cultures and the application of French law. While the Ministers for Women’s Rights and Associations of African Women have been very much in the public focus, it has been the courts who have settled the issue and which have gradually recognised the criminal nature of excision. In 1983, the Criminal Division of the Court of Cassation had already ruled that the “ablation of the clitoris”, involving deliberate violence, constituted a mutilation.

One article is more specifically concerned with assault on a child of under fifteen and considers it to be an aggravating feature of such an assault if it is carried out by the legitimate, natural or adoptive father or mother or any other person in a position of authority over, or in charge of, the child. Under the terms of this provision, a person inflicting such beating or injury is liable to a term of imprisonment if it results in:

*“mutilation, amputation or deprivation of the use of a limb, blindness, the loss of an eye or other permanent disabilities or involuntary killing”.*

Three important decisions were subsequently delivered in relation to excision. On each occasion, not only were sentences of immediate imprisonment passed, but both the mother and the father were convicted. The mothers were sentenced to five years' imprisonment (four years of which were suspended) and a polygamous father was sentenced to one month of immediate imprisonment and three years suspended, while his two wives were given suspended sentences of four years each.

France recognises nowadays that an active policy to combat the practice of genital mutilation must of necessity combine prevention and the application of the law.

According to a recent survey carried out by one of the best informed French organisations on the subject of female genital mutilation, the Women's Group for the Abolition of Sexual Mutilation and other Practices Harmful to the Health of Women and Children, this practice affects 30,000 women and little girls in France, most of them originating in sub-Saharan Africa.

In 1992, the Regional Delegation for Women's Rights of the Île de France brought together associations which had been involved for ten years in prevention at grass roots level in order to build up an information bank for widespread circulation. In 1994, the slogan “we protect our little girls” was taken up at national level, together with a poster.

Since Law No. 92-683 of 22 July 1992 amending general provisions of the Penal Code entered into force on 1 January 1994, violence involving mutilation is an offence carrying a harsh sanction under the new Penal Code (Articles 222-9 and 222-10). Where the victim is a child of under 15, the maximum penalty is a term of imprisonment of 15 years, or 20 years where the offence is committed by the parents or grandparents.

That same year a circular relating to the integration of immigrant populations (circular DPM94/42 of 19/12/94) included the prevention of genital mutilation in the action plans of *départements* accommodating the populations in question (the *départements* of Ile de France, Nord, Oise, Bouches du Rhône, Seine Maritime and Eure).

Some of the commissions set up by *départements* to combat violence to women have formed a subsidiary working party to deal with genital mutilation.

At the same time, training on the medical legal, social, psychological and ethnological aspects has been given by specialist associations to the professionals who have direct contact with the population concerned.

Finally, the Women's Rights Department and the associations have between them prepared a large number of documents: information packs, videos, training programmes, audio cassettes in five African languages.

The Women's Rights Department continues to offer financial support to the associations working with the concerned public and medico-social workers: CAMS (Commission for the Abolition of Genital Mutilation) and GAMS (Women's Group for the Abolition of Genital Mutilation and other Practices Harmful to the Health of Women and Children).

#### The latest developments in case law

The policy of prevention going hand-in-hand with judicial action has thus resulted in a very sharp reduction in genital mutilation.

The judicial action takes place at two levels:

- The intervention of the Children's Judge, who is able to take preventive steps when alerted to the likelihood of an excision either in France or abroad;
- Punitive measures where an excision has come to light.

It is said that the publicity given to the trials of those performing excisions and the parents has led to a better level of awareness both among doctors and social workers and among the families involved of the reasons and of the need to bring an end to the practice of genital mutilation.

In February 1999 a memorable trial took place at the Paris Assize Court following the laying of a complaint by a young girl who had been excised in childhood. She brought a claim for damages against the excisionist and against her mother, along with whom appeared 24 parents who had been traced through the address book of the excisionist.

48 victims of acts of excision performed during their minority were listed and the Assize Court for the first time ordered that they be paid damages of 80,000 F per child plus interest by way of compensation for the harm they had suffered.

The excisionist was sentenced to 8 years immediate imprisonment, the mother of the young girl to 2 years and the other parents were given suspended terms of imprisonment of between 3 and 5 years.

The trial provided a forum for the majority of the victims who had reached full age to express their wish for justice, for they were fully aware of the assault to their physical integrity in the name of a tradition that they wanted to see abolished.

#### Legislation in force

Since 1994, the French Penal Code has prohibited and punished severely violence involving mutilation (Articles 222-9 and 222-10 of the Penal Code). When the victim is a child of under fifteen, the maximum penalty is increased to fifteen years' imprisonment, or twenty years if the offence is committed by parents or grandparents.

Furthermore, the Child Protection Law of 15 July 1989 imposes an obligation on staff who become aware that violence has been exercised against a minor of under fifteen to report the matter, and the Penal Code stipulates that professional secrecy should not prevent this.

### Prevention

Awareness-raising campaigns, information and education are being organised by medical and social workers. Educational materials (information packs, films, etc.) prepared and issued in collaboration with the Government are used in these programmes. Lastly, organisations working towards the prevention of these practices receive State grants.

## **1.11 International Conventions**

France has ratified the Convention on the Elimination of all Forms of Discrimination against Women and also the 1949 Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others.

The optional protocol to the CEDAW Convention was signed by France on the first day that it was opened to signature, namely 10 December 1999, and ratified on 9 June 2000, to enter into force on 22 December 2000.

## **3.0 Effectiveness of the legislation**

### **3.1 Compensation**

The public authorities have become aware of the material and psychological difficulties encountered by women who are the victims of violence in seeking reparation. Non-governmental women's organisations that have been registered for over five years are authorised to represent their interests in cases involving all forms of violence (domestic and sexual).

Since 1985 there has been a Law under which an indemnity may be claimed from the State if the victim cannot obtain effective and adequate compensation for injury where "the facts have caused bodily harm leading to death, or permanent incapacity, or personal incapacity to work for over one month, or are punishable under the law."

### **3.2 Role of Non-Governmental Organisations in Legal Actions**

#### Sexual Harassment

The Law allows victims to benefit from the support of trades unions and associations that have been registered for over five years. These can bring an action with the written consent of the party concerned. Hearings may take place *in camera* or in Judge's Chambers on the application of either of the parties.

### Domestic violence, incest, rape, prostitutes

Set up in the wake of the campaigns of 1989, 1990 and 1993, the chain of associations to help women has received ever increasing levels of financial support. 35 associations received subsidies in 1990, 40 in 1991 and 60 in 1992 and 1993. In 1999 over 120 associations received State subsidies, including some hundred counselling centres and refuge centres.

These associations come to the help of women who are the victims of domestic violence, incest and rape, offer treatment centres for violent men and are active in the rehabilitation of prostitutes. They offer psychological support, legal advice, help to women in dealing with their plight and assistance with housing. Some of them are involved in court proceedings.

### **3.3 Care and Education**

Enormous progress has been made in France, on the one hand through the care of victims (training of professionals and subsidising associations), and on the other hand through the new Penal Code. The fight against violence is one of the very highest priorities of the Ministry for Women's Rights.

The interdepartmental convention "for the promotion of equality of opportunity between girls and boys, women and men in the educational system", signed on 25 February 2000, sets out preventive and educational plans of action for combating violence. Funds made available for the fight against violence towards women have enabled more than 4 million francs to be spent on the work of the national associations working in this field and on maintaining the two national telephone services "Women's domestic violence helpline" and "Women's rape helpline", the work of which has sharply increased over the past two years, and have also financed, to the tune of 6,365,500 francs, the setting up and running costs of over a hundred local counselling and support centres for women who are the victims of domestic or sexual violence.

### Research

The Ministry for Women's Rights decided in 1997 to allocate a grant out of its research budget for a national survey on women. A pilot survey was carried out in 1998 on a sample of 400 women. The final report confirmed the feasibility of carrying out a national survey on 7,000 women aged between 20 and 59 in 2000 and 2001. This survey is the first on this topic to be programmed in France. Its objective is to identify the various type of violence exercised in different areas of daily living (family, work, and public gatherings), whoever the perpetrators of violence may be."

The four working parties of the Central Council for Sexual Information, Birth Control and Family Planning (C.S.I.S.) that were set up in 1997 to carry out a survey in order to make recommendations, concluded their task at the beginning of the year 2000:

- Informing and educating young people in sexuality;
- Prevention of violence of a sexual nature;
- Support of parents in their task of bringing up their families;
- Family planning – fertility advice.

Each working party produced a report of its work, with firm proposals.

Finally, a national survey on violence against women in Metropolitan France (ENVEFF) was launched in 1999 by the French government in order to alleviate the lack of knowledge about violence, mainly as the result of the reluctance of victims to approach the authorities.

This survey, the cost of which is close to 4 million francs, is aimed at identifying the different types of personal violence to which women fall prey in the private, professional and public spheres, and to analyse the family, social, cultural and economic contexts of violent situations. The reactions of women to violence may be studied together with the effect on their physical and mental health and on their family and social life. Conducted during the first half of 2000, in the form of telephone interviews, this survey involves a representative sample of 7000 women aged between 20 and 59.

The results of this vast survey will be known at the end of the year 2000 and will be analysed at the National Conferences against Violence to Women to be held in Paris in January 2001. They will serve as a data base for the public authorities in devising and implementing new initiatives in combating violence and helping the women subjected to it.

## GEORGIA

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Information taken from the second periodic report of Georgia on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) submitted to the respective UN treaty body in September 2000. The Service of the Deputy Secretary of the National Security Council of Georgia on Human Rights Issues completed the information in November 2000.

### **Introduction**

In conformity with the Constitution of Georgia, every human being is equal before the law regardless of, *inter alia*, his/her sex (Article 14). Marriage is based upon equality of rights and free will of the spouses. The state promotes the prosperity of the family. The rights of mothers and children are protected by the law (Article 36). In general, the constitutional provisions guaranteeing human rights and freedoms are based on principles of gender equality and non-discrimination. Furthermore, the Georgian legislation, proceeding from the constitutional principles, attaches particular attention to equality between men and women, in criminal, civil or any other matters. Moreover, the Labour Code stipulates measures of special protection concerning women's labour conditions, maternity leave, etc. Till recently, there were no normative acts in our country dealing with domestic violence, as such. The situation in this regard has changed in connection with consideration of the initial report of Georgia on the CEDAW.

### **1.1 Legislation Relating to Violence Against Women**

The results of consideration of Georgia's initial report on the CEDAW were discussed at the sitting of the National Security Council of Georgia (July, 1999). Based on conclusions/recommendations adopted by the Committee on the Elimination of Discrimination against Women, the State Commission on Elaboration of State Policy for Women's Advancement (established in February, 1998) drew up a draft Decree of the President of Georgia "About the Measures on Strengthening the Protection of Human Rights of Women". The Decree was approved by the President of Georgia and entered into force on August 28, 1999 (#511). According to the Decree, the above State Commission was entrusted with preparation of a national "Action Plan on Combating Violence against Women for 2000-2002". The Plan was elaborated and the President of Georgia approved it by Order on February 25, 2000 (#64). By the Decree "About the Measures on Strengthening the Protection of Human Rights of Women", in order to facilitate implementation of the recommendations of the Committee on the Elimination of Discrimination against Women, the President of Georgia charged various Governmental bodies. In particular, the Ministry of Internal Affairs, in collaboration with the Prosecutor's Office, was instructed to collect and process the data regarding every fact of violence against women, as well as to provide the registration of facts of domestic

violence and carry out preventive measures for exposing and eliminating such kind of violence.

In the context of the issue in question, the importance of the Order #64 “On Approval of the Action Plan on Combating Violence against Women (2000-2002)” should be emphasised. The present Action Plan provides for objectives as follows:

- Improvement of research into the nature, character and results of violence against women, analysis of the application of legislation against violence;
- Obtaining information on domestic violence, making the information a subject of public discussion. Prevention of domestic violence and decrease of such kinds of cases;
- Elaboration of special programmes for potential perpetrators;
- Development of legislation, execution of laws and court decisions;
- Assistance to and protection of victims of violence;
- Obtaining information on professional violence and making it the subject of public discussions. Studying causes and results, their prevention and reduction;
- Combating ethnic violence, support of victims of ethnic conflicts, deportation, internal displacement or exile;
- Obtaining information on ecologic violence (i.e. the alteration of genofund through destruction of living environment and ecological changes, violation of the right to live in harmless environment) and making it a subject of public discussion;
- Obtaining information on cases of violence against girls, coordinating study of causes and results, making them a subject of public discussion, analysing the application of legislation available in the field of violence against girls;
- Prevention and elimination of trafficking in women for the purpose of sexual exploitation.
- Special strategies were worked out in order to achieve the objectives listed above. The executors of the Action Plan are to be both legislative and executive bodies, as well as NGOs, trade unions and mass media.

## 1.2 Domestic Violence

Georgia’s criminal legislation makes no distinction among violent or other crimes, based on the environment where the crime is committed. That is, violent crime whether committed indoors or outdoors, by a person known or unknown to a victim, shall be

punished equally. The Criminal Code of Georgia contains no notion of “domestic violence”. Neither does the Criminal Procedure Code.

At the same time, the Ministry of Internal Affairs has collected statistical data regarding crimes against women and, in particular, crimes committed within the family. According to the Ministry, in 1999, 17 crimes were committed in connection with family conflicts. Of this figure 7 crimes were committed against women, including 3 murders. January to June 2000, 11 crimes were committed because of family conflicts; the victims were women in 3 cases.

In the opinion of the Ministry of Internal Affairs, domestic violence in Georgia is mostly conditioned by economic and social hardship the population has experienced in recent years. On the other hand, domestic violence is often a result of unsettled property disputes. Taking into consideration the complex nature of domestic violence, law enforcement bodies have endeavoured to make use of preventive measures, in order to settle family conflicts. Reportedly, the range of domestic violence in Georgia is likely to be broad, but the parties involved (in particular, members of the family) are unwilling to file the respective complaints. This is not applicable to grave crimes (e.g. murder, heavy bodily injuries, etc.).

The Criminal Code contains a special chapter, which stipulates certain circumstances that extenuate criminal character of an act. Such acts include, inter alia, the following:

Necessary defence (Article 28), i.e. to make harm to an abusive person in order to protect one’s legitimate interests;

Urgent necessity (Article 30), i.e. to commit an unlawful act to eliminate danger threatening the person concerned, or other persons, or legitimate interests/rights, in the case when there was no other way to eliminate the danger.

Thus, a victim of domestic violence is entitled to resort to force, even when it entails grave consequences to an abusive person. In addition, it should be noted that according to the Criminal Code, private violence is sentenced in the same way as public violence.

### **1.3 Rape/Sexual Assault**

The new Criminal Code of Georgia that entered into force the 1 July 2000 contains chapter XXII entitled “*Crimes against sexual liberty and sexual inviolability of person*”. This chapter contains several Articles relating to corpus delicti associated with rape/sexual assault.

The Criminal Code defines **rape** as follows:

*“Sexual intercourse by use of violence, threat of violence, or by making use of the victim’s helpless state”.*

When committing rape, the Criminal Code stipulates the following aggravating circumstances:

- If the crime was committed several times;
- If the crime was committed by a person who had committed crimes against sexual liberty/sexual inviolability before;
- If the crime was committed by a group of individuals;
- If the crime was committed against a pregnant woman, or against minor;
- If the crime was committed with particular cruelty against a victim or other persons;
- If the crime was committed by use of the perpetrator’s official position;
- If the crime committed has entailed the victim’s death (by negligence);
- If the crime committed has infected the victim with AIDS (by negligence), bodily injuries or other grave consequences.

The Criminal Code envisages also the following crimes:

- Coercive actions of a sexual nature (i.e. sexual contacts in perverted form by use of violence, threat of violence, or by making use of a victim’s helpless state). In this case the aggravating circumstances are the same as in the event of a rape;
- Compulsion to sexual intercourse with exploiting of official dependence of a victim, or under the menace of disclosure of disgracing information about a victim;
- Sexual intercourse or other sexual assault against a person under the age of 16 years;
- Lecherous actions against a person under the age of 16 years;

The Criminal Code provides for various punishments for the crimes listed above, in particular,

- Rape is punished with 3 to 7 years of imprisonment, under aggravating circumstances 5 to 20 years;
- Coercive actions of sexual nature are punished with 3 to 7 years of imprisonment, under aggravating circumstances 5 to 20 years;
- Compulsion to sexual intercourse is punished with a fine, or correctional labour up to 1 year, or up to 2 years of imprisonment;

- Sexual intercourse or other sexual assault against a person under the age of 16 years is punished with restriction of liberty up to 3 years, or arrest up to 3 months, or up to 3 years of imprisonment;
- Lecherous actions against a person under the age of 16 years are punished with a fine, correctional labor up to 1 year, or up to 2 years of imprisonment.

The criminal legislation of Georgia makes no distinction between rape committed in marriage and rape, as such. On the whole, it should be mentioned that the notion “rape in marriage” is rather unusual for the population of Georgia. Probably, the facts of marital rape do take place, but to date there have been no statements of such kind on records. Correspondingly, no criminal cases have been initiated.

As to court rulings on cases of rape, in conformity with the Criminal Procedure Code, trial in all Georgian courts is open to public, but under certain circumstances the case may be considered in court sitting completely or partially closed. In particular, by court decision, the case concerning sexual crime may be considered *in camera*, if parties so request.

#### **1.4 Child Sexual Abuse/Incest**

As noted above, the Criminal Code considers as aggravating circumstance any sexual assault towards a child and envisages more severe sanctions for such crimes.

The criminal legislation of Georgia does not contain such *corpus delicti* as incest. Taking into account Georgian history, traditions and culture, the crime of incest in our country is nearly impossible. In any case, in recent years there have been no official data regarding incest in our country.

#### **1.5 Sexual Harassment**

The criminal legislature of Georgia does not include such crime. At the same time, women, on an equal footing with men, have unrestricted access to any legal remedies to protect their dignity in the workplace or elsewhere, in accordance with the Constitution and the law.

#### **1.7 Pornography**

The Criminal Code of Georgia contains the following article:

*“Illegal production, distribution of advertising of pornographic works, books, pictures or other items of a pornographic nature, as well as trading in such items, or storing of these items with the purpose of selling or distributing, shall be punished with fine, or correctional labor up to 2 years, or imprisonment for the same term”.*

## 1.8 Prostitution

In conformity with the law in force prostitution as such does not constitute a crime. At the same time, according to the new Criminal Code, the following acts are classified as crimes:

- Inveigling into prostitution through use of violence, threat of violence or of destruction of property, as well as by blackmail or fraud (Article 253);
- Organisation and keeping of the den for prostitution (Article 254);
- Inveigling a minor into prostitution or other sexual lechery (Article 171, Paragraph 1).

Various sanctions are imposed for commitment of these crimes: from fine to imprisonment up to 2 to 5 years.

According to the Ministry of Internal Affairs, in 1999 and the first six months of 2000, four criminal cases were initiated on prostitution-related crimes. During the same period, law enforcement institutions elicited a few facts when minor girls were inveigled into prostitution. Within the framework of the “Presidential Program on Social Protection” and “Professional Training and Prevention of Delinquency in Adolescents” (1996-1999), special rehabilitation centres were set up for children in conflict with the law. Minor prostitutes are also sent to these centres where they have the opportunity to get comprehensive education and development.

It should be mentioned that the media give significant consideration to the problem of prostitution in Georgia. It is a frequent occurrence for an independent newspaper to publish a relevant article or interview with a prostitute. The conventional opinion is that prostitution in Georgia is conditioned by the high level of poverty and social-economical hardship owing to which women often are unable to earn their living in any other way. Recently, vital public discussions took place concerning the creation of a legal framework for prostitution (i.e. the question is whether to turn prostitution into an ordinary profession). According to the Chairperson of the Parliamentary Committee of Human Rights, about 100 Georgian prostitutes applied to the Parliament with such a request. The human rights advocates (e.g. Public Defender, Deputy Secretary of the National Security Council on Human Rights Issues and a number of NGOs) are against solving the problem in such a way. Discussions on this matter are still underway.

According to the data provided by the Ministry of Labour, Health and Social Affairs, in 1999 and the first 6 months of 2000, 785 women were infected with sexually transmitted diseases. compared with the previous years, this index has decreased. According to the data available, among women infected with sexually transmitted diseases about 30-40 percent are prostitutes. In this connection it should be noted that 30 March 1998, the President of Georgia issued order #110 “On Measures Aimed at Prevention of Sexually Transmitted Diseases”, according to which (a) the Ministry of Health was instructed to

provide free medical treatment of prostitutes, if necessary and (b) the Ministry of Internal Affairs was instructed to bring prostitutes to the relevant medical institutions, in order to treat those suffering from sexually transmitted diseases.

### Trafficking in Human Beings

In the context of this question, a special section of the “Action Plan on Combating Violence against Women” is to be noted. In order to provide prevention and elimination of trafficking in women, to condemn trafficking for the purpose of sexual exploitation as an infringement of the basic principles of human rights, the following measures are stipulated by the Plan:

- To define trafficking in all its elements and reinforce the sanctions accordingly;
- To collect data on trafficking for the purpose of sexual exploitation, work out programmes for protection of its victims;
- To facilitate co-operation among law enforcement, migration, social, legal and administrative bodies for elimination of trafficking in women.

In accordance with the Plan, the measures listed above are to be undertaken by the Ministries of Internal Affairs and for Refugees and Accommodation, as well as by the Prosecutor’s Office of Georgia. The Parliament of Georgia and NGOs also play an important role in this matter.

Recently, the NGO “WomenAid-Georgia” (local branch of “WomenAid-International”, London) has initiated the multi-media anti-trafficking campaign “Be smart/Be safe!» within the framework of which the NGO is going to implement projects aimed at raising awareness in trafficking-related matters both in governmental bodies and in public, arranging information campaigns, etc. The State agencies endeavour to co-operate with “WomenAid-Georgia” in achieving these goals. Several meetings with participation of various governmental bodies concerned, local and international NGOs have already been held, in order to identify the most important fields of future work.

#### **1.9 Obscene phone calls/telephone sex**

No practices of such kind have been reported.

#### **1.10 Female Genital Mutilation**

Practices of such kind have never been known in Georgia.

#### **1.11 International Conventions**

Georgia is a State party to all main international human rights instruments. There were no reservations concerning the Convention on the Elimination of All Forms of

Discrimination against Women, as well as other human rights instruments. In April 1999, Georgia became a member of the Council of Europe and acceded to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). In May 1999, the Georgian party signed Protocols 1, 4, 6 and 7 of the ECHR.

## GERMANY

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Information provided by the German Federal Ministry for Family Affairs, Senior Citizens, Women and Youth in November 2000.

### **Introduction**

Germany recognises that violence against women is part of everyday life in Germany and that it takes a wide variety of forms. Violence against women is not limited to assaults on the physical and emotional integrity of women alone, it includes subtle forms of behaviour which prevents a woman from developing and expressing her own will, and ignores her needs and well-being. The violence ranges from daily harassment in the street and interference in working life to various forms of disrespect, degrading women to objects, maltreatment and sexual abuse within the family and in public, rape, homicide and trafficking in women.

The Federal Government has been dealing with violence against women for over 20 years. In particular, the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth has, by hosting studies and pilot projects, clearly illustrated the forms, backgrounds and causes of violence against women. The Federal Government has also tested possibilities for helping in practice and initiated numerous amendments to laws in favour of the affected women. Moreover, the Federal Laender have constantly expanded the network of private and public institutions offering protection and help for affected girls and women.

In order to combat violence against women more effectively, the Federal Government has issued a comprehensive Action Plan to combat violence against women the 1 December 1999. In doing so, the Federal Government makes it clear that structural changes are necessary, rather than the occasional, isolated measures that disregard the complexity of the manifestation of violence.

### **1.1 Legislation Relating to Violence Against Women**

#### Constitutional Law

The constitution provides for comprehensive guarantees for the protection of all fundamental rights of all human beings, irrespective of nationality, descent, race, language, homeland or country of origin. Women, like all people, are guaranteed protection against any form of physical and psychological violence in accordance with particular needs.

2(2)§ *"Everyone has the right to life and freedom from physical harm"*.

This constitutional provision guarantees protection against violence committed by the state. The State further has a duty to take all steps to prevent violence against women in all areas of society, including the family.

2(1)§ of the constitution:

*"Everyone has the right to free development of his or her personality as long as he/she does not violate the rights of others or violate the constitutional order or the moral code".*

*1(1)§ the dignity of men and women is inviolable.*

These Constitutional provisions safeguard general rights that exist for the protection of the personality. This guarantee includes protection against psychological violence committed by the State and the State has an obligation to take suitable measures to counter psychological violence against women committed by society as a whole.

In 1997, the determination of penalties for offences against property and crimes was modified so that offences against property are no longer sentenced to a higher penalty than crimes of violence.

### Penal Law

The German Penal Code sentence violence against women with high penalties.

## **1.2 Domestic Violence**

Because of the wide range of definitions of violence against women, it is impossible to make any reliable statements concerning the actual extent of violence against women. The police crime statistics provide little information of value in this context, since many women fail to report acts of violence and coercion to the police – in particular, if a partner commits the offence. According to a survey, conducted among victims, by the Lower Saxony Institute of Criminological Research in 1992 on behalf of the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth, the majority of sexual violence - some two thirds - takes place in the closed social environment of the family and household. This study revealed that one woman out of seven has been the victim of rape or sexual coercion at least once in her life.

### Criminal Law

Violence against women is covered by general provisions of criminal law e.g. homicide, bodily harm, deprivation of liberty (by a state official) and coercion.

These laws have broad application and provide protection from matrimonial and domestic violence.

With the aim to ensure that cases of domestic violence are not treated as "private" matters and dismissed by the police and the Public Prosecutor's office, the "Guidelines for Criminal Proceedings" have been changed. This is to ensure that the public authorities deal with domestic violence, i.e. that the police and the Public Prosecutor's office institute legal proceedings when they become aware of cases of ill treatment.

### Separate Right of Residence for Wives of Foreign Nationals

In 1997, the regulation concerning an independent right of residence for foreign spouses was amended in the Alien's Act. In cases of special hardship (including domestic violence), the wife can obtain an independent right of residence without having to comply with a time limit. In the past, a conjugal community had to have existed for at least 3 years in Germany. This regulation resulted in that a foreign woman who wished to separate from her violent husband within this period had to count of expulsion. This year's (2000) amendment to the same regulation lowered the general period a marriage had to exist to 2 years.

## **1.3 Rape/Sexual Assault**

German Law regards "violation of a person's right to sexual self-determination" as a serious offence. Its guiding principle is that a woman's right to sexual self-determination is inviolable and cannot be either abolished or restricted when a woman gets married.

### Rape

Rape (177§) and Sexual Coercion (178§) are punishable offences if:

"A person by force, or threat of violence which constitutes an actual danger to life or limb, compels a person to have intercourse or engage in other sexual acts".

179§ covers sexual abuse of persons either physically or psychologically unable to resist the offence.

In 1997, the term "violence" in the Penal Code was expanded to embrace exploitation of a helpless situation. Precedent had previously restricted the notion to substantial physical violence. Furthermore, all forms of penetration were placed on the same level in the amendment, whereas only vaginal penetration was considered as rape under the old law.

### Rape in Marriage

In July 1997, after years of debate and several attempts in the German Bundestag, rape in marriage was criminalised. The previous law only defined extramarital rape as a crime, whereas sexual intercourse forced on the wife by the husband could only be prosecuted as coercion or bodily harm.

### Sexual abuse in a counselling, treatment or support relationship

In 1998, new penal provisions, imposing penalties for sexual abuse in a counselling, treatment or support relationship, were introduced. Any therapist must refrain from any sexual relationship whatsoever with his female and male patients. In the event of violation of this regulation, the offender can also be banned from practicing his profession in order to avoid repeated offences. This law also benefits handicapped women.

### Rules of Criminal Procedure

- Previous sexual history:

68 (1)§ Questions which may lead to disgrace of a witness or members of her/his family, or that concern their personal lives may only be asked if the questions are indispensable. This provision is aimed to prevent victims of rape from questions about their previous sexual experience.

- Testimony in the absence of the defendant:

If it is feared that a witness will not be truthful if the defendant is present at the examination, the court may order the defendant to leave the courtroom while testimony is given. The same applies when there is danger for the health of the witness if he/she testifies in the presence of the defendant.

### Options for Guaranteeing Protection of the General Public Against Sex Offenders

Changes in the penal law and in the law of prison administration are intended to give courts and prison authorities new and more flexible options for guaranteeing protection of the general public against, in particular, dangerous sex offenders.

The therapy options for treatable offenders are, for example, to be expanded and the options improved for committing such offenders to a social therapy institution during their prison term. Sex offenders sentenced to more than two years of imprisonment who are both capable and in need of being treated must be transferred to a social therapist.

## **1.4 Child Sexual Abuse /Incest**

### Sexual abuse

The sexual abuse of children i.e. persons under the age of 14 years, is punishable under 176§ of the Criminal Code.

The 6<sup>th</sup> amendment to reform the Penal Code, which entered into force on 1 April 1998, introduced higher penalties for child sexual abuse. Under the new Act, particularly serious cases of child sexual abuse are no longer classified as mere offences, but as

serious crimes and, depending on the severity of the individual punishable act, will generally be punished with a minimum prison sentence of one, two or five years.

If the sexual abuse is committed for the purpose of producing and disseminating portrayals of child pornography, the standard punishment is now between 2 and 15 years imprisonment. In addition, the minimum sentence in cases of severe or life-threatening physical abuse has been increased from the previous 1 to 5 years of imprisonment.

A person who negligently causes the death of a child as a result of sexual abuse, and a person who commits rape or sexual coercion with a fatal outcome, faces a life sentence or a sentence of not less than 10 years of imprisonment.

Owing to the deletion of the restricting requirement that the victim be a German citizen, it has now been possible to hold responsible under criminal law (since 1 September 1993) German tourists who sexually abuse children abroad, even if the offence is not punishable in the country where it was committed.

### Incest

173§ outlaws sexual intercourse between related persons.

174§ (sexual abuse of a person in one's charge) protects minors in their relationship with persons to whom they have been entrusted for the purposes of education, training and care, or to whom they are subordinate under an employment contract. This rule also applies to a man who engages in sexual acts with his own or adopted children under the age of 18 years.

### Time Limits for Prosecutions

In June 1994, the start of the limitation of prosecution under criminal law for certain serious sex offences to the detriment of children was deferred until the age of 18. This prevents sex offences committed on children from already being statute-barred by the time the victims are no longer under the influence of the offender and are in a position to appreciate the wrong done to them and report it to the police.

## **1.5 Sexual Harassment**

The Act on the Protection of Employees against Sexual Harassment at the Workplace affords legal protection against sexual harassment at the workplace to all employees in the civil service and the private sector. The Act obliges all employees to immediately take the necessary protective steps in the event that a female employee feels sexually harassed. This includes consequences for the offenders under labour and disciplinary law.

## 1.7 Pornography

184§ of the Criminal Code provides for punitive measures against distributing pornographic literature. It is also a punishable offence to publish, distribute, produce or engage in other preparatory work of pornography involving violence, child sexual abuse or sexual acts carried out by human beings with animals.

### Child Pornography

In order to more effectively combat child sexual abuse in the production and dissemination of pornographic films and photographs, the German Bundestag passed the 27<sup>th</sup> amendment to the Penal Law - Child Pornography – which entered into force on 1 September 1993. This act increases the penalties for the production and dissemination of child pornography by extending the range of punishment to 5 years and makes the possession and procuring of child pornographic portrayals a punishable offence for the first time.

The 6<sup>th</sup> amendment to the Penal Code (1998) provides for a maximum prison sentence of 10 years for the commercial or organised dissemination of child pornography portraying an actual or realistic event. Cases in which it is impossible to establish whether the portrayal is real or fictitious are also covered by this regulation.

## 1.8 Prostitution

The promotion of sexual acts by minors is an offence punishable under 180§ of the Criminal Code.

Prostitution as such is not an offence under German law. Prostitutes are protected against coercion and exploitation (180§), promotion of prostitution (181§), living off immoral earnings and trafficking in human beings (180b§ and 181§).

### Trafficking in Women

According to the police crime statistics compiled by the Federal Office of Criminal Investigation, 919 cases of trafficking in human beings came to light in 1995 and 1,094 cases in 1996. The number of victims increased from 1,196 in 1995 (including 1,158 females) to 1,473 in 1996 (including 1,445 females). Since 1989, the victims have mainly originated from the countries of Central and Eastern Europe.

The Criminal Law was amended in 1992 by the outlawing of trafficking in human beings. This amendment improves the protection against sexual exploitation, specifically against the dangers of forced prostitution and trafficking in human beings, that the law, in particular, provides for foreign girls and women.

Moreover, a law was passed for improving the combating of money laundering, which is intended, among other things, to expand the possibilities for confiscating the financial

resources of organised traffickers in human beings. In addition, Article 180b of the German Penal code (trafficking in human beings) has been added to the catalogue of offences open to accessory prosecution in art. 395 of the German code of Criminal Procedure, so that the victims can also appear as additional prosecutors with the corresponding rights in these proceedings.

The revised articles also apply to criminal acts committed abroad, independently of the law applicable where the offence was committed.

### Trafficking in Children

The 6<sup>th</sup> amendment to the Penal Code (1998) introduced a provision against trafficking in children in order to allow more effective action to be taken against the sexual abuse of children.

### Measures to Combat Trafficking

The Federal Government combats trafficking in children and women by prevention, prosecution of the offender and support to the victims.

For the female victims who act as witnesses in the criminal proceedings against the offenders, it is a question of the right of residence, special witness protection programmes, accommodation and maintenance, support in the proceedings, medical and psychological support, the protection of their families in their home countries against reprisals on the part of the traffickers and reintegration programmes.

In order to clarify all the associated measures related to the legislation concerning foreign nationals that affects the responsibility of various Federal and Laender agencies, the police, the courts and the victim support groups set up a working group in 1997. The “Working Group on Trafficking in Women” operates under the control of the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth. The aim of this group is to harmonise and coordinate all the necessary measures to combat trafficking in women.

Germany has over 25 counselling centres where prostitutes in duress and women in trafficking can get help.

## **1.11 International Conventions**

The Federal Republic of Germany is a signatory to European Convention for the Protection of Human Rights and Fundamental Freedoms, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Furthermore, Germany has adopted a number of international conventions aiming to protect women from violation of human rights, in particular the Convention on the Elimination of all Forms of Discrimination Against Women.

The Federal Republic of Germany is one of the states that has always urged and supported the establishment of a special commissioner at the UN Commission on Human Rights responsible for human rights violations in form of violence against women.

### **3.1 Support/Protection**

#### Shelters

The first German shelter for women, opened in Berlin in 1976, was a project of the Federal ministry for Family Affairs, Senior Citizens, Women and Youth. There are today more than 400 women's shelters in Germany, including 120 in the new Federal Laender, where the Federal Government contributed towards the establishment of the first women's shelters by granting DM 1.2 million for the framework of a special programme. Other pilot projects of the Federal Government are:

- An emergency helpline for female victims of sexual violence;
- A walk-in therapy centre;
- Counselling and housing for sexually abused girls;
- Counselling and housing for prostitutes under duress and victims of trafficking in women;
- Etc.

These pilot projects have often been copied (for instance, there are currently 156 emergency helplines throughout the country), the Federal Laender and the municipalities finance some projects.

In order to exercise more influence on politics and to improve cooperation and information, the support institutions are increasingly networking. The Federal government supports this network by providing financial provision for annual networking meetings of the respective institutions and a national coordination centre for women's shelters.

#### Domestic Violence

In 1995, the "Berlin Intervention Project Against Domestic Violence" was initiated. It is intended to improve the protection of women subjected to domestic violence during the police and court proceeding of the offender. This project is modelled on the Duluth, Minnesota, "Domestic Violence Intervention Project" and is aimed to coordinate measures by all institutions and projects to facilitate better protection for maltreated women and prosecution of perpetrators.

#### Research and Training

The Federal Government has conducted and published an important number of studies concerning violence against women. Some research projects are intended to support needs for amendments of the legislation, for example, research concerning legal practice

when the marital home is allocated to the abused wife. Other research projects are the publication of a guide for marriage and family counselling centres for counselling on domestic violence against women and the production of continuing training materials for the female staff of women's shelters and for the police. The concept of training courses for the police concerning violence against women is currently used in the education programmes of the police training schools of the Laender.

### Education

Educational public relations work takes an important place among the measures for reducing violence against women. The Federal Ministry for Women, the Laender Ministries for Women, the municipal commissioners for women's affairs and the anti-violence projects, have implemented many measures designed to effectively attract public attention. There is consequently a host of publications by the Federal Government on the subject of violence against women, illustrating its different forms and aspects.

The three-year campaign (1993 - 1996) on violence against women by the Federal Ministry for Women could specially be mentioned. The campaign addressed women and men in different ways with a host of individual measures.

### Other Measures

- Publicly subsidised "night taxis" for women's safety;
- Informative and awareness raising television programmes.

### Witness and Victim Protection Measures

In December 1998, the Witness Protection Act expanded the right of involvement of victims and ensured that the burdens placed on victims witnessing in court are kept to an unavoidable minimum. For instance, it is possible to examine witnesses by audiovisual media, if they then are spared the ordeal of giving evidence directly in court. In addition, in order to avoid multiple examinations in the course of the criminal proceeding, the Act also permits, under certain circumstances, the use of previous examinations recorded on videotape as a substitute for renewed personal examination in court.

Under certain circumstances, a legal advisor can be appointed for a witness at the expense of the state for the purpose of examination, if the witness is not in a position to exercise his or her authorities personally.

In addition, the possibilities have been improved for crime victims to receive assistance of a lawyer throughout the proceedings. This kind of counsel for the victim is particularly envisaged for the victims of sex offences and is provided at the expense of the state, regardless of the financial situation of the victim.

Victims are entitled to bring an associated action to claim civil damages, especially victims of sexual offences, defamation and crimes involving bodily harm. The victims have also the following rights:

- To join the criminal proceedings as a civil party and to have an active part in the proceedings;
- To use legal remedies to challenge the court's decisions.

### Compensation

Women who become victims of crimes of violence can demand compensation from the perpetrator for injuries sustained, medical costs and loss of earnings. In addition, a woman who has suffered bodily harm, violation of her personality rights or who is a victim of certain sexual offences may be entitled to claim compensation for non pecuniary damage. The level of compensation varies according to the circumstances in the individual case.

### Organisational Measures for Police Stations and Public Prosecutor's Offices

The national and local government are concerned to encourage the police and the public prosecutor's offices to adopt a sensitive approach to the treatment of victims of violence. The aim is to spare women from degrading treatment and shame when reporting a criminal offence and in the proceedings against the offender. To this end:

- Special departments of public prosecutors have been established in all Länder for prosecuting criminal offences against a person's right to sexual self-determination;
- In most Länder, it is an established principle that women and girls victimised by sexual violence shall be questioned only by women police officers;
- Posts for staff with special responsibilities for dealing with women have been established at Bavarian police stations;
- The police are endeavouring to take into account religious and cultural traditions in the investigations of cases involving women from minority ethnic groups;
- Leaflets and brochures have been produced for victims of sexual offences in order to inform them of their rights and the assistance available;
- In many Länder, special training on sexual offences is given to police officers. The aim is to prepare them to adopt a sensitive approach handling victims of violence;
- Lectures and seminars on the subject of women and violence are offered to judges and public prosecutors.

In July 1995, a ‘course concept’ for police officers concerning “Male violence against women” was published. This concept is to be incorporated into the continuing education of police officers.

### 3.9 Granting of Asylum

The constitution 16 (a)(1) guarantees persons persecuted for political reasons an individual right of asylum, which can be enforced if necessary by a court. An essential precondition is that the applicant concerned is indeed the victim of persecution for political reasons. Sex-specific violations of human rights entitle the right of asylum if they constitute a manifestation of political persecution or have been carried out as a means of political repression in a manner for which the state can be held responsible e.g. so-called ethnic cleansing.

If the prerequisites for political persecution are not fulfilled, consideration must be given to the violation of human rights in the context of a review of the obstacles to deportation pursuant to art.53 of the Alien’s Act, i.e.; if an individual, explicitly impending threat exists.

A woman conducts, if possible, a hearing if a female asylum seeker requests this. If the behaviour of the female asylum-seeker or the circumstances of the persecution of a female asylum-seeker (e.g. sexual violence) indicate the need for being heard by female staff members, this requirement is observed *ex officio* without that the female asylum-seeker have to specifically express such a wish. The same applies for interpretation by a female interpreter.

In order to ensure that the needs of female refugees are given adequate and sensitive consideration in the asylum procedure, the “Federal Office for the Recognition of Foreign Refugees” regularly holds qualification and continuing education courses on reasons for flight specific to women. Furthermore, male and female sole decision-makers who have received special training are appointed as special commissioners in cases of female, minors and torture victims. In addition to dealing with corresponding cases, their tasks include advising decision-makers in cases of persecution of women and to forward information on the latest developments in this sector. These special commissioners are in the future going to be available throughout the country in all branches of the Federal Office.

## GREECE

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Information provided by the General Secretariat for Equality, Ministry of Interior, Public Administration and Decentralisation, Hellenic Republic, in November 2000.

### 1.1 Legislation Relating to Violence Against Women

Violence against women as a social phenomenon is covered by rules of law under the Greek legislation. The relevant provisions, however, mostly refer in general to crimes against the individual's personal freedom, honour and dignity, as well as crimes against sexual freedom.

The forms of violence covered by the legislation, through the general provisions of civil and criminal law in particular, as well as the specific legislation (labour laws, etc), include:

- a. Physical injuries (Criminal Code, Chapter XVI, articles 308, 308A, 309, 310, 311, 314, 315).
- b. Crimes against sexual freedom and crimes involving the exploitation for financial purposes, of sexual life (Criminal Code, Chapter XVIII, articles 336, 337, 338, 343, 344).
- c. Crimes against honour (Criminal Code, Chapter XXI, articles 361, 361A, 368).
- d. Outrage to personality (Civil Code, articles 57, 59, 932).

Certain special provisions deal with violence against women, which recognise both physical harm and psychological emotional harm. Psychological violence, in the absence of a specific offence, can be prosecuted since any form of violence associated with physical violence or threat of serious and imminent harm constitutes an outrage to personality. This offense is punishable under the general provisions prescribed either in the Civil and Criminal Code, or in special laws.

### 1.2 Domestic Violence

There are no specific domestic violence provisions in the Penal Code. It is included in the offences of violence against the person. Bodily injury: defines simple bodily injury; unprovoked bodily injury; dangerous bodily injury; severe bodily injury; deadly bodily injury. Bodily injury and insults to the personality that a woman may experience in marriage are regulated under the Penal code.

### 1.3 Rape/Sexual Assault

Crimes against sexual liberty and the crime of exploitation of sexual life; insult of sexual dignity; coercive indecency.

Provisions concerning rape have been amended by virtue of law 1419/1984. The requirement that a woman must bring the charges was eliminated, and replaced by automatic prosecution. Rape was removed from a chapter that protected social morality and redefined as a *crime against sexual liberty and the crime of exploitation of sexual life*. Rape, which was previously defined as "forcing a woman to take part in extra-marital intercourse using bodily violence or the threat of significant and immediate danger" has been merged with "coercive indecency".

The present definition of rape is:

"the coercion of another to extra-marital intercourse with bodily violence or the treat of significant and immediate harm".

Rape in marriage does not constitute a specific offence. It may, however, be prosecuted on the grounds of forcing the other person to tolerate or submit to sexual assault, associated with physical violence or threat of serious and imminent harm, although there is as yet no relevant case law.

"Insult of sexual dignity", "brutally with obscene gestures" and proposals about indecent acts are now crimes. These were formerly considered to be an "insulting action".

It is deemed a more serious offence if committed by a group of perpetrators or against a child under 12 years.

#### Problems with the Law

Analyses of official statistics have demonstrated that penalties inflicted are less strict than the law allows; only a few cases lead to imprisonment. Women are deterred from recourse to law by:

- Light penalties;
- Time consuming nature of penal procedure;
- The burden of proof lying with the woman;
- The suspicion met by women reporting rape after the medical examination which refers to her previous sexual history - including whether she was a virgin or not;
- Court interpretation of law and attitudes of legal functionaries are affected by prevailing social prejudice.

The inability of the police and judicial authorities to deal with violence against women often results in women taking the law into their own hands. In 1986, a person charged with rape was beaten and tied by women; in 1983, independent women's organisations held a march in Corinth handing out details of charges and disclosures against a rapist.

#### **1.4 Child Sexual Abuse/Incest**

All offences above are more serious if committed against a child less than 12 years old.

The following legislation in the Penal Code protects the young under 18: Art 336, "Rape"; Art 337, "Insult of genitive dignity"; Article 338, "Abuse in Licentiousness"; Article 339 "Children's Seduction"; Article 340, "General Provision"; Article 342, "Exploitation of the young under age in Licentiousness"; Article 347, "Licentiousness against nature"; Article 349, "Pimp"; Article 350, "Trafficking"; Article 360, "Neglect of the supervision of the young under age".

#### **1.5 Sexual Harassment**

Greek Law offers no protection to women against sexual harassment in the workplace under general provisions, but there are specific laws in both the Penal and Civil Codes:

- If an employer through his own action insults a female employee and this act is unlawful and constitutes an abuse of the right to lead, then the woman in question may demand for reparation for causing moral harm from the employer. He may as well be obliged to withdraw the insult and refrain from repeating it in the future;
- If the behaviour of the employer is such as to compel the woman to resign (indirect sex discrimination) then the woman after proving this coercion, is entitled to demand default earnings up to the time the employer denounces the labour contract and pays the relevant compensation;
- If the particular act inflicted on the woman is described in law as a penal offence then the perpetrator is subject to the penalties of the penal law, e.g. insult by word or deed, threats, the exercise of bodily or psychological force;
- There is a specific law for Civil servant. If a civil servant commits an indecent act against a person in a subordinate position, and thus abuses his/her position, a sanction of up to one year imprisonment can follow. (There's no corresponding provision for the private sector).

#### Problems with the law

The victim of sexual harassment must bring the charge against the perpetrator. This requirement has only been eliminated in rape, where Prosecuting authorities bring the indictment based on information brought by any person.

The case law and the written laws, which govern sexual harassment at work, do not provide a solution to the following problems:

- Burden of proof on the woman;
- Complex court procedures;
- Difficulty of finding witnesses;
- Fear of dismissal;
- Fear of repercussions in professional advancement;
- -Social prejudice regarding position of women in the labour market;
- Attitudes of family and friends.

Not a single case of sexual harassment has been reported to the Equality Officers existing at all ministries.

### **3.1 Support/Protection**

In Greece there is a considerable shortage of services from which women who have been victim of violence could seek help.

- At State level, on the initiative of the General Secretariat for Equality, a Centre for Battered Women is in operation in Athens. The centre offers the following services:
  - The Reception Office for Battered Women, which offers free legal advice, psychological support and information about other available services.
  - The Home for Battered Women that has been in operation in Athens since 1993 cooperates with the Municipality of Athens. This Home offers hospitality to battered women and their children as well as psychological support and information on other available services.

In addition, battered women can also seek help at the State hospitals, the Health Centres and the Mental Health Centres, but these institutions are not adequately staffed to handle such cases.

- Women's NGOs and groups are starting to mobilise and offer free services e.g. legal advice, defence counsel, socio-psychological support to women who are victims of any form of violence;
- In 1990, an SOS call service for battered or raped women opened in Thessaloniki by two independent women's groups. A similar service is operating in Athens;

- The General Secretariat for Equality organised in 1990 two subsidised seminars for the vocational training of battered women and two subsidised seminars in 1992 for mothers living alone (widows, divorced, separated or unmarried women) among whom there are also women who have been victims of violence;
- Two seminars for training of the Police Force were organised in 1997. The first one was organised by the General Secretariat for Equality. The second seminar (“ARIADNI”) concerned violence and sexual exploitation of women and minors and was organised by the Ministry of Public Order;
- Since 1997, the General Secretariat for Equality supports the project against violence against women, “DAPHNE”, in collaboration with the European Union;
- The General Secretariat for Equality, as the official state agency responsible for promoting the issue of equality between the two sexes in Greece, has recently introduced a Committee of experts in order to study and work out the legislation in force in Greece and in other countries. This Committee will make a list of all forms of violence against women at the legal level in order to be enforce the necessary legislative provisions, as well as the proper acts at social level.

### **3.10 Proposed Reforms (women's organisations)**

Rape should be redefined as a crime against the person and personal freedom, i.e. a broader concept than crime against sexual freedom and self-determination of the individual.

Women's organisations have demanded the abolition of the exception to the automatic prosecution of rape, which allows the victim to request the close down of the investigation for personal reasons. Experts contest this demand, referring to the traumatic nature of the criminal process.

It should be an offence to offensively report rape and sexual crimes in general in the mass media and to identify the victim. News programmes should denounce the event as a social crime not as an isolated act of violence; Crimes of violence against women should include psychological force as a component of the crime, at present this is unpunished.

## HUNGARY

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Information provided by the Secretariat for Women's Issues, Ministry of Social and Family Affairs in November 2000.

### 1.1 Legislation Relating to Violence against Women

Section 66 of the Hungarian Constitution establishes a general legal principle of equality between men and women: "The Republic of Hungary guarantees equality for both men and women with regard to exercising all civil, political, economic, social and cultural rights. According to Section 70/A of the Constitution:

- (1) "The Republic of Hungary respects the human rights and civil rights of all persons without discrimination on the basis of race, colour, gender, language, religion, political or other opinion, national or social origins, financial situation, birth or any other grounds whatsoever.
- (2) The law provides strict punishment for discrimination on the basis of Paragraph (1).
- (3) The Republic of Hungary endeavours to implement equal rights for everyone through measures that create fair opportunities for all.

Section 70/B of the Constitution entails important anti-discrimination provisions, such as the right to work, the freedom of choice of labour and profession, the right to equal remuneration for equal work, the right to income according to the quality and quantity of work and the right to relaxation and paid holidays.

Section 3 of the Act on the Control of Labour Affairs<sup>12</sup> also includes a prohibition of discrimination. Section 76 of the Civil Code deals with the problem as a violation of personality rights. The prohibition of gender-based discrimination is furthermore laid down in Section 5 of the Labour Code:<sup>13</sup>

In connection with an employment relationship, no discrimination shall be practised against employees on the basis of gender, age, race, national origin, religion, political views or membership in an employee interest representation organisation or activities connected therewith, as well as any other circumstances not related to the employment. Any differentiation clearly and directly required by the character or nature of the work shall not be construed as discrimination.

In the event of any disputes related to a violation of the prohibition of discrimination, the employer shall be required to prove that his actions did not violate the provision of subsection (1).

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<sup>12</sup> Act No. LXXV/1996

<sup>13</sup> Act No. XXII/1992

In 1998, there were altogether 3 procedures before the labour supervisory authorities, based on the violation of the anti-discrimination principle; two of them were related to discriminatory job advertisements.

Women's rights are embodied in the concept of human rights. Certain mechanisms have been established to secure the realisation of these rights, such as the ombudsperson who supervises the practical application of these fundamental rights.

If the right to equality is violated, various judicial remedies are available: the women may bring criminal, civil, family, administrative or labour law actions before the court. In addition, there is a constitutional remedy: according to the Section 70/K of the Constitution, claims arising from the violation of fundamental rights shall be enforceable before court (gender equality is classified as a fundamental right). If a law violates a constitutional provision, redress can be sought before the Constitutional Court. Anyone who has been aggrieved in consequence of the application of an unconstitutional law and who has exhausted all other remedies has access to the Constitutional Court by lodging a constitutional complaint.

## 1.2 Domestic Violence

The most significant Hungarian legal rules relating to domestic violence will be presented below.

### Constitution

The Constitution acknowledges and protects human rights and fundamental freedoms.

### Penal Code

The Penal Code contains several provisions concerning violent criminal offences committed against an adult family member. It is possible on the grounds of these provisions to conduct a criminal procedure and impose a penalty on the perpetrators of different forms of wife abuse or abuse of children.

Sexual assault:

Rape: Since the amendment of the Penal Code in 1997, rape in marriage constitutes a criminal offence.

Assault against decency: Since the amendment of the Penal Code in 1997, assault against decency in marriage constitutes a criminal offence.

### Contravention Act

Among the acts prohibited by the Contravention Act "dangerous threat" has the most significant practical importance in the field of domestic violence.

On the basis of the Act on Child Protection (Act XXI of 1997) the system of family-support (child welfare) services are developed and strengthened. It is possible in the framework of these institutions to carry out prevention of domestic violence in the family and support for victims of domestic violence. The act declares that if a mother and child are forced to escape from the common home, they shall be provided with common accommodation. The mother does not have to worry that her child is going to be taken away from her. Until the settlement of the problem, they are accommodated in so-called temporary home for families. Training of workers of such homes is provided to raise the awareness of the nature of domestic violence, the endangerment of victims, the close link between wife-abuse and child-abuse and the line of action to handle domestic violence. The introduction of coordinated training models have as their objective that family-support services shall continuously co-operate with other public and non-governmental organs in order to increase the effectiveness of intervention against domestic violence.

### Social Act

The forms and system of institutional (public) care for homeless people is determined in the Social Act (Act III of 1993). It is significant from the viewpoint of our subject matter that the act does not provide for establishment and maintenance of women's shelters. From current data on available accommodation, the relative lack of temporary housing for women is known. In the interest of solving this problem, the Department of Social Services of the Ministry of Social and Family Affairs invited tenders for 2000, on the establishment of night refuge houses, which supports above all the creation of women's shelters.

### Government Resolution on Victim Protection<sup>14</sup>

In 1999, the Hungarian Government passed a resolution on the protection of victims of crimes. This Resolution includes several provisions that will hopefully significantly improve both the situation for victims of domestic violence and other forms of violence against women.

*“The Government states that authorities under its leadership dealing with victims of crimes in the frame of administrative or other procedure, in particular organs in charge of criminal investigation, criminal prevention, public order protection, administration controlling foreigners, administration on refugees, child and family protection, social and health-care services (hereinafter authorities and other governmental agencies acting in the cases of victims) shall provide assistance for the victims of crimes in the course of their work in the interest of, apart from becoming acquainted with their rights and duties in the criminal procedure, obtaining extensive knowledge on social, economic and health services, on further possibilities of legal advising and assistance, on services of other victim-supporting social organisations, and on the way of access to them. For this purpose, the authorities concerned shall carry out an intensive campaign, through, among other means, the media. The authorities have to provide for the preparation of educational materials (leaflets) that help victims of crime in conformity with the*

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<sup>14</sup> No.1074/1999. (VII.7.) Gov. Res.

*peculiarities of the crime-type in question, to gather information on the essential and possible services and actions needed to be undertaken by the authorities and simultaneously provide access to the service.”*

*“The Government draws attention to models to be used for the prevention from becoming a victim, in particular in the field of crimes related to prostitution, drugs and psychotropic substances. The government underlines also the importance of examining the sources of deceit, the dangers of sexual exploitation and drug addiction and the possibilities facilitating the improvement of the victim’s situation.”*

### Services supporting victims of domestic violence

Civil organisations have set up help-lines and legal advice services.

The development of the national network of family-aid services has had a good result. Our task is to continue the training of specialists working in the network to combat domestic violence and to improve co-operation between the state organs and between state organs and non-governmental organisations by introducing co-ordinated training models.

### Criminal Law

Hungarian penal legislation has no provisions that specifically sanction domestic violence. It is included within crimes against the person.

It is hard to estimate the extent of domestic violence in Hungary as there have been few surveys<sup>15</sup> and official statistics do not reveal this data. Official statistics indicate that 25% of women over the age of 14 years are victims of domestic violence. In 66% of the cases of crimes against the person, including homicide, the victims are women and the offenses take place at home. However, as the figures depend on crimes reported to the police, it is likely that these figures are underestimated.

### Civil Law

Hungarian family law allows dissolving of marriage if it has irretrievably broken down. There are no predefined requirements such as fault for getting a divorce. It is not possible to file for divorce before a mandatory reconciliation procedure. Both spouses may initiative a divorce, so a woman subjected to violence can seek a divorce.

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<sup>15</sup> Krisztina Morvai: Terror in the Family (in Hungarian); Kossuth Kiadó, Bp. 1998; Olga Tóth: Violence in the Family (in Hungarian) TÁRKI, 1999. N. 12.

### 1.3 Rape/Sexual Assault

Title II “Crimes Against Sexual Morals”:

#### Rape (section 197)

- (1) A person who, by violent action or direct menace against life or limb, forces a person to have sexual intercourse, or who uses a person’s incapacity of defence or manifestation of her will for sexual intercourse, commits a felony and is sentenced to 2 to 8 years of imprisonment.
- (2) The punishment is 5 to 10 years of imprisonment if:
  - a) The victim is under the age of 12 years;
  - b) The victim is under the education, supervision, care or medical treatment of the perpetrator;
  - c) More than one person has sexual intercourse with the victim on the same occasion, knowing about each other's acts.
- (3) The punishment is 5 to 15 years of imprisonment if the provisions of subsection (2), paragraph b) or c) are fulfilled and the rape is committed against a person under the age of 12 years.

#### Assault Against Decency (section 198)

- (1) A person who, by violence or direct menace against life or limb, forces another person to engage in fornication or to the endurance thereof or who uses for the purpose of fornication another person’s incapacity of defence or manifestation of will, commits a felony and is sentenced to 2 to 8 years of imprisonment.
- (2) The punishment is 5 to 10 years of imprisonment if:
  - a) *The victim is under the age of 12 years;*
  - b) *The victim is under the education, supervision, care or medical treatment of the perpetrator;*
  - c) *Several persons fornicate the victim on the same occasion, knowing about each other's act.*
- (3) The punishment is 5 to 15 years of imprisonment if the provisions of subsection (2), paragraph b) or c) are fulfilled and the sexual assault is committed against a person under the age of 12 years.

#### Fornication Against Nature (section 199)

A person over the age of 18 years, who fornicates with a younger person of the same sex, commits a felony and is sentenced to up to 3 years of imprisonment.

### Forceful Fornication Against Nature (section 200)

- (1) A person who, by violence or direct menace against life or limb forces, a person of the same sex to engage in fornication or to the endurance thereof or uses that person's incapacity of defence or manifestation of will, commits a felony and is sentenced to 2 to 8 years of imprisonment.
- (2) The punishment is 5 to 10 years of imprisonment if:
  - a) The victim is under the age of 12 years;
  - b) The victim is under the education, supervision, care or medical treatment of the perpetrator;
  - c) Several persons fornicate the victim on the same occasion, knowing about each other's acts.
- (3) The punishment is 5 to 15 years of imprisonment if the provisions of subsection (2), paragraph b) or c) are fulfilled and the sexual assault is committed against a person under the age of 12 years.

### Criminal Proceeding

#### Private Motion (section 209)

The crimes defined in section 197, subsection (1), as well as section 201, subsections (1) and (2) may only be prosecuted after a private motion, except for the case of crimes punishable not on private motion are committed in connection therewith.

#### Interpretative Provision

A person under the age of 12 years shall be deemed as incapable of defence for the purposes of sections 197, 198 and section 200.

## **1.4 Child Sexual Abuse/Incest**

The Hungarian law and legal policy pays special attention to the protection of children's rights, prevention of violence and child-abuse. The Criminal Code penalises more severely crimes committed against children (see rape (Section 197), assault against decency (Section 198) etc). There are however specific acts that are penalised explicitly in the interest of the protection of minor victims: Endangering a minor (Sec. 195.) seduction (Art. 202.) and pornography (Art. 195/A).

According to Section 202 of the Penal Code, a person who induces somebody under the age of 14 years to have sexual intercourse or to fornicate with another person commits a felony and is sentenced to 1 to 5 years of imprisonment.

A person over the age of 18 years who strives to persuade a person under the age of 14 years to have sexual intercourse or to fornicate with another person, commits a felony

and is sentenced to up to 3 years of imprisonment. These conducts are punishable with more serious penalty (respectively 2 to 8 years and 1 to 5 years of imprisonment) if the injured party of the crime is a relative of the perpetrator, or is under the education, supervision, care or medical treatment of the perpetrator.

*Chapter XIV* “Crimes Against Marriage, Family, Youth and Sexual Morals”, title I:

Changing of Family Status (section 193)

- (1) Any person who alters the family status of another person, thus in particular exchanges a child or smuggles one into another family, commits a felony offence and is sentenced to up to 3 years imprisonment.
- (2) The punishment is 1 to 5 years of imprisonment, if the alteration of family status is perpetrated:
  - a) *By an employee of a medical or educational institution within the sphere of his occupation;*
  - b) *By a person responsible for the tutelage, guardianship or supervision of a person under the age of 18 years.*
- (3) If the criminal act is committed by an employee of a medical or educational institution due to negligence, such person is sentenced for a misdemeanour offence to up to 1 year of imprisonment, labour in the public interest or a fine.

Endangering of a Minor (section 195)

- (1) A person obliged to conduct the education, supervision of or care for a minor, who seriously violates his obligations arising from such duty and thereby endangers the physical, intellectual or moral development of the minor, commits a felony and is sentenced to 1 to 5 years of imprisonment.
- (2) Unless a graver crime is realised, an adult who induces or tries to induce a minor to perpetrate a crime or to the pursuance of a dissolute way of life is punished in accordance with subsection (1).
- (3) Any person of legal age who has forced labour conducted by a minor commits a felony offence and is sentenced to 2 to 8 years of imprisonment.

Seduction

Section 201

- (1) A person who has sexual intercourse with a person under the age of 14 years or a person over the age of 18 years who engages in fornication with a person under the age of 14 years commits a felony and is sentenced to 1 to 5 years of imprisonment.
- (2) A person over the age of 18 years who strives to persuade a person under the age of 14 years to have sexual intercourse or to fornicate with him, commits a felony and is sentenced to up to 3 years of imprisonment.
- (3) The punishment is respectively 2 to 8 years and 1 to 5 years of imprisonment if the injured party of the crime defined in subsections (1) or (2) is a relative of the

perpetrator or is under the education, supervision, care or medical treatment of the perpetrator.

### Section 202

- (1) A person who induces a person under the age of 14 years to have sexual intercourse or to fornicate with another person commits a felony and is sentenced to 1 to 5 years of imprisonment.
- (2) A person over the age of 18 years who strives to persuade a person under the age of 14 years to have sexual intercourse or to fornicate with another person, commits a felony and is sentenced to up to 3 years of imprisonment.
- (3) The punishment is respectively 2 to 8 years and 1 to 5 years of imprisonment, if the injured party of the crime defined in subsections (1) or (2) is a relative of the perpetrator or is under the education, supervision, care or medical treatment of the perpetrator.

### Incest (section 203)

- (1) A person who has sexual intercourse or fornicates with a relative in direct line commits a felony and is sentenced to 1 to 5 years of imprisonment.
- (2) The descendant is not punished if he/she is under the age of 18 years at the time of the perpetration of the act.
- (3) A person who has sexual intercourse with his or her sibling is sentenced for misdemeanour offence to up to 2 years of imprisonment.

## **1.5 Sexual Harassment**

Sexual harassment does not appear as a proper crime, but in jurisdictional practice it is judged equivalent to "defamation". Furthermore, a perpetrator may be held responsible for duress, restriction of personal freedom.

### Obscenity (section 208)

A person who exposes himself before another person in an indecent way for the satisfaction of his or her sexual desire, commits a misdemeanour, and is sentenced to up to 2 years of imprisonment, labour in the public interest, or a fine.

## **1.7 Pornography**

### Production of Prohibited Pornographic Pictures (section 195/A)

- (1) The making of pornographic picture or pictures of a minor by video, film, photograph or by any other means, distribution or trading of such pictures or rendering of such pictures available to others constitute a felony and is punished with 2 to 8 years of imprisonment. The crime of production of prohibited pornographic pictures is in force since 1997. According to this, a person who takes

pornographic pictures of a minor by video, film, photograph or by any other means, distributes or trades such pictures, commits a felony and is sentenced to 2 to 8 years of imprisonment. A person who has a minor to participate in a pornographic show or who provides financial means thereto is sentenced as set forth above.

- (2) A person having a minor participating in a pornographic show is sentenced as set forth in subsection (1).
- (3) A person providing financial means and thus assisting in the commission of the crime defined in subsections (1)-(2) is sentenced to 2 to 8 years of imprisonment.
- (4) In the application of Subsections (1)-(2) pornographic picture or pornographic show is the act or display of sexuality in a gravely indecent manner of exposure specifically for arousing sexual demeanour.

## 1.8 Prostitution

Prostitution was until 1993 a crime in Hungary. The Act XVII. of 1993 eliminated prostitution from the circle of crimes. However, this legal solution was only a shy step towards legalisation, since the sanctions under the contravention law against “sexual service for financial compensation” were kept by the legislator. At the same time, the sanctions concerning crimes related to prostitution was increased.<sup>16</sup>

The step towards a more restricted legalisation concerning prostitution was taken in 1999 when the chapter on acts related to prostitution came into force. (Act LXXV of 1 September 1999 on the Rules of Intervention Against Organised Crime and the Individual Phenomena Related Thereto and related amendments).

The following crimes related to prostitution are criminalised in the Penal code: Promotion of prostitution (Art. 205), living on the earnings of prostitution (206.) and pandering (Art. 207.). The legislator defines the notion of prostitution among the Interpretative Provisions (Art. 210/A.) as follows:

- (1) A person who has sexual intercourse or fornicates, striving to make a regular profit, pursues prostitution.
- (2) For the purposes of this title, fornication means: any gravely indecent act except for sexual intercourse, which stimulates or satisfies a sexual desire.

Promotion of prostitution (Art. 205.) and pandering (Art. 207.) is punished more severely if the victim is under the age of 18 years. Promotion of prostitution is sanctioned with 2 to 8 years of imprisonment, if “Any person under the age of 18 years engages in

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<sup>16</sup> Criminal acts: promotion of prostitution – Section 205 of the Penal Code, living on the earnings of prostitution – Section 206, pandering – Art. 207.

prostitution in the brothel” (205. §. (3) a.) ). Pandering is sanctioned with 2 to 8 years of imprisonment if the procuring is committed “Against a relative of the perpetrator or a person under his education, supervision or care or who is under the age of 18 years” (Art. 207. (3) a.).

### Zones of prohibition and zones of tolerance

In recent years, continuous efforts have been made to elaborate a system, to prevent and control prostitution, without violating the rules and principles of the Convention on the Suppression of Traffic in Persons and of the Exploitation of the Prostitution of Others. (New York, 1949). The result was a new law, based on a so-called *limited abolitionist* concept. According to this model, there are *zones of prohibition*, described by the law, where prostitution is not allowed and *zones of tolerance* to be created by the local governments, in the places where prostitution dominantly appears. The assignment of such locations cannot be neglected, if prostitution permanently appears in public places and the settlement has more than 50.000 inhabitants.

Prostitutes as well as clients are prohibited from offering or accepting sexual services in the protected zones. Furthermore, the offering of sexual services to persons under the age of 18 years, the accepting of offers of such person and the offering services in a way offending other people is forbidden. Violations are sanctioned with fines. The advertisement of sexual services (and to take part therein) by written form, audio-visual or other means in protected zones is forbidden and sanctioned by a fine. All of the above mentioned violations of the law are *contraventions*, (petty offences) which belong to the competence of the police.

There still do not exist any so-called "zones of tolerance" as most local governments are reluctant to create such zones on their own territory. (It is not elaborated, by whom and how it is possible to build the infrastructure of such zones.)

### Health control of prostitutes

Health control of prostitutes is regulated in the order No.41/1999 (IX. 8.) of the Minister of Health Affairs. According to this regulation, a prostitute is only allowed to offer sexual services if she possesses the prescribed medical certificate, which is valid together with her identity card. The prostitute herself should initiate the medical examination. It is not free of charge and should be repeated every month or once every three months, depending on the kind of medical examination.

### The new law's approach to prostitution

The new law on prostitution<sup>17</sup> approaches the problem from the view of combating organised criminality, as it entails provisions on business operations, crime prevention control and alien law, which all have a complex effect on organised criminality. By

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<sup>17</sup> See chapter 5.3.1

introducing a limited abolitionist concept that partly legalises prostitution, the aim is to prevent prostitutes from exploitation by pimps and traffickers and to gain/strengthen the prostitute's independence and self-determination. The control over this phenomenon makes it possible to combat organised criminality.

Severe penalisation for trafficking in human beings, pornography, smuggling of people etc. are also parts of the combat against organised crime. Furthermore, there are laws on protection of victims/witnesses, on state compensation for victims of violent crimes and on victims' rights in the criminal procedure. Steps are also taken to improve the status of victims of trafficking, especially for minors who run a higher risk of victimisation (Section 195/A of Penal Code prohibits the production of pornographic material of children)<sup>18</sup>.

Steps are being taken by the government to establish a close contact with relevant NGOs and to support their activities. The Ministry of Social and Family Affairs is sponsoring a project to disseminate information on trafficking in women and to provide training for the police and NGOs on assistance to victims. Based on a handbook published in December 1999 a training course was conducted in January 2000. Since December 1999, the Ministry of Social and Family Affairs are funding a NGO for the employment of two social workers who run reintegration and assistance programmes for prostitutes.

### The Police

The police have established special departments for organised criminality, prostitution and crime prevention. Beside this, there is a great development in the field of assistance and support for victims. In 1998, a Victim Protection Bureau (Áldozatvédő Iroda) was established within the framework of the Ministry of Interior. Its tasks include co-ordinating and organising the establishment of more victim support organisations, to examine, develop and supervise the conditions and circumstances for victims at police stations, as well as to provide training for police officers in the field of victimology. In the near future, even in the smallest police stations, there will be a highly trained referent on victim protection. In bigger police stations, the whole department or section will deal with these tasks. So far, there are 17 new victim support offices and 128 referents dealing with protection of victims.

Great emphasis is placed on legislation and practice to improve the situation of migrants. Further financial resources should be allocated to cover the costs of strategic planning, decisions, programmes and the improvement of the quality of accommodation and services.

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<sup>18</sup> It entered into force on 1 March 1999: Section 195/A (1)

Promotion of Prostitution (section 205)

- (1) A person who makes a building or another place available for another person's prostitution commits a felony and is sentenced to up to 3 years of imprisonment.
- (2) The person who maintains, heads a brothel or supplies financial means to its operation commits a felony and is sentenced to up to 5 years of imprisonment.
- (3) The punishment is 2 to 8 years of imprisonment if:
  - a) Any person under the age of 18 years engages in prostitution in the brothel;
  - b) Prostitution is promoted as a part of a criminal organisation.
- (4) A person who persuades another person to engage in prostitution is sentenced in accordance with subsection (1).

Living on Earnings of Prostitution (section 206)

A person who lives entirely or in part on the earnings of another person's prostitution commits a felony and is sentenced to up to 3 years of imprisonment. Banishment may also take place as a supplementary punishment.

Criminal Proceeding (section 210/A)

- (1) Prostitution is pursued by the person who has sexual intercourse or fornicates striving to make regular profit.
- (2) For the purposes of this title, fornication is any gravely indecent act, with the exception of sexual intercourse, which serves the stimulation or satisfaction of sexual desire.

Pandering (section 207)

- (1) A person who solicits another person for sexual intercourse or fornication with somebody else in order to make profit commits a felony and is sentenced to up to 3 years of imprisonment.
- (2) The punishment is 1 to 5 years of imprisonment, if the pandering is conducted like a business.
- (3) The punishment is 2 to 8 years of imprisonment, if the pandering is committed:
  - a) Against a relative of the perpetrator or a person under his education, supervision or care or who is under the age of 18 years;
  - b) With deceit, violence or direct menace against life or limb;
  - c) As a part of a criminal organisation.
- (4) A person who agrees to perpetrate pandering defined in subsection (2) commits a felony and is sentenced to up to 3 years of imprisonment.

Chapter XII. Title III “Crimes Against Personal Freedom and Human Dignity”:

Trafficking in Human Beings (Sect. 175/B): <sup>19</sup>

On 1 March 1999, an amendment was introduced to Chapter XII of the Penal Code, which penalised trafficking in human beings.<sup>20</sup> Relevant provisions within this chapter are: Sect. 175 (Violation of personal freedom) Sect. 175/A (Kidnapping) and Section 175/B (Trafficking in human beings).

The Hungarian Penal Code place the crime “trafficking in human beings among “Crimes against personal freedom and dignity” (Section 175/B):

Any person who sells, purchases, conveys or receives another person, or exchanges a person for another person, or appropriates one for such purpose for another party, commits a felony offence and is sentenced to up to 3 years of imprisonment.

The Act provides for up to three years of imprisonment for preparatory activity, which constitutes a misdemeanour offence.

The punishment is 1 to 5 years of imprisonment, if the criminal act is committed against a person deprived of personal freedom, against a person under the age of eighteen years for the purpose of forced labour, or for the purpose of fornication or sexual intercourse, or to involuntary engage in such with another person.

Apart from the above-mentioned crimes, several forms of this crime are punished more severely, regulated by the section in question. These conducts are punishable with respectively, 2 to 8, 5 to 10, 10 to 15 years of imprisonment or prison for life.

The punishment is 2 to 8 years of imprisonment if the criminal act involves the two following aggravating circumstances: It is committed as a part of a criminal organisation; it is committed against a person under the education, guardianship, supervision or medical treatment of the perpetrator.

The punishment is 5 to 10 years of imprisonment if the criminal act involves the three following aggravated circumstances: It is committed against a person deprived of personal freedom, it is committed as a part of a criminal organisation or it is committed against a person under the education, guardianship, supervision or medical treatment of the perpetrator and deprived of personal freedom.

The punishment is 10 to 15 years of imprisonment or prison for life if the criminal act is committed for the purpose of forced labour and fornication or sexual intercourse or to involuntarily engage in such acts with another person; against a person deprived of

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<sup>19</sup> Trafficking in human beings as a criminal offence was incorporated in the Criminal Code (Section 175/B) in 1998 by the Act N. LXXXVII. Section 43. It came into force on 1 March 1999.

<sup>20</sup> Chapter XII (Crimes Against Person), Title III. Crimes against personal freedom and human dignity.

personal freedom, as a part of a criminal organisation; against a person under the education, guardianship, supervision or medical treatment of the perpetrator and deprived of personal freedom.

Any person who makes preparations to engage in trafficking in human beings commits a misdemeanour and is sentenced to up to 2 years of imprisonment.

The legislator rules the act of the person “maintains the status of deprivation of the victim’s personal freedom who was acquired and deprived of his/her personal freedom through trafficking in human beings and forces such victim into forced labour”. This crime is also placed to the Chapter XII. Title III. Crimes Against Personal Freedom and Human Dignity. The Punishment is 2 to 8 years of imprisonment (Paragraph 2 of Section 175).

### 1.11 International Conventions

Overview on international human rights conventions ratified by Hungary:

#### UN instruments:

Convention	Ratification by Hungary	Entry into force	Promulgation
International Covenant on Civil and Political Rights (ICCPR) 1966	1974	1976	Law Decree No. 8 of 1976
Optional Protocol to ICCPR 1966	1988	1988	Law Decree No. 24 of 1988
Second Optional Protocol to ICCPR on the Abolition of Capital Punishment 1989	1994	1994	Act No. II of 1995
International Covenant on Economic, Social and Cultural Rights 1966	1974	1976	Law Decree No. 9 of 1976
International Convention on the Elimination of All Forms of Racial Discrimination 1965	1967	1969	Law Decree No. 8 of 1969
Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984	1987	1987	Law Decree No. 3 of 1988
Protocol amending the 1926 Slavery Convention 1953	1958	1958	Law Decree No. 18 of 1958
Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery 1956	1958	1958	Law Decree No. 18 of 1958
Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others 1949	1955	1955	Law Decree No. 34 of 1955
Convention relating to the Status of	1989	1989	Law Decree No. 15 of 1989

Refugees 1951			
Protocol relating to the Status of Refugees 1967	1989	1989	Law Decree No. 15 of 1989
Convention on the Political Rights of Women 1953	1955	1955	Law Decree No. 15 of 1955
Convention on the Elimination of All Forms of Discrimination Against Women 1979	1980	1980	Law Decree No. 10 of 1982
Convention on the Rights of the Child 1989	1991	1991	Act No. LXIV of 1991

### Instruments of the Council of Europe:

Convention	Ratification by Hungary	Entry into force	Promulgation
European Convention on the Protection of Human Rights and Fundamental Freedoms (ECHR) 1950 and Additional Protocols No. 1, 4, 6, 7	1992	1992	Act No. XXXI of 1993
Protocol No. 11 to the ECHR on the transformation of the Control Mechanism 1994	1995	1998	Act No. XLII of 1998
European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment 1987	1993	1994	Act No. III of 1995
European Social Charter 1961	1999	1999	Act No. C of 1999
Framework Convention for the Protection of National Minorities (1995)	1995	1998	Act No. XXXIV of 1999

### 3.1 Support/Protection

In Hungary, several NGOs exist which provide support to victims of crimes.

The **Fehér Gyűrű** (White Ring) Public Benefit Association offers financial, legal, emotional, psychological and other kinds of assistance to victims of crimes and their families. The organisation is also lobbying effectively before authorities to improve the status of victims.

**NANE** (Women for Women Together Against Violence) works with women and children affected by violence. The organisation runs a telephone hotline, providing information and support for victims of violence. As a consequence of the participation in the campaign against trafficking in women by the EU, IOM and the Hungarian government (1999/2000, the hotline is now extended to assist trafficked women).

The **ESZTER** Foundation, which was registered in 1991, is an NGO specialised in assistance of victims of sexual violence. In 1994, the Foundation established the ESZTER Clinic as an outpatient centre to support victims of sexual child abuse and assault. Employing specially trained professionals, the foundation offers a wide range of services, including crisis intervention, counselling and long-term psychotherapy.

In 1996, the "**Kiút Veled Egyesület**" (Escape Association) was established. This NGO aims at the prevention of prostitution, forced prostitution and trafficking in women, to assist victims and support their reintegration and rehabilitation. Its structure and main fields of activity are the following: Social workers groups, research methodological groups and experts groups (lawyers, medical doctors, psychologists).

In November 1999, IOM started several information campaigns in Hungary and Bulgaria in cooperation with the governments, several NGOs and various experts. This project increases understanding of the dangers and consequences of trafficking among Hungarian women and relevant Hungarian authorities in order to discourage and prevent trafficking in women in, from and through Hungary.

In 1999, the **Council for Women's Issues** was established in order to accelerate the implementation of legislation and programme of action to secure equal opportunities of women. The Council consists of 29 members and is entitled to participate in the preparation of Government decisions as a coordinating body, with the functions of consultation and expressing opinions as well as providing recommendations on the implementation of action programmes for the development of women's equal opportunities. The Council adopted its Constitution in September 1999 and has since then been actively involved in legislative and other tasks concerning women's issues. In December 1999, it established an **Ad Hoc Committee Against Forced Prostitution and Trafficking in Persons** to deal with this complex problem. This committee's tasks are to elaborate measures on prevention, information, and assistance for victims and training, in co-operation with authorities and NGOs.

In 1995, the Office of Women Policy was established within the framework of the former Ministry of Labour. Since 1998, it has operated in the framework of the Ministry of Social Affairs and Family Matters under the name **Office on Women's Issues**. The Office is providing support and a forum for the general NGOs as well as for those dealing with women's issues. It has wide-ranging activities on women's issues and the empowerment of women and has established special working groups dealing, for instance, with gender equality, violence against women, prostitution, etc. A wide-range of research and reports concerning women's issues are also very relevant in the development of women's rights.

## ICELAND

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The information from Iceland is drawn from summarised information provided by the Office of Gender Equality, in December 2000.

### 1.1 Legislation on Violence Against Women

There is no specific legislation relating to violence against women in Iceland. It is regulated like other forms of violence, with the same rules applying to both sexes. Most are found in the Icelandic Penal Code no.19/1940.

### 1.2 Domestic Violence

There is no specific legislation on domestic violence. Therefore it is regulated as any other form of violence. In the Penal Code there are various articles that concern violence.

According to art. 211, murder can lead to 5-16 years of imprisonment or a life sentence. According to art. 217, physical assault can lead to fine, custody or imprisonment of up to 1 year. Art. 217 rule so-called lesser physical assault and this article is probably the most commonly used in cases concerning domestic violence against women. This article provides that a prosecution should not take place unless it is necessary from the point of view of the public interest.

According to art. 218 a serious physical assault can lead to imprisonment of up to 16 years. In addition, article 218a provides that consent to physical assault decreases the punishment under art. 218 and that offences under art. 217 are not punishable if the assaulted person consented to the act. Art. 218a further provides that if the assault takes place during a physical fight or struggle, it is permissible to decrease or omit the punishment under Section 217. The same section applies if the one who suffers harm is the one who started the fight by assault or provocation.

According to art. 220 it can lead to up to 8 years of imprisonment to put someone in such a situation that she/he is unable to help himself and leaving her/him without helping her/him in this helpless state.

Under the Marriage Act 31/1993 a wife/husband can divorce her/his spouse if he/she is guilty of physical assault or sexual violence (Art.40).

#### Survey on violence against women

In May 1994, the Icelandic legislative body voted in favour of a resolution entrusting the Minister of Justice to appoint a committee whose task it was to supervise a research into the reasons for, the prevalence of and the consequences of violence against women. The stated goal was to get an overview of the situation in order to find ways to improve it. This

committee began its work in February 1995 and the main results of the investigation were published in February 1997. 3000 Icelanders (Iceland has a population of around 270.000), half women and half men, were in the sample. The survey was carried out in telephone interviews in April 1996. A similar survey was made in Denmark a few years before.

The survey showed that 1.3 % of women had experienced violence at the hands of their partner in the last 12 months. Around 54% of women subjected to violence from their partner have experienced severe violence. 4.5 % of the women said that they have been raped after reaching the age of eighteen. More than 80 % knew the perpetrator. Only 13.3 % reported the rape to the police. In the instances when the women knew the rapist only 9 % reported the incident but 30 % when they did not know the perpetrator.

The general results show that males are far more subjected to violence than women and they are also far more likely to be the perpetrators. (Women who have used violence have relatively more often been the victims of violence than males. 70 % of women perpetrators have also been subjected to violence. Among males 37 % of the victims are also perpetrators.) On the other hand, women are far more likely to have been subjected to violence from their husband or former husband.

Only 0.7% of the women say that they have been subject to violence from both their current and previous partner. This must either mean that women who have been in a violent relationship do not repeat that experience, or that they are reluctant to admit the violence.

When women kill abusive husbands/partners the judge has possibilities to take into account specific circumstances when deciding the punishment. So there is room for "leniency" under certain circumstances, such as abuse in marriage. This has indeed been used, but there are no legal guidelines.

### **1.3 Rape/Sexual Assault**

Rape and sexual assault are regulated in the Penal code 19/1940, mainly as crime against the person. The rules concerning sexual crimes were revised in 1992. The main changes were that the rules could now be applied to both sexes, while the former rules were only applicable to women.

According to article 194, anyone who by force or threat of force compels a person to have sexual intercourse or other sexual congress with him/her shall be imprisoned for at least one year and up to sixteen years. The deprivation of freedom by confinement, drugging or other comparable means, counts as force.

Article 196 states that whoever makes use of the insanity or other mental deficiency of a person in order to have intercourse or other sexual congress with him/her, or if he/she is in any way in such a state that he/she is unable to prevent the act or understand its meaning, is sentenced to up to six years of imprisonment.

According to article 197 it can lead to 4 years of imprisonment for someone working in a prison, mental hospital or other such institute to have sexual intercourse with a client.

According to article 198, it can lead to 3 years of imprisonment to have sexual intercourse by abusing a person's dependency.

Article 205 provides that if the man and the woman in the situation ruled by article 194-198 are married and reconcile, or marry after the event, the punishment may be dropped.

### Criminal Procedure

Rape in marriage is outlawed, prosecuted and sanctioned in the same way as other forms of rape.

A rape case would first be tried before a district court and then (possibly) before the Supreme Court. The age of consent is 14; there is no direct legal definition and the general definition of consent is broad, meaning that it is up to the prosecutor to show that there was no consent.

The usual sentence applied to rapists appears to be imprisonment for 12 to 24 months.

According to article 8 in the Criminal Procedure Law the Court may order a closed trial to protect the witness or the victim.

According to article 59.2 the judge has to make sure that the questions being asked of a witness are not insulting or hurting and irrelevant to the case in question. Nevertheless, it is not forbidden to ask questions about the witness's previous sexual experience.

If, in an open courtroom, a question is put to a witness about its personal matters, the judge can write down the question and the witness is allowed to answer in writing (art.59.5). According to art. 59.6 the judge can order the accused to leave the courtroom while testimony is given, if it is feared that a witness will not be truthful if the accused is present.

## **1.4 Child Sexual Abuse/Incest**

Child sexual abuse/Incest is ruled in the Penal Code.

According to article 202 it can lead to 12 years of imprisonment to have sexual intercourse with a child younger than 14 years old. Other sexual harassment can lead to up to 4 years of imprisonment. According to article 205 the punishment may be cancelled if the parties concerned get married or start living together.

According to article 200 and 201 it can lead to 10 years' imprisonment to have sexual intercourse with one's child under the age of 18, as well as one's adopted child, stepchild, foster child or a child one has been entrusted with. Other sexual harassment can lead to 4 years of imprisonment.

In November 1998, the Government Agency for Child Protection opened the Children's House, a concept adapted from the Children's Advocacy Centers in the United States to Icelandic conditions. The Children's House is a partnership between the child protection services, the health services, the law enforcement and the prosecution. They agree to work together under one roof to investigate child sex abuse and provide assistance and treatment for the victim and the victim's family. Their aim is to prevent the re-victimisation of the child by providing a child- friendly environment for investigation, as well as empowering the child to overcome traumatic consequences.

## **1.5 Sexual Harassment**

The Act on the Equal Status and Equal Rights of Women and Men from May 2000 defines sexual harassment. Article 17 states: "Sexual harassment constitutes sexual behaviour that is unreasonable and/or insulting and against the will of those who are subjected to it, and which affects their self-esteem and is continued in spite of a clear indication that this behaviour is unwelcome. Sexual harassment can be physical, oral or symbolic". Article 25 also states that: "Employers shall also ensure that no employee is subjected to injustice in his/her occupation, e.g. regarding safety at work, working terms or the assessment of his/her performance, due to the fact that he/she has complained about sexual harassment or discrimination on the basis of gender".

The provision of article 198 of the Penal Code stipulates that any person, who aggressively misuses his/her position against another person who relies on him/her for work, shall be subject to up to three years' imprisonment. Other kinds of sexual harassment can lead to up to two years' imprisonment. The court has only ruled twice on sexual harassment and the two cases concerned men harassing men.

The Penal Code also contains a provision (article 209) stating that any behaviour of a sexual nature abusing a person's integrity shall be punishable by law.

Article 1 of Act 1980 on Working Conditions and Human Health at Workplaces stipulates that through this law an effort is to be made to "ensure a safe and healthy working environment, which shall always be in accordance with the social and technological development in the society". Article 65 of the Act states that the phrase "health care for employees" refers to a service established to "...promote the employees' mental and physical well-being". As it is clear that sexual harassment results in indisposition and is out of tune with social development in society, the Occupational Safety and Health Administration has felt such harassment is in breach of the objectives of the law on occupational safety and health. Hence it has issued certain guidelines, focusing on education regarding sexual harassment at the workplace.

## **1.7 Pornography**

It can lead to up to 6 months of imprisonment or a fine to publish, sell or distribute pornography (art. 210). This article has very rarely been used and in practice most forms of pornography can be obtained relatively easy.

## **1.8 Prostitution**

### Prostitution

According to article 206, prostitution can lead to two years' imprisonment for the prostitute, and up to 4 years for anyone who benefits from the prostitution of others.

### Trafficking in Human Beings

It can lead to up to two years' imprisonment to actively encourage someone, woman or man, to come to, or to leave the country for the purpose of prostitution if the woman/man is younger than 21 and is not aware of the purpose of the trip. Neither prostitution nor trafficking in women has been considered a serious problem in Iceland, due to its relative isolation and few inhabitants. Nevertheless, due to the increase of night and strip-clubs in Iceland the last couple of years, the Government has taken actions and passed an amendment to the legislation of work permission for foreigners no. 133 from 1994. According to an amendment from April 2000, strip dancers who perform as artists in nightclubs have to apply for work permission.

## **1.10 Female Genital Mutilation**

There are no special rules that cover female genital mutilation, but it would be ruled as any other form of violence.

## **1.11 International Conventions**

Iceland has ratified the main International Conventions regarding women's rights. Among them the ILO Convention No. 100 concerning Equal Remuneration for Men and Women Workers for Work of Equal Value, ratified in 1958 and No. 111 concerning Discrimination in respect of Employment and Occupation, ratified in 1963.

In 1985, Iceland ratified the UN Convention on the Elimination of All Forms of Discrimination against Women. The European Convention on Human Rights was ratified in 1953 and Iceland became a member of the European Social Charter in 1976.

## **1.13 Protection of Pregnancy/Pregnant Women**

According to the Act on Parental Leave a pregnant woman has the right to be transferred within her place of work if her health or the health of the foetus is jeopardised. Such a transfer shall not result in lower wages. There are also provisions in the act that protect

the right of a pregnant woman against unfair dismissal on behalf of the employer. This provision also applies to a parent on parental leave.

## **2.0 Sentencing**

There's no statistical analysis of the incidence of domestic violence. The general impression is that such violence very rarely appears in court.

## **3.1 Support/Protection**

### Women's shelter

The women's shelter in Reykjavik, serving the whole country, was established in 1982. The shelter is an emergency shelter for women suffering from domestic violence. The shelter is based on a feminist ideology that violence against women, domestic and other sorts of violence, is a social problem not a private one. The shelter is run by the NGO Women's Shelter Alliance, and financially supported by the government, various municipal authorities and private donors. The spokeswomen of the Alliance have criticised the justice system for not being effective enough and pointed out that victims do not obtain redress in the existing system.

### Organisation of Women Against Sexual Violence-"Stigamot"

In 1990, the Organisation of Women Against Sexual Violence "Stigamot" established in Reykjavik a centre for survivors of sexual violence. A collective of women who are themselves survivors of different forms of sexual violence run the centre. All the services are free for its users. The centre is financed by grants from the government as well as local authorities and its own fund-raising. The centre offers individual and group counselling and support to women subjected to violence. If the victims want to report, Stigamot support them through the police hearing and the court proceeding that might follow. One of the main efforts has been to distribute information about sexual violence and its consequences to the public and professionals. The organisation has criticised the judicial system for its responses (or the lack of it) in cases concerning sexual violence; the demand of the burden of the proof is too strong and that the punishment is too soft.

### Emergency reception

An emergency reception for rape victims was opened at the Emergency Ward of the Reykjavik Municipal Hospital in March 1993. The emergency reception combines medical, psychological, legal and social assistance for victims of rape or attempted rape. The Emergency reception has made recommendations regarding how investigations of rape and other sexual crimes should be conducted. The recommendations are available in a manual for policemen.

### Other measures

In Iceland, violence against women is recognised as an obstacle to equality. In a new four-year action programme on measures to promote gender equality a number of measures focus on violence against women.

The Equal Status Council appointed a special Men's Committee in 1993. This committee has focused heavily on violence against women. It has organised a public seminar, published two booklets on the subject and organised an education campaign in 1995 under the heading "Men Against Violence."

### **3.10 Proposed Reforms**

The Minister of Justice appointed a committee to study whether it is necessary to amend Icelandic law in order to fight this kind of violence. Some of the factors being studied include whether a police decree is sufficient in respect of ordering an injunction against approach, and whether or not to provide the victims with legal counsel. If these proposals are agreed upon, amendments to the law will be needed.

## IRELAND

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Information provided by the Department of Equality and Law Reform in November 2000.

### 1.1 Legislation Relating to Violence Against Women

Ireland has recently reviewed its laws regarding violence against women and has made some significant reforms including: Family Law Act 1996, Family Law (Divorce) Act 1996 and the Domestic Violence Act 1996.

Since 1994, a number of important Irish reports on the issue of violence against women have been published including: Policy Document for Women's Refuges (1994), Federation of Refuges; Making the Links (1995), Women's Aid; Report of the Working Party on the Legal and Judicial Process for Victims of Sexual Violence and Other Crimes of Violence Against Women and Children (1996), National Women's Council and the Report of the Task Force on Violence Against Women published by the Office of Tanáiste, April 1997. The terms of reference of the Task Force were to develop a co-ordinated response and strategy on the problem of 'mental, physical and sexual violence against women - *with a particular focus on domestic violence*'. Its remit included:

- Examining existing services and support for women who have been subjected to violence;
- Examining legislation dealing with the victims and perpetrators of violence;
- Making recommendations on how legislation, services and support could be made more effective;
- Making recommendations for a comprehensive preventive strategy and examining rehabilitation programmes for perpetrators of violence.

### 1.2 Domestic Violence

Domestic Violence is defined as any form of physical, sexual or psychological violence which puts the safety or welfare of a family member at risk. In respect of children, Irish legislation emphasises the safety and welfare of children. Measures introduced to combat domestic violence include: barring orders; safety orders; and protection orders.

A national survey conducted for Women's Aid showed that 7% of women had been abused in the previous year by a partner or ex-partner; 18% of women had been abused at some point in their lives; that multiple forms of abuse were common and 10% had experienced physical violence.

## Civil Law

The Department of Equality and Law Reform are of the view that for most victims of domestic violence, civil legal processes represent the most effective, accessible and most frequently used remedies.

The most frequently used remedy is the barring order, a civil law remedy. Introduced in 1976, this order empowers a court to order a spouse to leave the family home in the interests of the safety or welfare of the other spouse or children. The order may also prohibit the spouse from entering the family home.

The Family Law (Protection of Spouses and Children) Act 1981 strengthened the law by extending the maximum duration of the barring order granted in the District Court from three to twelve months, the granting of a statutory power of arrest to the Gardaí for breaches of the order and the creation of a new type of order called a **protection order**. Protection orders are designed to provide immediate protection for the applicant spouse or child pending the determination of the barring order application. They fall short of barring the offending spouse from the family home. In exceptional circumstances the court can grant an interim barring order which is an immediate order requiring the violent person to leave the family home, pending the hearing of an application for a barring order.

The Domestic Violence Act 1996 introduced further reforms. The main features of this Act include

- extending the powers of the courts to grant barring and protection orders for the protection of a cohabitant or the parent of an adult child. The cohabitant must have been living with the respondent for a certain period of time. In both cases the proprietary interests of the applicant in the home must equal or exceed that of the applicant;
- empowering the court to grant barring orders on an interim ex-parte basis in situations of extreme emergency;
- increasing the maximum duration of a barring order made in the District Court from one to three years (renewable on application for a further three years). The Circuit Court has unlimited jurisdiction;
- empowering the courts to grant a new type of order, a safety order. A safety order is in effect a long term protection order available to or against all members of a household. It prohibits a person from further violence or threats of violence. A safety order does not oblige that person to leave the family home. If the parties live apart, the order prohibits the violent person from watching or being in the vicinity of the house. The District Court has the power to make a safety order for up to five years and the Circuit Court has unlimited jurisdiction;

- enabling health boards, subject to certain conditions, to apply for orders on behalf of victims of violence;
- providing increased fines and terms of imprisonment for breaches of barring, safety and protection orders and strengthening the Garda powers to arrest without a warrant in domestic violence cases generally.

The current position, then, is that there are two main type remedies available under civil law - the barring order and the safety order. Protection orders constitute an interim remedy and in exceptional circumstances interim barring orders can be granted.

A person can apply for protection through these remedies if they belong to the following categories:

- A married person can apply for a barring or a safety order against her/his spouse;
- A cohabiting person can apply for protection through these remedies. The protection available depends on how long they have been living together and who owns the family home: if they have been living together for an aggregate period of six months during the previous year, a partner can apply for a safety order; if they have been living together for an aggregate period of six months during the past nine months, a partner can apply for a barring order, unless the violent partner has greater ownership rights to the home.
- Parents - a parent can apply for a barring or a safety order against their own child, if the child is over 18 years of age (ownership restrictions apply as above);
- Others living together - a person can apply for protection against violence by someone over 18 years who lives with them, if the court is satisfied that the relationship is not primarily based on a contract. For example, two relatives living together could be covered. Persons in this category can apply for a safety order but will not qualify for a barring order.
- Health boards are empowered to apply for orders when a person could apply in their own right, but is deterred through fear or trauma from doing so. The consent of the person is not required, although there is a requirement of consultation.

The grounds on which both orders can be granted are similar, i.e. that the safety or welfare of the applicant or dependent person requires it. A safety order can be granted for a period of up to five years and a barring order for up to three years. Both are renewable. If broken, the Gardai can arrest and charge the person.

The Judicial Separation and Family Law Reform Act, 1989 provides for the granting of a decree of judicial separation, and empowers the courts to make a variety of ancillary orders where spouses cannot agree on the terms of their separation. Unreasonable behaviour of one spouse towards another is one of the grounds on which a decree of judicial separation may

be granted. On or following an application for a decree, the court may grant barring, protection or safety orders and the court may confer on one spouse the right to occupy the family home subject to such conditions as it thinks proper, or it may transfer ownership of a home to the other spouse in appropriate cases.

The Family Law Act 1996 empowers the court in a wide range of family proceedings (including domestic violence proceedings) to order social reports from the Probation and Welfare Service and health boards. This provision is of particular importance in situations of domestic violence.

Provisions to protect the safety and welfare of spouses and children are also enshrined in Ireland's new divorce laws. Removal of the constitutional ban on divorce was approved by the people in a Referendum on 24.11. 1995. The Family Law (Divorce) Act, 1996 gives legislative effect to divorce. The court, in granting a decree of divorce, must be satisfied that:

- At the date of the institution of proceedings, the spouses have lived apart for a period of, or periods amounting to, at least four years during the previous five years;
- There is no reasonable prospect of reconciliation, and such provisions as the court considers proper having regard to the circumstances exist or will be made for the spouse and any dependent members of the family.

The court, on granting a divorce or at any time thereafter, is empowered to make barring, protection or safety orders, or an order conferring on one spouse, either for life, or for another period specified by the court, the right to occupy the family home to the exclusion of the other spouse or it may transfer ownership of the home to a spouse in suitable cases.

### Criminal Law

Any intentional or reckless act of physical violence by one person against another constitutes an assault under Irish Criminal Law. Possible charges include: assault occasioning actual bodily harm; assault occasioning grievous bodily harm, attempted murder, manslaughter or murder. Prosecutions can be brought privately or by the Gardaí and the Director of Public Prosecutions.

While domestic violence is a criminal offence, only a small number of cases go to prosecution. In 1996, according to the Annual Report of the Garda Síochána, of the 4,645 arrests made in cases involving domestic violence, only 506 people, (11%) were convicted. The general response is for the victim to apply for protection under civil law. However research indicates that the threat of criminal justice intervention influences men's behaviour in terms of re-offending. The Task force on Violence Against Women (1997) recommends that domestic violence should always be viewed as a serious crime and should be prosecuted. However the Task Force does acknowledge that because of the nature of the crime and the relationship between the parties, each case should be assessed on its own merits and that prosecution is not always possible or appropriate. Where serious violence

has occurred and where weapons of any kind have been used, or when the abuser has re-offended, the Task Force believes that prosecution should be pursued, taking into account the wishes of the victim.

The Criminal Law Bill 1996 provides for a power of arrest without warrant in relation to offences punishable by 5 years imprisonment. This will apply to assault occasioning actual bodily harm, wherever it occurs.

Non Fatal Offences Against the Person Act 1997 provides for a new offence aimed at 'stalking' which will incur a maximum penalty of seven years imprisonment and will empower the court also to order the 'stalker' not to communicate in any way with the victim for a period specified by the court, or to approach within a specified distance of the victim's residence or place of work. This law could have relevance to some forms of domestic violence - on the part of former boyfriends or former partners.

### Women's Experience of Using the Courts

Women who have been subjected to violence often find court hearings an ordeal and a traumatic experience. The Task Force reports that there are no purpose built courts to deal with family law cases. In some areas there is either no or insufficient special time set aside for family law hearings. Often the courts have no waiting area or space for consultations, which means women may have to wait and / or discuss their case watched by, or within the hearing of, the abuser.

### Policing Domestic Violence

The Garda Síochána is recognised as being the first point of contact for women experiencing domestic violence. It is the only state agency with a written policy on violence against women. Given their role in providing protection for women through law enforcement, their response is central to an effective strategy for dealing with domestic violence.

A Garda Síochána Policy on Domestic Violence Intervention was introduced in 1994 and revised in 1997. It establishes a pro-arrest policy (allowing more discretion than a mandatory arrest policy) and outlines procedures to be followed in dealing with domestic violence calls, stating that domestic violence should be treated like any other crime, and defines the Garda's primary role as protection through law enforcement. The policy also recognises the vulnerability of victims in domestic violence cases and the need for prompt action; and that the removal of the offender is an important objective. Other provisions of the policy include: pro arrest, given reasonable cause, when a barring, safety or protection order is believed to have been breached; dealing with domestic violence calls promptly on the basis that it is a crime and life and property may be at risk; police bail should not be given, as the likelihood of further victimisation is high; providing information on civil remedies and relevant services; being aware of child protection issues; recording reasons if no arrest is made.

However the Task Force on Violence Against Women (1997) found that the policy was unevenly applied in different districts and recommends that the policy be more closely supervised and at a high level within the police and more closely monitored with regular publication of statistics on calls received, action taken and reasons for not charging stated.

Year	Incidents	Persons injured	No. of Arrests	No. Charged	No. Convicted
1994	3951	750	765	600	392
1995	3956	861	850	527	455
1996	4645	923	860	725	506

From Garda Síochána Annual Reports as cited in Report of the Task Force on Violence Against Women (1997) p 43.

### Need for an Integrated Criminal Justice Response

The Task Force recommended that to be effective, a pro-arrest police policy must be part of an integrated criminal justice response involving policy, prosecution and sentencing, pointing out that if the criminal justice system fails to punish the perpetrator, or applies totally inadequate sanctions, the risk to victims of reprisals could increase. A pro arrest policy must operate in tandem with adequate judicial sanctions which clearly convey to the perpetrator that violence against women is a serious crime and is punishable accordingly.

### Role of Women Police

While the number of women in the Garda Síochána is increasing, they still only constitute 8% of the force. The Task Force recommends that they should be actively involved in dealing with domestic violence.

### Police Training

Given their significant role as the first point of contact for many women experiencing domestic violence, police training is considered vital. Training about domestic violence is part of induction training for Gardaí.

However the Task Force considers that training is best provided by experts in the area and should include understanding the dynamics of domestic violence, how difficult many women find it to disclose this abuse and the pressures on women, including fears for personal safety which can lead her to drop charges. They recommend that the induction training be supplemented by regular, ongoing in-service training and that agencies providing support services for women should have input into this training.

### Domestic Violence and Sexual Assault Investigation Unit

The Domestic Violence and Sexual Assault Investigation Unit was established in Dublin in 1993. It is staffed by Garda who are highly trained and experienced in dealing with domestic violence and sexual assault. Its functions include:

1. Overseeing the investigation of offences of domestic violence, child sexual abuse and other sexual violence offences committed against women and children and providing assistance in more complex cases;
2. Examination of enforcement practices in respect of protection and barring orders;
3. Improving methods of investigation through training, advice and assistance;
4. Liaising with statutory and non statutory bodies which have a brief for sexual assault and domestic violence;
5. Liaising with Community Relations and Juvenile section personnel.

The Task Force recommends that Domestic Violence and Sexual Assault Investigation Units be established in other urban areas of Ireland and that in other areas there should be a sufficient number of Gardaí with the training and expertise to deal effectively with sexual assault and domestic violence cases.

### **1.3 Rape/Sexual Assault**

Ireland's Ministry of Justice records statistics for rape and sexual assault :

Year	Rape	Sexual Assault	Aggravated Sexual Assault
1995	191	604	17
1994	184	381	9

There is no gender breakdown for the sexual assault figures; it is also not specified whether these figures refer to convictions or belong to an earlier stage of the criminal justice process, however they are the only figures obtained. However the Department of Equality and Law Reform note that there is evidence to suggest that only a small numbers of cases are reported and that an even smaller number result in criminal proceedings.

#### Legal Definition

Rape is defined in the Criminal Law (Rape) Act, 1981, as amended by the Criminal Law (rape) Amendment Act, 1990, as sexual intercourse with a woman who at the time of the intercourse does not consent to it and at that time the man knows the woman does not consent, or is reckless as to whether she does or does not consent. In the event of a man

believing that a woman was consenting to sexual intercourse, the jury must have regard to the “presence or absence of reasonable grounds for such a belief”.

*Consent:* The issue of consent is central to proving rape. Consent is not defined in the 1981 Act but the Law Reform Commission proposed the following definition:

Consent means consent freely and voluntarily given and, without in any way affecting or limiting the meaning otherwise attributable to those words, a consent is not freely given if it is obtained by force, threat, intimidation, deception or fraudulent means. A failure to offer resistance to a sexual assault does not constitute consent to a sexual assault.

The Criminal Law (Rape) (Amendment Act) 1990 represents a significant improvement in the legal protection afforded to victims of sexual assault. It signifies that it is viewed by government as serious crime. It abolishes certain rules which were regarded as offensive to women, it:

- Removes the marital exemption i.e. abolishes the rule that a husband cannot be found guilty of raping his wife;
- Creates two new offences: aggravated sexual assault and rape under section 4 of the Act which includes penetration of the anus or mouth by the penis or penetration of the vagina by any object held or manipulated by another person (offences of penetration which were not included within the traditional definition of rape). Each of these new offences carries a maximum penalty of life imprisonment;
- Abolishes the common law rule by which a boy under 14 years was presumed to be incapable of sexual intercourse;
- Abolishes the rule which made it mandatory for the judge in trials for sexual offences to warn the jury of convicting on the uncorroborated evidence of the complainant;
- Provides for all serious sexual assaults to be tried in the Central Criminal Court (the highest criminal court);
- Provides for the exclusion of the public but not the press for trials in cases of rape and sexual assault - with certain exceptions;
- Extends the restrictions on cross examination about previous sexual history to other sexual offences defined within the Act;
- Extends evidential and anonymity provisions to all victims of sexual assault - previously limited to rape.

Past Sexual History remains a subject of concern. Complainants report that questioning about their sexual history is invariably hostile and they describe counsels’ cross examination as offensive, aggressive and degrading. While such evidence is only admissible at the

discretion of the judge, the experience of Rape Crisis Centres would suggest that such discretion is not generally withheld. The Task Force considers that when the complainant is giving evidence, she should not be cross examined as to her past sexual history unless it is proven to the court that the evidence is substantially relevant to the facts at issue, as envisaged by the 1981 and 1990 Acts. Applying this rule should prevent the defence from embarking on “fishing expeditions” where answers to questions are concerned and from attempting general smear tactics, which attack the character of the complainant on matters which have no relevance to the issues before the court. The Task Force, noting that nothing is known about the extent and circumstances under which judges grant permission for the woman’s past sexual history to be introduced, recommended in 1997 that law and practice in relation to this area be reviewed so as to ensure that strict legal criteria, as laid down in the 1981 Act, as amended, are being adhered to.

Criminal Evidence Act 1992 provides for the giving of evidence through a television link in cases involving a sexual offence or violence and for the introduction in court of video recordings of statements made by persons under 14 years in cases involving a sexual offence or in cases involving violence. It also sets out the circumstances in which a spouse/former spouse is competent and compellable to give evidence.

Criminal Justice Act 1993 enables appeal against unduly lenient punishments and places an obligation on the court when determining sentences for sexual and violent crimes to take into account the effect on the victim. It also empowers the court to order the convicted person to pay compensation.

### Role of the Police

The Task Force notes that there have been real improvements in the response of the Gardaí in recent years. The establishment of the Domestic Violence and Sexual Assault Investigation Unit in Dublin in 1993 (see above) marks the introduction of a unit which deals with the specialist investigation and treatment of persons who have been sexually assaulted or raped. The unit provides facilities for the effective collection and processing of forensic evidence and a structured environment for the examination and treatment of victims of sexual assault and rape. Its brief also includes liaising with statutory and non statutory bodies and organisations which have a brief to deal with rape and sexual assault. While primarily designed to meet local needs, in January 1997, it was placed under the National Bureaux of Criminal Investigation giving it a country-wide brief.

### Support Services:

#### a) Rape Crisis Centres

There are currently 16 Rape Crisis and Sexual Abuse Counselling Services in Ireland. Services provided by each centre focus predominantly on counselling by telephone or on a face to face basis to victims of recent and past rape attacks and child sexual assault. Dublin Rape Crisis Centres, for example, provides a 24 hour crisis telephone service for victims of rape and sexual abuse. In 1995 a total of 6,100 calls were made to the crisis line. In 1995,

the government allocated a total of £907,000 to Rape Crisis Centres throughout the country. In line with a recommendation of the Second Commission on the Status of Women, secure funding has been made available through the health boards since 1995.

Special counselling centres for victims of rape and child abuse have also been established by the Eastern Health Board in Blanchardstown, Clondalkin, Clontarf, Coolock and Tallaght.

### Outstanding Problems

Despite recent changes in law, improvements in policing and improved funding for Rape Crisis Centres, there remains a high level of concern in Ireland in relation to the operation of the law and Criminal Justice Processes relating to rape and sexual assault. The Task Force, for example, reports that only a small number of rape cases are ever reported to the Gardaí and even smaller numbers lead to criminal proceedings. Garda figures demonstrate that, of cases which are reported to them, few result in conviction, only 19% in 1994, for example. Many women report that their experience of the criminal justice system is difficult and the perception is that sentencing in rape cases is inconsistent and lenient.

Recommendations for change have been made by both the Task Force on Violence Against Women (1997) and The Working Group on the Legal and Judicial Process for Victims of Sexual and Other Crimes of Violence Against Women and Children established by the National Women's Council of Ireland which published its report in October 1996. This latter report has made 30 recommendations for changes to the law and the legal process. These recommendations are presently being considered by Parliament.

Priority Recommendations from the National Task Force are aimed at encouraging more women to report cases of sexual violence to the Gardaí. Their principal recommendations concern better liaison with victims; conditions for granting leave to cross question complainants about their past sexual history; and Garda policy on the treatment of rape, sexual assault and other offences of sexual violence. These include:

- The Garda Síochána should develop and publicise clear policy and practice regarding their response to victims of rape, sexual assault and other offences of sexual violence;
- Following a decision to prosecute, the investigating Gardaí should be assigned the task of liaison with the victim. Victims should have regular consultations with counsel before and throughout the trial and should receive a copy of their statement and any Victim Impact Report as a matter of course;
- Permission to cross examine a complainant about her past sexual history should only be granted where it is proven to the court that the evidence is substantially relevant to the facts at issue, as envisaged in the legislation; law and practice on this point should be reviewed to ensure that the strict criteria laid down in the 1981/1990 Acts are adhered to.

Other recommendations from the Task Force include:

- Expert training to all Gardaí on the initial aspects of handling rape and other sexual violence offences;
- All victims of sexual / domestic violence to be notified if the unescorted release of an offender is anticipated or has taken place;
- In cases of delayed reporting, the judge should instruct the jury that there may be good reasons why she did not complain immediately;
- Custodial sentences should be applied in all cases of rape, unless there are wholly exceptional circumstances;
- Sentencing policy should include the option of a period of post release supervision;
- All law and rules of practice relating to the corroboration warning (a judicial warning to the jury in cases of rape / sexual assault that it is unsafe to convict on the uncorroborated evidence of a woman) should be abolished and the case heard as any other;
- Information about counselling and support services to be made readily accessible to all rape and sexual assault victims;
- Victim Impact statements should be requested for both trials and appeals and a list of suitably qualified professionals be compiled and made available to the courts in cases where the victim is not attending a professional therapist; where a victim disagrees with the impact statement, this should be made known to the judge; and
- The question of legal representation for rape victims should be addressed by the Department of Justice.

The recommendations of Working Group on the Legal and Judicial Process for Victims of Sexual and Other Crimes of Violence Against Women covered many of these points. In addition they recommended that:

- The Criminal Law (Rape) amendment Act be extended to include penetration of the anus by an object;
- Consideration be given to codifying of rape and sexual offences with a view to creating an offence of ‘penetrative sex’ (rape) and ‘non penetrative sex’ (sexual assault);
- That the absence of overt resistance on the part of a complainant should never be construed by the courts as consent;

- In rape trials, where consent is an issue raised by the defendant, the onus of proof should shift to the defendant to prove he sought and obtained the consent of the complainant;
- The powers of the Director of Public Prosecutions be reviewed in the interests of accountability so as to allow the DPP to give reasons as to why prosecutions do not proceed, except when it is not in the public interest to give reasons; the DPP to provide annual statistics as to the number of cases involving sexual and other violence towards women and children which are referred to his office and the outcomes of such cases; and consideration be given to the establishment of a special section within the DPP's office to deal with the prosecution of sexual offences;
- Where bail is an issue, the Gardaí be required to discuss with the victim and their families what concerns they have and what conditions, they might want a court to impose on the accused if bail is granted;
- A full review be undertaken relating to the trial of rape and sexual assault offences, with a view to evaluating their impact on the victims and recommending appropriate procedural changes;
- Separate, secure waiting room facilities should be provided for the use of the victim and her family; courts should be designed to ensure that the victim is not forced to be beside, near or opposite the accused; facilities for the victim to give evidence from behind a screen should be available on request;
- Where the accused wishes to plead guilty to an offence, the victim(s) should be informed immediately; where a lesser plea is accepted by the DPP, the victim(s) should be notified and, in as far as possible, the reasons for this be forwarded to the victim(s) by the office of the DPP;
- Where an accused pleads guilty of a sexual violence offence against a woman or a child, it should be a matter of practice that a court will not proceed with the case unless satisfied that the victim(s) have been informed and given an opportunity to be present in court;
- Separate legal representation for complainants in rape and sexual assault cases would provide much needed support for complainants, render the trial processes less traumatic and contribute significantly to an increase in reporting of rape; measures for separate representation, including its insertion in the legal aid system be developed and implemented;
- Where the complainant's credibility is attacked by disclosing any past criminal offences or past sexual history, the defendant's past record and sexual history should also be disclosed;
- Grounds for appeal be stringently applied and monitored; guidelines to be drawn up;

- Support services be provided for women and children victimised by crimes of violence on a countrywide basis; these services must be accessible to women with disabilities and with an awareness of regional and cultural differences; funding should be appropriate to the needs of the service.

#### The recommendation of the Task Force against Violence against Women

##### (i) Admissibility of evidence of complainant's previous sexual history

The recommendation of the Task Force against Violence against Women is among the matters under consideration in the context of a review of the Law on Sexual Offences which is underway at present. The review is expected to be completed in the first half of 2001.

##### (ii) Delayed Complaint

The recommendation of the Task Force against Violence against Women is among the matters under consideration in the context of a review of the Law on Sexual Offences which is underway at present. The review is expected to be completed in the first half of 2001.

##### (iii) Warning regarding uncorroborated evidence in sexual offence cases

The recommendation of the Task Force is among the matters under consideration in the context of the review of the Law on Sexual Offences which is underway at present.

##### (iv) Sentencing issues

The penalty structure for sexual offences and other related sentencing issues are among the matters under consideration in the context of the review of the Law on Sexual Offences which is underway at present.

##### (v) Post-release supervision of sex offenders

The Sex Offenders Bill, 2000 which completed Committee Stage in the Dáil on 10 October, 2000, provides that, for the first time ever, the courts will be able to order the supervision of sex offenders by the Probation and Welfare Service on their release from prison. The system of post-release supervision it is proposed to introduce will enable the courts at the time of conviction to impose on a sex offender a determinate sentence comprising a term of imprisonment and period of post-release supervision with the latter being served in the community under Probation and Welfare Service supervision. The combined custodial and supervision periods will not exceed the maximum custodial sentence available for the crime committed and the fact that there will be post-release supervision cannot influence the length of the custodial sentence which would otherwise be imposed.

The expectation is that this Bill will pass its remaining stages in the Dáil and Seanad during the Autumn session so that the Bill can be enacted before the end of the year.

(vi) Separate legal representation for victims of rape

The Sex Offenders Bill, 2000 also provides for the introduction of separate legal representation for complainants in rape and other serious sexual assault cases where application is made to adduce evidence or to cross-examine the complainant about his or her past sexual experience. The Law Reform Commission in its 1988 Report on Rape expressed doubts as to the constitutional propriety of separate legal representation for complainants in rape and other serious sexual assault cases insofar as it might alter the balance of the criminal process and deprive the accused of a trial in due course of law. Subsequent case law has tended to confirm those doubts. Under present law the sexual history of a complainant - the issue usually only arises in the case of rape - is only permitted to be introduced into a trial by leave of the judge. The application to introduce such evidence - which is made in the absence of the jury - must prove that such evidence is relevant. Since such applications are made in the absence of the jury, the Minister's advice is that what is proposed does not pose any constitutional difficulties as it could not impinge on the jury's view of the case it is trying. This would appear to be as far as the Constitution would allow such a provision to go.

As already indicated, it is expected that this Bill will pass its remaining stages in the Dáil and Seanad during the Autumn session so that the Bill can be enacted before the end of the year 2000.

#### **1.4 Child Sexual Abuse**

There has been an increased public awareness of the traumatic effects of sexual abuse of girls and an encouragement of the growing understanding of women/girls' vulnerability in this area.

The Department of Health reports that of the 1816 cases of child abuse dealt with by health boards, 557 involved child sexual abuse in 1994 and the latest figures show that of 2,541 cases, 765 involved child sexual abuse. The Department of Justice show in 1995 there were 15 convictions for 'incest'; 23 for 'unlawful carnal knowledge of a girl under 15 years'; and 17 convictions for 'unlawful carnal knowledge of a girl under 17'.

The procedures followed by health boards in investigating suspected cases of child abuse follow the 1987 Child Abuse Guidelines issued by the Department of Health, as amended by the 1995 Procedures for the Notification of Suspected Cases of Child Abuse between the health boards and the Gardaí which set out a standard procedure for the notification of cases between the two agencies.

## Legislation

### Criminal Law

The relevant legislation includes: Punishment of Incest Act, 1908; Criminal Law Amendment Act, 1935; Criminal Law (Incest) Proceedings Act, 1995. Other Sexual Offences Acts also apply. The maximum penalty for incest with a female of 15 years or older was increased from 7 years to 20 years imprisonment in the Criminal Justice Act, 1993.

### Civil Law

The implementation of the Child Care Act, 1991, in 1996, has resulted in an improved legal framework for the delivery of services to children. Health boards are now under a legal obligation to promote the welfare of children in their area who are not receiving adequate care and protection. The Act sets out new provisions which deal with the protection of children in emergencies, care proceedings and the powers and duties of health boards in relation to children in their care. A total of £40 million in additional revenue has been provided since 1993 to put in place the necessary services for the implementation of the Act.

These service developments have involved the appointment of additional professional and administrative staff. Nationally the developments include the creation of 900 new posts for child care services. Child Care Development Officers have been appointed in each health board area to act as regional managers of child care services; additional social workers, child care workers, psychologists, child psychologists and family support workers have also been appointed. Other service developments include the establishment of new family support services and the expansion of foster care and residential child care. Increased funding has been provided for preventive services such as family resources centres, youth projects and day nurseries and for the expansion of Home Help and Home Support Services.

### Policing

The domestic Violence and Sexual Assault Unit established by the police in 1993 includes within its remit overseeing the investigation of offences of child sexual abuse.

### Prevention

The Stay-Safe Programme has been designed for use in Primary Schools on a nation-wide basis and covers all forms of abuse including bullying. The programme consists of a video for children (girls and boys), two separate curricula for junior and senior cycles, a training session for teachers and additional information for parents. The extension of the Programme to second level schools is currently under discussion.

A framework for a more co-ordinated response to child abuse, including child sexual abuse, is set out in *“Putting Children First - Promoting and Protecting the Rights of Children”*, published by the Department of Health, January 1997.

## 1.5 Sexual Harassment

### Legislation

#### Employment Equality Act, 1977

The Employment Equality Act, 1977 prohibits discrimination in relation to employment on grounds of sex or marital status. While the Act does not contain any specific reference to sexual harassment, the Labour Court, in a ground-breaking decision in 1985, found that freedom from sexual harassment is a condition of work which an employee of either sex is entitled to expect. The Court will accordingly treat any denial of that freedom as discrimination within the terms of the Employment Equality Act, 1977. This decision has facilitated employees to pursue claims of sexual harassment under the 1977 Act through the Equality Officer Service of the Labour Relations Commission (now the Office of Director of Equality Investigations) and the Labour Court.

#### Employment Equality Act, 1998

The Employment Equality Act, 1998, which came into operation on 18 October, 1999, prohibits discrimination in relation to employment on nine grounds, namely gender, marital status, family status, sexual orientation, religion, age, disability, race and membership of the Traveller community. The Act defines sexual harassment for the first time in Irish law. It outlaws sexual harassment in the workplace and in the course of employment whether by an employer, another employee or by clients, customers or business contacts of an employer. It also provides that different treatment of a person in the workplace or in the course of employment, because of rejection or acceptance of sexual harassment, whether in the workplace, in the course of employment or outside the workplace, constitutes discrimination on the gender ground. Sexual harassment is defined to include all unwelcome and sexually or otherwise on the gender ground, offensive, humiliating or intimidating actions involving acts of physical intimacy, spoken words, gestures or the production, display or circulation of written material or pictures or requests for sexual favours. An obligation is placed on employers, to take all reasonable steps to ensure a sexual harassment free environment and to prevent a person being treated differently because of rejection or acceptance of sexual harassment. The legislation also applies to providers of vocational training, employment agencies and trade unions and employer and professional organisations.

Anybody who considers that s/he has been discriminated against contrary to the Employment Equality Act, 1998 may seek redress by referring the matter to the office of the Director of Equality Investigations, the Labour Court (in dismissal cases) or the Circuit Court (in gender cases).

### Codes of Practice

An Irish Code of Practice on measures to protect the dignity of women and men at work was issued in September 1994, following consultation with social partners. The Code of Practice, which is in accordance with the European Commission recommendation on the Council of Ministers Resolution on the subject, aims to provide guidance towards creating a work environment free of sexual harassment and a framework for dealing effectively with complaints of sexual harassment when they arise.

The 1998 Act provides for the development of statutory codes of practice which will be admissible in evidence and taken into account in determining any relevant case.

### Support Services

- (a) The Employment Equality Agency was in operation until 17 October 1999, when it was replaced by the Equality Authority. The Employment Equality Agency/Equality Authority provide information and advice to the public in relation to the provisions of the equality legislation. The Agency/Authority offer advice and information on sexual harassment at work and can represent a complainant in a case. The following statistics relate to enquiries received by the Employment Equality Agency in relation to sexual harassment for the years 1997, 1998 and 1999.

Year	Sexual Harassment Enquiries
1999	331
1998	298
1997	266

\* For the period 1 January 1999 to 17 October 1999.

- (b) Trades Unions: should provide advice and support to members on sexual harassment.
- (c) The Rape Crisis Centres provide counselling to women victimised by sexual harassment.
- (d) Other Organisations: Many organisations are providing training for supervisors dealing with complaints and preventing harassment. Many employers in the public sector and large private sector employers now have policies on sexual harassment.

### Prevention Programmes

Training programmes have been introduced in workplaces and educational institutions. General information is given by the media. The 1994 Code of Practice was widely circulated. It is a valuable guide to employers and workers as to their duties and responsibilities regarding conduct in the workplace.

A Framework for the Development of Equal Opportunities at the level of the Enterprise has been established to assist in the development and implementation on a voluntary basis of equal opportunity policies at enterprise level. A Framework committee involving representatives of employers, trade unions and relevant Government Departments and bodies has been established to progress this initiative. Among the issues identified as appropriate for discussion at enterprise level is sexual harassment.

### Equal Status Act, 2000

The Equal Status Act, 2000 deals with sexual and other harassment in the areas covered by the Act, i.e., in the provision of goods and services, accommodation, disposal of premises and education. A person in authority in an educational establishment, a person providing services or accommodation or disposing of goods or premises is prohibited from sexually harassing or harassing a student, customer, etc., as the case may be. A person who is responsible for the operation of an educational establishment or a place at which goods, services or accommodation facilities are offered to the public may not permit a student, customer, etc., to suffer sexual harassment or harassment there. Sexual harassment is defined as an unwelcome act of physical intimacy, an unwelcome request for sexual favours or an unwelcome act or conduct with sexual connotations. Harassment is defined as an offensive, humiliating or intimidating act or conduct based on any of the discriminatory grounds.

## **1.8 Prostitution**

Under Irish law, prostitution in itself is not an offence, but the law does seek to protect prostitutes from exploitation and to protect the public from certain manifestations of prostitution.

It is an offence for a person, in a street or public place, to solicit or importune another person for the purposes of prostitution. The offence applies equally to a prostitute (male or female) soliciting a client, a client soliciting a prostitute or a third party soliciting one on behalf of the other. The same offence and penalties apply to prostitutes, clients or anyone who solicits in a public place.

It is also an offence to solicit or importune another person in order to commit certain sexual offences, such as sexual relations with under-age persons, to keep or manage a brothel.

A member of the Garda Síochána who has reasonable cause to suspect that a person is loitering in a street or public place in order to solicit for the purposes of prostitution may direct that person to leave the scene immediately. It is an offence not to comply with such a direction without reasonable cause. "Loitering" includes loitering in a motor vehicle and this provision therefore applies to kerb-crawlers.

The most recent statute law in this area is Criminal Law (Sexual Offences) Act 1993 which, while primarily concerned with decriminalising homosexual acts between consenting adults also:

- Extended the law on soliciting in public, previously applied only to prostitutes, to include clients of prostitutes and any third parties e.g. pimps;
- Strengthened the law on the protection of prostitutes from exploitation by introducing new offences aimed at curbing organised prostitution and strengthening the law against living off the earnings of prostitution of another person.

So now it is an offence for a person, for gain, to compel or coerce another person to be a prostitute or, for gain, to control or direct a prostitute or to organise prostitution. It is also an offence to live knowingly on the earnings of a prostitute and to aid and abet prostitution.

1995	Prosecutions	Convictions
Soliciting / importuning for the purposes of committing a sexual offence.		1
Soliciting / importuning for purposes of prostitution	19	13
Loitering for the purposes of prostitution	15	12
Other	18	16

These figures include both women and men.  
Source - C.E.D.A.W. report.

### Trafficking in Women

There are no specific statutory offences of trafficking in women specifically for the purpose of their sexual exploitation. However, it is planned, as soon as other legislative priorities allow, to introduce a provision similar to the provisions which have already been introduced in relation to children (The Child Trafficking and Pornography Act, 1998), in relation to trafficking in adults for the purposes of their sexual exploitation. The Illegal Immigrants (Trafficking) Act, 2000 creates an offence of trafficking in illegal immigrants and asylum seekers and provides a framework through which those engaging in the trafficking of illegal immigrants for gain can be dealt with under the law.

## **1.10 Female Genital Mutilation**

Female Genital Mutilation is never carried out in Ireland.

### 3.1 Support/Protection

#### Domestic Violence: Refuges

At present there are 24 refuges and hostels providing accommodation for victims of domestic violence; Health boards provided £1.38 million which represents 90% of the total expenditure on such services.

#### Women's Aid National Freephone Helpline

A Women's Aid National Freephone Helpline operating 10.00am -10.00pm, six days a week, was established in 1992. Its aims include:

- Providing a free, confidential, anonymous, non-judgmental national phone-line; Supporting women in making informed decisions in their lives;
- Providing accurate, up to date legal, housing and financial information, outlining their rights, entitlements and options;
- Finding emergency refuges or alternative accommodation for women and children;
- Gathering statistics to educate the general public and policy makers about the needs of battered women and their children, and
- Educating and training women who have been abused to become volunteers to help other women.

From its establishment until December 1996 a total of 34,000 phone calls were made to the line, (8,000 in 1996).

The Task Force recommended that a national helpline networked into locally based services, publicised widely, rather than local helplines, is the way forward. It recommends that this helpline should operate 24 hours a day seven days a week, by trained staff, with guaranteed funding.

#### Health Boards

Health Boards are empowered to intervene by making applications for orders under the Domestic Violence Act 1996 on behalf of victims in certain circumstances.

#### Marriage Guidance

Marriage counselling agencies are considered to be of immense assistance by the Department of Equality and Law Reform who have provided increased funding to facilitate their expansion and development of services.

#### Legal Aid

The Scheme of Civil Legal Aid and Advice administered by Law Centres and staffed by solicitors to provide legal services at little or no cost to persons of limited financial means

was introduced in 1980. This scheme is of importance for victims of domestic violence seeking redress through civil law.

### Men's Programmes - Prevention

There are two voluntary organisations providing intervention programmes for violent men: The Cork Domestic Violence Project and Men Overcoming Violence (MOVE).

The Cork Domestic Violence Project was established in 1993. It offers a 20 week programme with a 10 week induction programme. To date, 80 men have completed the programme. It is based on the principles of the Duluth programme for men in Minnesota USA and places emphasis on inter-agency co-ordination to ensure that violent men remain accountable for their behaviour and to maximise protection for women.

Its primary goal is the protection, rehabilitation and empowerment of women and children. The aim of rehabilitating of men is secondary to this. The programme is based on the analysis that violence against women occurs in societies characterised by gender inequality and that violence is a part of a wider pattern of coercive and abusive behaviour used by men to retain power and control over women. The programme holds that men must be made accountable for their violent and abusive behaviour and challenged to live out a pattern of equality and respect. A parallel education, support and counselling group is run for women partners. A policy of limited confidentiality to men is practised so that the programme can disclose information revealed by men to protect his partner and children.

Women assess the ongoing behaviour, abusiveness and lethality of men, ensuring that the experiences of women victimised by violence remain central to the intervention strategy. Evaluation of the programme is just beginning. In a follow up of partners of 20 men who completed the programme: 67% of women stated there was no further violence; 22% stated there was some and 11% stated there was a lot. The project, however, warns of the need for vigilance about results and points out that the programme is unlikely to change the behaviour of men, but can mitigate the incidence of violence.

This project receives minimal state funding and the majority of resources come from fund-raising.

MOVE, initiated in 1989, has developed programmes in Dublin, Cork and other parts of Ireland. Its primary concern is the safety of women and children which it pursues by placing the responsibility for finding solutions to violence on the men. It operates a 13 week rolling programme throughout the year. Men are referred to the programme by doctors, solicitors, psychiatrists, marriage counsellors and social workers, and a small number are referred by the courts. The programme is based on weekly group sessions facilitated by professionals. Men are challenged to confront and explore their violent behaviour, attitudes and beliefs and are challenged to take full responsibility for their violence. The programme is informed by the understanding that violent men are not 'sick', but use violence as a means of control. MOVE defines success as men stopping being physically violent and ceasing to exert control in the many other ways that batterers do e.g. psychological abuse. MOVE hold the

belief that the woman's perspective should be taken into account in deciding whether or not real change is occurring. MOVE is a voluntary organisation with no secure state funding. MOVE also engages in out-reach work to educate and inform professionals and public opinion about violent men and their responsibility for violence.

The Task Force has identified core principles which should apply in the establishment of treatment programmes for violent men and recommends that only programmes which follow these principles should receive state funding: protocols regarding referrals should be developed;

- Assessment procedures should be established;
- Programmes to be linked to the criminal justice system;
- Contact to be maintained with partners to verify the safety and well-being of abused women and children;
- Only limited confidentiality to be accorded to men to allow for sharing of information and the protection of women;
- Work with men should not be done in isolation, but in full collaboration with statutory services and women's organisations.

#### The Community Development Programme

The Community Development Programme was established in 1990 in recognition of the role of community development in tackling poverty and disadvantage. In May 1998 a contract was signed with Women's Aid to act as a Support Agency to the Community Development Programme. The purpose is to provide support and advice to projects on the appropriate response to women experiencing violence. While projects will not provide services to these women they will be advised on how to deal sensitively with women coming to them for support and to assist the women to contact the appropriate agencies. The objectives of the Support Agency are to;

- Facilitate the creation of good practice guidelines for all those in the Community Development Programme who may have a role in responding to women who are abused;
- Explore the possible strategies the CDP may wish to initiate and develop in order to respond to women in the community who are abused;
- Facilitate linkages with relevant statutory and voluntary agencies which would enable individual community development projects to develop different strategies appropriate to their community;
- Facilitate linkages with relevant training and education personnel and agencies towards the development of specific strategies and responses;
- Support the CDP to promote the integration of policy and good practice guidelines into all relevant statutory and voluntary agencies;

- Support the CDP to raise an awareness about violence against women within the wider community through education and awareness programmes.

### **3.10 Proposed Reforms**

#### Integrated Criminal Justice Response to Domestic Violence

The Task Force recommended that to be effective, a pro-arrest police policy must be part of an integrated criminal justice response involving policy, prosecution and sentencing.

#### Monitoring of Law

Mechanisms to be put in place for monitoring the operation of the Domestic Violence Act 1996 and to review its effectiveness.

#### Judicial Training

Training of Judiciary about the nature of domestic violence.

#### Policing

Ongoing in service training to supplement domestic violence training provided in induction training; training facilitated by outside experts - including women's organisations.

The new Garda policy in relation to domestic violence to be monitored to ensure consistency in its implementation between the different districts.

The Gardaí should develop strong inter-agency links with statutory, voluntary and community groups working around domestic violence.

Each Garda station should have information packs available detailing local statutory and voluntary sector support services; information on intervention programmes for violent men should be included.

#### Support Services

A national helpline networked into locally based services, publicised widely, rather than local helplines, is the way forward. It recommends that this helpline should operate 24 hours a days seven days a week, by trained staff, with guaranteed funding - modelled on Women's Aid's National helpline

The Task Force recommended that 'One Stop Shops' be provided through community development projects in all local areas, to provide advice and information to women experiencing violence.

### Treatment Programmes for Violent Men

Establishment of principles for good practice; monitoring and evaluation of programmes.

### Developing a co-ordinated response and strategy for dealing with domestic violence

A National Steering Committee should be established with membership drawn from all relevant sectors to advise on policy development and priorities. It should be chaired by a Minister of State with designated responsibility for the development of policies in this area.

Regional Planning Committees with a strategic focus should be established in each region with membership drawn from all relevant sectors.

The establishment of Local Networks with a community based approach to the provision of services, including inter-agency co-ordination of services and sharing of information at a local level.

### Preventive Strategies

A long term strategy aimed at changing society's attitudes and values and the structures which facilitate gender inequality.

Improved service response.

Public awareness campaign aimed at both preventing domestic violence and stopping its recurrence to be developed by the National Steering Committee with TV/radio and posters. Information leaflets, posters and other materials giving local information should be displayed in places like supermarkets, health centres, churches, community groups, social service offices, post offices and sporting clubs.

Special focus programmes in education to provide young people with the knowledge, skills and attitudes necessary to prevent violence against women in future generations. Teacher training programmes, gender proofing of educational materials and methods are also needed as a part of such a programme.

Parenting and family support programmes be established.

## ITALY

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Information provided by the Department for Equal Opportunities in November 2000.

### **Introduction**

A lot of progress has recently been made in Italy in raising the awareness about violence against women. Women's movements organisations and institutions, in particular after the 1997 Directive was launched, have completed the advancement of the work. This progress has been achieved despite many contradictions and, at times, open hostility.

Women have expressed their active solidarity with the victims of violence through some hundred different associations all over Italy. This network of associations has organised 15 women's crisis centres sponsored by local authorities. The centres, some even with secret shelters, offer a range of services including legal counsel, psychological assistance, emergency help lines and other forms of support. This experience has heightened the awareness of violence against women and children.

Nonetheless, the situation remains severe and highly complex. In recent years, the number of cases of sexual violence and physical and psychological abuse occurring within families, reported to the police has practically doubled. Moreover, many of the accidents with severe lesions are reported as domestic accidents, instead of domestic violence and abuse. This phenomenon is explicitly recognised in the National Health Plan.

A recent survey conducted by the Italian National Statistics Institute (ISTAT), with a sample of more than 50,000 women, revealed that in over 80 per cent of the cases, the violence occurred within the context of a trust-based relationship. Women's crisis centres have reported the same observation. Roughly 90 per cent of the women who seek help from these centres have experienced physical and sexual violence in their families. Moreover, research projects have been initiated in many Italian universities on both the scale of violence against women and its repercussions on their physical and psychological health.

### **1.2 Domestic Violence**

Acting on the proposal of the Minister of Equal Opportunities, the government presented a draft law "*Measures Against Violence in Family Relations*", which introduced some of the judicial measures that already exist in other countries' legislation. "Barring orders", one of the measures introduced, ensure the removal of the perpetrator of violence from the family home. Until now, the only chance that a woman had to escape from a violent husband or partner was to abandon her home, which represented suffering in another form. If the draft bill, just adopted by the Senate is also passed by the Lower House, then women subjected to violence may choose to file a criminal complaint or initiate a civil

action. If a woman files a criminal complaint, she demands that the police arrest her violent partner or, more simply, she may initiate a civil action, with the enforcement of a barring order for her husband or partner to leave the family home and keep away from the places where the woman usually conducts her life. The order may also entail his payment of family support. Thanks to the work of women's associations, more and more people are gradually recognising the severity of violence in families. The Interior Ministry has organised specific training courses on domestic violence for law enforcement officers.

### 1.3 Rape/Sexual Assault

The first outcome of the World Conference of Women in Beijing was the approval 15 February 1996 of a *new law against sexual violence*<sup>21</sup>. Twenty years after the introduction of the first draft legislation, based on a citizens' initiative for which 300,000 signatures had been collected, the Italian female members of Parliament decided to start working together. They overcame their party differences, and pooled their efforts. Offence against the physical and psychological integrity of women, through sexual abuse, was in the new law taken out of the category of offences against public morality, and was instead placed in the category of crimes violating personal rights and freedom. The other big changes introduced by the new law included the unification of rape and sexual assault in the single act of sexual violence. The law provides that this crime is prosecutable on the basis of the irrevocable filing of charges by the woman. This crime may also be prosecuted without the woman filing a complaint, if the offence is associated with other crimes, in particular, with gang rape, as well as in the case that the victim of sexual violence is under age, disabled or a person subjected to authority. By contrast, the offence is not punishable if committed by children under 13, as long as the difference in age between the two children is not over three years.

This law has not yet been fully implemented and monitored, but has already been amended by a new instrument that was introduced against the sexual exploitation of children.

To respond more adequately to the women who denounce sexual violence in many police stations throughout Italy, special investigation services have been organised.

Many training courses have been organised for social workers in a variety of contexts. The first emergency service for the victims of violence was organised by the Mangiagalli Clinic in Milan and the University of Rome carried out a first study on gastro-intestinal pathologies produced by violence.

The Minister for Equal Opportunities reached an agreement with ISTAT concerning the first national study on sexual violence and coordinated also an "Urban Anti-violence Project". The project was funded by the European Structural Funds, and was launched in

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<sup>21</sup> Law 66, which abrogated a series of articles contained in the previous 1930 Code, thereby changing Art. 609, which concerns personal rights and freedom. On this subject, the National Committee for Equal Opportunities, issued a publication entitled "Sexual violence: twenty years for a law".

five Italian cities (Venice, Rome, Naples, Palermo and Catania). This project aims to investigate sexual violence in the more marginalized social contexts and to provide training to social and health workers.

The network of Anti-Violence Crisis Centres in the Emilia Romagna region has conducted a first systematic assessment of its work over the last few years, and a similar study is being carried out in Lombardy.

#### **1.4 Child Sexual Abuse/Incest**

In 1998, the Parliament passed a *law against the sexual exploitation of children*. The law was passed under the pressure of public opinion that had been strongly alarmed by a number of serious episodes of violence, abuse and paedophilia, as well as by a campaign against sexual tourism engaged by many NGOs.

The Minister for Social Solidarity, with other ministries and NGOs, submitted the guidelines against violence and abuse of children to the government. These guidelines deal with the issues of information, monitoring and prevention, as well as the practical measures and the training of social workers to assist children who have been raped or abused. The guidelines also analyse the root causes of male violence against both women and children.

Followed by the indications set out in the government plan and in Law 285/1997 on childhood<sup>22</sup>, in many local communities, social and health workers, along with teachers, have addressed this issue.

#### **1.5 Sexual Harassment**

Considerable work has been done the last years on the issue of sexual harassment and coercion in the workplace, thanks to the efforts of women trade unionists. This contribution led to the introduction of specific measures in the national labour contracts to protect working women from harassment. Many codes of conduct have also been drafted, especially in the civil service and health-care sectors. Sexual coercion in the workplace is a widespread phenomenon. Sexual harassment affects also self-employed female workers, as demonstrated by the ISTAT survey.

The Parliament has so far approved a very controversial draft bill against sexual harassment in one of the Houses.

#### **1.8 Prostitution**

##### Trafficking in Women

Trafficking in women for the purpose of sexual exploitation in Italy involves women from Eastern Europe and Africa. This form of trafficking is under the control of criminal

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<sup>22</sup> See chapter "L. The girl child"

organisations such as the Italian and Albanian mafias. It reduces thousands of women into a state of enslavement through the continuous use of violence.

Many initiatives, both legislative and practical, have been undertaken to address the issue of trafficking in women.

On a legislative level, the crime of trafficking has been included in the statute of the International Criminal Court as a specific case under the crime of enslavement. The Italian government supported this hypothesis in the Rome Conference for the creation of the International Criminal Court in July 1998, and approved a draft bill "*Measures against trafficking in human beings*" 3 March 1999<sup>23</sup>.

The bill introduced the new crime of trafficking in human beings into the Criminal Code as a modern form of slavery, which is punished severely (from 5 to 15 years of prison). The definition of trafficking includes both trafficking for the purpose of sexual exploitation (prostitution and sexual enslavement in the home), and forced labour, involuntary service and other forms of enslavement.

However, the issue cannot be dealt with through repressive measures alone. It is also essential to recognise and safeguard the human rights of the women who are caught up in trafficking and liberate them from the criminal gangs. For this reason, the Equal Opportunities Department has worked for the inclusion of a measure protecting the victims of trafficking in the *new law on immigration (Law 40/1998)*. Art. 18 of this law enable the issuance of a six-month residence permit to everyone who wishes to escape from the traffickers. This permit is renewable, and is granted for reasons of social protection. The permit may be received not only by the women who report the traffickers and bear witness in court, but also by all those women who are in danger because of their attempt to escape from the criminal gang exploiting them, and therefore participate in a social assistance and integration programme run by NGOs. During this period, the woman may seek employment and thereby obtain a regular status, and can decide to remain in Italy. The associations working in this sector, and which have so far only been able to offer shelter, protection and support to the victims, will now be able to boost the efficacy of their action.

The law on immigration was obtained thanks to the establishment of an Interministerial Committee, chaired by the Ministers for Equal Opportunities and Social Solidarity, with representatives from the Ministries of Justice, Interior, Foreign Affairs and the Ant mafia General Prosecutor. The Committee also collaborated with the Catholic and secular civic associations, which have gained considerable experience in the field. The Committee worked on drafting a definition of trafficking in women, and on understanding its scale and implications. It also assessed the Italian legislation in force and designed the practical measures needed to help women in conditions of forced prostitution.

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<sup>23</sup> This draft is currently being read in the House of Deputies.

*Following the adoption of this law, during the year 2000 the first 49 social assistance and integration projects for trafficked women, financed by the Department for Equal opportunities, were been implemented by non-governmental organisations in collaboration with local authorities.*

Concrete actions have also been taken by setting up a nation-wide helpline with over 100 operators, providing foreign women, forced to become prostitutes, with information on legal, administrative and health aspects. The help line directs them towards local associations and agencies that run 49 state funded social protection projects, which have already been in operation in the whole country for over 3 months. An information and awareness campaign has been launched in order to publicise the helpline. The campaign envisages the broadcasting of television and radio advertisements, placarding large posters in areas where much prostitution takes place, and the distribution of stickers with the helpline's phone number on. In the first three months of operation, the help-line already succeeded in enabling 100 women and girls to escape trafficking and participate in social assistance and integration programmes.

*Social projects of this nature will continue also in 2001 and will be integrated by actions against trafficking included in the multi-regional operational programme of "Objective 1, Italy 2000-2006", National operational programme "Security in Southern Italy". These actions will specifically target young girls, and will include field and statistical research, local actions and pilot projects for assistance, psychological support, education and training, as well as access to employment and an awareness-raising campaign, particularly in the areas where street prostitution has contributed to the development of racist attitudes towards immigrants.*

The cooperation between institutions and NGOs, which have accumulated years of experience working with street prostitutes and have developed the knowledge and skills needed to address the problems of the victims of trafficking, was essential for the success of the initiative. This experience has been invaluable for the action of government and institutions, and it has helped Italy to contribute to an understanding of trafficking in women in international fora, as documented by the Parsec study.

### **1.10 Female Genital Mutilation**

Female genital mutilation (FGM) involves 30,000 Sub-Saharan women who are currently living in Italy and hundreds of girls who were born in Italy.

The Equal Opportunities Department, in collaboration with the Health and Social Solidarity Ministries, organised a national seminar for obstetricians, gynaecologists and paediatricians with the purpose to help them to understand and take proper care of the women who have undergone genital mutilations, when they come to hospital for any kind of treatment or for delivery. This initiative has stimulated a greater awareness about FGM in universities and among many health workers who are organising forms of response and forming regional guidance centres.

### 1.11 International Conventions

The international activities on violence against women are focused on providing assistance to the women who are victims of armed conflict. In addition, the Directorate General for Development Cooperation (DGDC) of the Foreign Ministry has also financed a specific initiative against the trafficking of Albanian women. The initiative is an OIM Project for an informational campaign against trafficking in many areas of the country, especially in those rural areas where the aggression against young women is more severe. Moreover, the DGDC granted 500,000 USD to the UNIFEM Trust Fund for initiatives on violence against women. The Equal Opportunities Department, the DGDC and UNIFEM will work together to identify the initiatives to be implemented chiefly in the Balkan area.

This project started in March 1998 in collaboration between the Equal Opportunities Department, other Italian Ministries and the U.S. A bilateral agreement was signed by President Clinton and Prime Minister Prodi for the exchange of information resulting from investigations, the training of specialised workers in both the countries of origin and the countries of destination and the protection of the victims and their family members in their countries of origin.

In the European Union framework, the Equal Opportunities Department took part in an IOM Project<sup>24</sup> on information gathering by European police forces.

### 3.1 Support/Protection

The first integrated project against all forms of tolerance towards violence against women was launched in Bologna. This "Zero Tolerance" project was implemented in cooperation between institutions and NGOs. The strategy is based on prevention, the delivery of specialised services and an awareness-raising campaign addressed to the local communities. The Zero Tolerance Project is becoming a benchmark for other Italian municipalities.

*In 1997-1998, the Italian National Institute of Statistics carried out the first national study on sexual harassment and violence against women, involving over 20,000 women between 14 and 59 years of age. Other studies have been carried out by the network of centres against violence against women in the region of Emilia-Romagna. The national network of such centres includes about 70 institutions of this nature.*

In 2000, a Pilot Project "URBAN Cities Anti-violence Network - Italy" was undertaken by the European Commission, funded by the European Regional Development Fund (ERDF). The project involves 9 Italian cities (Venice, Rome, Naples, Palermo, Catania, Lecce, Foggia, Reggio Calabria, Cosenza) and is co-ordinated by the Italian Department for Equal opportunities. Its objectives are:

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<sup>24</sup> Funded by the European STOP Programme and co-funded by the Ministry of the Interior,

- To develop a set of common indicators to identify and analyse the different forms of violence against women;
- To define an action protocol on the prevention and eradication of violence against women;
- To define a methodology for the re-organisation of the existing services to assist women victims of violence.

The network created by the project has already published a training manual on strategies to eradicate violence against women and to organise services to assist the victims.

Field research has at the same time been undertaken, involving around 15.000 people in the cities partners in the network, on the basis of a common questionnaire. Local authorities as well as research institutes, universities and women's associations have been involved in the research work. The results are currently been compiled.

### **3.3 Main Problems**

The culture of violence is still widespread in Italian society despite women's efforts to change the situation and the judiciary system is not immune. A recent ruling by the High Court of Appeal created a scandal and was hotly debated in Italy. The court held that it is not possible to rape a woman who wears jeans, since it is impossible to pull this type of trousers off without the woman's consent. A large part of the country, its institutions and cultural milieu, without any differences in political affiliation, spoke out loudly against this ruling. Not by chance, the office that collects the judges' motivations of the rulings decided not to publish this motivation, which means that this ruling will not become a precedent.

In other cases, male resistance and cultural and social complicity with violence is aggravated by the lack of knowledge and adequate facilities. For instance, in the case of trafficking in women, the problems derive from the inability to see the difference between "independent" prostitutes and women victims of trafficking. Other problems are related to the size and complexity of illegal immigration and the difficulty to raise questions on male sexuality, in relation to the sex market.

Domestic violence is still an underestimated reality. The rooted misconception is that the rapist or abuser is a stranger. The social and family tendency to remain silent about cases of domestic violence still persists. Other problems, such as female genital mutilation, are largely ignored and wrongly attributed to religious motivations. The reaction to this problem is either total rejection or the fear to take action for a misplaced sense of "respect for cultural differences".

## LATVIA

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Information provided by the Social Policy Development Department, Ministry of Welfare in November 2000.

### 1.2 Domestic Violence

There are no specific laws in Latvia to combat domestic violence. Few institutions and organisations, neither governmental and non-governmental have initiated the process. Involved governmental institutions like the Ministry of Interior and the State and Municipal police co-operate with non-governmental organisations to educate professionals who deal with cases of domestic violence in their everyday work. The NGO crisis centre “Skalbes” has been conducting several multidisciplinary seminars regarding domestic violence for district attorneys, judges, police officers, medical doctors, psychologists and social workers. The outcome of these seminars is a specific work group that meets twice a month to work on the various legislative issues concerning domestic violence. The aim of these activities is to develop specific legislation regarding domestic violence.

Statistics in Latvia from 1997 show that in the women’s prison in Riga, of those women who are sentenced for severe crimes 89% have murdered or committed severe harm against their spouses or partners. Latvian Criminal Law defines responsibility for murder or severe or medium harm, committed in a state of sudden intense psychical exasperation. In these cases “sudden intense psychical exasperation” is a palliative circumstance. The weak point is that “sudden intense psychical exasperation” which results in a murder or a serious injury of the victim, must be an immediate reaction to the victim’s action. Cases in Latvia show that women who have been suffering from domestic violence for years, see sometimes as the only solution to escape from an abusive relationships is to murder their partner, thus they continuously and rationally plan the murder. The Latvian justice encountered such a case in 1997 and the woman was sentenced to eight years of imprisonment.

The legal solution could be to introduce a specific rule in the Criminal Law concerning murder or severe harm, if victim has been violent against his partner or spouse (the perpetrator).

According to the law, private violence should be sanctioned in the same way as public violence. The problem in Latvia is that domestic violence is often considered to be the family’s personal business or a private matter how people organise their relationship. This myth about domestic violence is very strong in Latvian society. This problem should be addressed by educative and informative work with professionals and society.

## Rape and Sexual Assault in Marriage

According to the letter of the law, rape and sexual assault in marriage should be prosecuted and sentenced the same way as other forms of rape. In practice, Latvian court practice does not come across cases concerning rape in marriage. It is probably a question of attitude – in our society there are strong myths about gender roles in the family, therefore both the general public and professionals (policemen, district attorneys, judges) tend to consider rape in marriage as “a marital duty”, not a crime.

Restriction and banning orders are rules that are welcome to be introduced in the Latvian legislation regarding domestic violence.

In Latvian Civil Law, the family rights section concerning divorce sets out that “a spouse can file for divorce, if the other spouse endangers her/his health.” The Supreme Court of Latvia has ruled that in such cases the court should divorce the spouses immediately. Nevertheless, there should be sufficient evidence of violence or abusive relations (for example a police act or a forensic expert report).

### **1.3 Rape/ Sexual Assault**

In the Criminal Law all sexual crimes are defined as “criminal offences against morality and sexual inviolability”.

Rape is defined as “sexual intercourse using violence, threat or the helpless state of the victim” (article 159). According to Article 159, rape has three levels of severity:

- Sexual intercourse using violence, threat or the helpless state of the victim is punishable with up to 7 years of imprisonment, with an optional subsequent term of police supervision.
- If a rape recidivist or a group of people commits rape, the sanction is 5 to 15 years of imprisonment, with an optional subsequent term of police supervision.
- Rape with severe consequences or rape of a minor is punished with 10 to 20 years of imprisonment or prison for life, with an optional subsequent term of police supervision.

“Severe consequences” mean the victim’s death, suicide or suicidal attempt or severe harm.

Commentaries to the Criminal Law explain “helpless state” as cases when the victim is not aware of the intent or seriousness of the violent act and does not show any resistance against the perpetrator because of physical disabilities, psychiatric disorders, other states of illness or unconsciousness, severe intoxication of alcohol or narcotics or if the victim is a minor (under the age of 14 years).

Rape can only be vaginal intercourse and is considered as a completed crime at the time of penetration.

According to Latvian legislation, only females can be victims of rape, and the direct perpetrator can only be a male. This is the weak point because the definition of rape and the commentaries of the Criminal Law, as well as court practice show that rape means only vaginal intercourse. Sodomy and violent anal intercourse (both female and male victims) are classified as “violent sexual abuse”. The imprisonment sanctions for the last is in average two years less than for rape.

These sanctions seem illogical, because, as we know, both of the mentioned crimes often cause serious continuous consequences – both mental and physical health problems, problems in social adaptation etc.

In rape trials, the most important technical evidence is the report of the forensic expert, witnesses’ evidence is also relevant.

Cases of rape are usually ruled by the district courts. Cases that are classified as extremely severe crimes (offences which can be sentenced for imprisonment for more than ten years or prison for life), the regional court rules these cases.

#### **1.4 Child Sexual Abuse/ Incest**

The following crimes relating to child sexual abuse are punishable under the Latvian Criminal Law:

- For a person who has reached the age of majority and who has sexual intercourse with a person under the age of 16 years who is economically or otherwise dependent on the perpetrator the punishment is up to 4 years of imprisonment.
- Improper activities with an under age child against his/her will or where the perpetrator is an adult is sentenced to up to 3 years of imprisonment.
- Improper activities with an under age child (under the age of 14 years) is punished with up to 5 years of imprisonment.
- Rape of a minor or under age child is considered as a circumstance for increased punishment to 5 years of imprisonment (if victim is of 14 to 18 years of age), or 10 to 20 years of imprisonment or prison on life (if victim is under the age of 14 years).
- Sodomy or lesbianism, or other kinds of unnatural sexual abuse is sentenced as follows; if the victim is of 14 to 18 years of age the sanction 3 to 12 years of imprisonment, and if the victim is under the age of 14 years – 5 to 15 years of imprisonment.

Incest as a sexual crime is not separately defined and consanguinity between the victim and the perpetrator is not a consideration.

## 1.5 Sexual Harassment

Sexual harassment is not defined in the Latvian legislation. Human Rights instruments in force in Latvia state that a person has the right to dignity at work, equal rights for both sexes, etc.

Sexual harassment is not punishable as a criminal offence against the person. It can in some cases be classified as rape, threat of rape, rowdysm or offence against a person's honour.

## 1.7 Pornography

A person can be punished under article 166 of the Latvian Criminal Law for violating the regulations on importing, producing and distribution of pornographic materials like publications, pictures, films, video and audio tapes. The sentence is a fine, forced labour or up to 1 year of imprisonment. If above-mentioned pornographic materials describe or visually show sexual abuse of children, sexual actions with animals, necrophilia or pornographic violence, the sentence is up to 3 years of imprisonment. This article also provides that a person who involves an under age child in the production of pornographic materials is sentenced to up to 5 years of imprisonment.

## 1.8 Prostitution

Latvian Criminal Law provides criminal responsibility for a person who violates the regulations of the Cabinet "On prostitution restriction", i.e. forcing somebody to practice prostitution, and pimping.

Prostitution as such is not prohibited in Latvia, except for under age children, incapable persons, and prostitutes without a medical card.

Regulations of the Cabinet set the following rules for persons who practice prostitution:

- It is prohibited to offer and provide the service in other venues but these appointed by municipality, or in apartments or houses which are not under the title or hired by a prostitute or a client;
- It is prohibited to provide sexual services if any under aged child is in the same apartment or room;
- It is prohibited for prostitutes to get organised in groups for providing sexual services or to take orders for sexual services, except for cases when the client is the same person;
- Thorough health control and supervision is carried out by medical doctors, Centre for Sexually- transmitted diseases, AIDS Centre, and the police.

Repeated violation of the regulations on prostitution restriction is sentenced with forced labour, fine or imprisonment.

A person who forces another person to practise prostitution is sentenced to a fine or up to 3 years of imprisonment. Force to practise prostitution by breaching the person's confidence or by deceit or using the victim's dependency of the perpetrator or the helpless state of the victim is punished with a fine or up to five years of imprisonment. A person who forces or induces an under age person to practise prostitution is sentenced to up to six years of imprisonment.

Pimping is defined as abuse of a prostitute with the intent to benefit. This criminal offence is sentenced with up to four years of imprisonment. If the pimps are acting in group, or a souteneur abuses an under age prostitute, the sentence is up to eight years of imprisonment and the seizure of the belongings.

### Trafficking in Human Beings

Latvian legislation does not provide specific measures for trafficking in women. Several articles of the Criminal Law include elements of trafficking in women (forced prostitution, pimping and incapacitation of a person's freedom, etc.)

The regulations of the Cabinet of Ministers "On Restriction of Prostitution" provides that it is prohibited to organise persons to provide sexual services abroad, as well as organise for this purpose persons to arrive from abroad.

#### **1.9 Obscene phone calls/ telephone sex**

Obscene phone calls and telephone sex are not a subject for criminal responsibility, nor are they regulated in the Latvian legislation.

#### **1.10 Female Genital Mutilation**

There are no specific rules on female genital mutilation. Theoretically, the articles on committing severe or medium harm could cover the issue. According to the Latvian Criminal Law one of the requirements for the offence "harm" is that it causes loss of an organ or the function of an organ.

#### **1.11 International Conventions**

Latvia has ratified the following international treaties relating to children's and women's rights:

- Declaration on Children's Rights of November 20, 1959;
- Convention On Children's Rights of 20 November, 1989;
- Declaration on Elimination of Discrimination Against Women of November 7, 1967;
- Convention on Elimination of All Forms of Discrimination Against Women (1979).

### **1.13 Protection of pregnancy / pregnant women**

There are several rules in the Latvian Criminal Law protecting pregnant women. Murder of a pregnant woman, if the perpetrator was aware of the woman's pregnancy is considered as a severe crime, which is punished with 10-20 years of imprisonment and up to three years of subsequent police supervision or prison for life.

According to the law it is a criminal offence to force a woman to have an abortion, if abortion is completed. The sanction for this crime is up to two years of imprisonment, forced labour or a fine. An illegal abortion, depending on the severity, is punished with imprisonment, a fine or the loss of the right to practise medicine. If the abortion caused the death of the pregnant woman or other serious consequences is the term of imprisonment up to 15 years.

## **2.1 Sentencing**

### **Sentencing domestic violence**

The former Latvian Criminal Code contained a specific article that provided punishment for battering or torture, i.e. for intended assault or battering as well as other acts of physical violence. The sentence was up to 3 years of imprisonment.

On 1 April 1999 the new Criminal Law of Latvia entered into force and the content of this article is dissolved in the articles on severe and medium harm.

As mentioned above, according to Latvian Law, domestic violence as such is not considered a criminal offence. Domestic violence with severe consequences can be classified as light, medium or severe harm, threat to commit severe harm or murder.

Domestic violence, depending on the consequences, is sentenced under various articles of the Criminal Law to up to 15 years of imprisonment, a fine or police supervision.

## **3.10 Main Problems and Proposed Reforms**

Existing work experience with assaulted women shows that the general public as well as professionals from the legal and social field are unaware of the scope and seriousness of domestic violence. This makes the existing system unsupportive and unfriendly to the victims and their families. Open discussions concerning myths and stereotypes about both victims and perpetrators in the general public would empower people to participate in the change of the protective and preventive systems.

It is possible to draw up the following objectives:

- Increase public awareness of domestic violence and gender roles;
- Amendments in the Criminal Law regarding domestic violence as a separate crime;
- Improve the criminal process – introduction of restriction orders;
- correct and thorough implementation of the existing laws.

## LIECHTENSTEIN

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Information provided by the Equality bureau, Vaduz in November 2000.

### 1.1 Legislation Relating to Violence Against Women

There is no specific legislation relating to violence against women in Liechtenstein. It is regulated like other forms of violence, most of the regulations are found in the Liechtenstein Penal Code LGBL. 37/1988. The same rules are applied to both sexes.

In April 1996, a working group was established to revise the Penal code and the Code of Penal Procedure. Priority was assigned to section 10 of the Penal Code, „public offences against morality“. The proposed measures include: To abolish the statute of limitations in the case of sex offences, to define rape in marriage as a criminal offence and to legislate against sexual harassment at the workplace. The Government submitted the report for *Vernehmlassung* (the stage in the legislation process when a bill is submitted to interested bodies for comments before being formally transmitted to the Landtag) in May 1998. The first reading in the Parliament (Landtag) took place in 1999. The second reading is expected to take place by the end of year 2000.

The draft legislation concerning the Code of Criminal Procedure will probably be submitted by the Government by the end of 2000.

The first reading of the draft legislation concerning protection against domestic violence, and particularly concerning “exclusion from and prohibition on entering the home in cases of domestic violence“ (Wegweiserecht) took place during the October session 2000 of the Liechtenstein Parliament.

### 1.2 Domestic Violence

#### Penal law

There is no specific legislation concerning domestic violence, it is regulated as any other form of violence. There are various articles that concern violence in the Penal Code. The maximum and minimum sentences vary with the grossness of the crime.

#### Civil Law

In Liechtenstein Civil Law there are no provisions concerning domestic violence. Under the new Marriage Law from 1999, it is possible to file for divorce if the continuation of the marriage is not reasonable for a spouse.

### 1.3 Rape/ Sexual Assault

Rape and Sexual Assault are regulated in the Penal Code LGBl. 37/1988.

Liechtenstein Penal Code criminalises:

- To compel, by force or threat of force, a woman to have sexual intercourse (rape);
- Sexual offence by force or threat of force against a woman or a man;
- Rape or other sexual offence against a woman who suffers from insanity or other mental deficiency of a woman or who is unable to prevent the act or understand its meaning.

The sentence is 6 month to 20 years of imprisonment.

### 1.4 Child Sexual Abuse/Incest

Child Sexual Abuse/Incest is ruled in the Penal Code LGBl. 37/1988.

#### Incest

- Sexual intercourse with a child under the age of 14 years;
- Sexual offence with a child under the age of 18 years;
- Sexual intercourse with a descendant;
- Sexual intercourse with a sibling;
- Sexual intercourse with offspring under the age of 20 years. An adopted child, stepchild, foster child or a child one has been entrusted with, is placed on a level with offspring;
- Sexual intercourse between an employee at a hospital or similar institutions and a patient.

The sentence is 6 month to 20 years of imprisonment. The maximum and minimum penalty varie with the grossness of the crime.

### 1.5 Sexual Harassment

The actual Penal Code does not cover sexual harassment.

The Equality Act, which is in force since 5 May 1999, covers sexual harassment.

The Labour Act, which came into force the 1 January 1998, stipulates that the employer has to ensure that an effort is made to establish a safe and healthy working environment, and to prevent sexual harassment.

### **1.7 Pornography**

The Liechtenstein Penal Code LGBl. 37/1988 criminalises: Pornography, Prostitution and Traffic in Human beings.

Publishing, selling or distributing pronography is sentenced with a fine or 6 months of imprisonment.

### **1.8 Prostitution**

Prostitution is punished with 2 years of imprisonment. To benefit from somebody else's prostitution leads to 5 years of imprisonment.

#### Trafficking in Human Beings

It can lead to up to 10 years of imprisonment to actively encourage someone, woman or man, for the purpose of prostitution.

### **1.11 International Conventions**

As a member of the United Nations and the Council of Europe, Liechtenstein has ratified a number of European and international conventions relating to the protection of human rights. In 1996, Liechtenstein ratified the UN Convention on the Elimination of all Forms of Discrimination against Women. The European Convention on Human Rights was ratified in 1982.

### **1.13 Protection of Pregnancy/Pregnant Women**

The Employment Act was amended in 1998. In general, an employer is required to take all measures that are technically practicable, and that are compatible with conditions in the workplace, to protect the health of the employees. Regulations dictate which measures a company must take to protect the employees' health. There are special provisions in the Employment Act for pregnant women and nursing mothers. The employer is required to provide working conditions for, and assign duties to, pregnant women and nursing mothers that do not have a negative impact on their health or the health of the child. Under Liechtenstein's current legislation, a mother may be dismissed neither during pregnancy nor the 16 weeks after delivery.

### **3.1 Support/ Protection**

#### Women's Shelter

In 1991, the Women's shelter was established in Liechtenstein. It serves the whole country and the region. The shelter is run by the Association for Protection of Mistreated Women and Children. This institution has proved to be an important source of assistance for women in need. In 1999, 31 women, of whom 11 were residents of Liechtenstein, sought refuge in the Women's House along with 40 children. In 1998 and 1999, the Association for Protection of Mistreated Women and Children and the Association for Networking (Netzwerk) conducted projects in schools to prevent sexual exploitation.

#### Network

The Information and Contact Network for Women „Infra“ was established in 1986. The aim of „Infra“ is to promote contacts and exchange experiences and views among women. It also provides information on women's issues in the field of medicine, culture, law, violence against women and politics.

#### Violence Against Women

In Liechtenstein there is still a taboo with respect to violence against women, whether in public or in private. From September to December 1997, an anti-violence campaign was launched in Liechtenstein (through the Equality Bureau in cooperation with non-governmental organisations) in order to create and enhance awareness of this multi-faceted problem. After an invitation from the Government of Liechtenstein, the United Nations Special Rapporteur on violence against women, Radhika Coomaraswamy, visited the country in April 1998. She met with members of the Government, of the administration, of the Public Prosecutor's Office, as well as with representatives of non-governmental organisations. During her visit to the Women's House, she also met with three victims of domestic violence. Her report was submitted to the Commission on Human Rights at its 55th session for consideration.

## LITHUANIA

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Information provided by the Labour Market and Equal Opportunities Division, Department of Labour, Ministry of Social Security and Labour in November 2000.

### 1. Legislation Relating to Violence Against Women

On 1 December 1998, the Seimas (the parliament) of the Republic of Lithuania adopted a *law on Equal Opportunities for Women and Men*. The purpose of the law is to ensure the implementation of the provisions about equal rights for women and men, protected by the Lithuanian Constitution. Upon the enforcement of the Law (1 March 1999), the official definition in the Lithuanian legislation of “discrimination against women” is in line with the definition provided in Article 1 of the Convention on Elimination of All Forms of Discrimination Against Women.

The definition of “discrimination against women” in the law of Equal Opportunities for Women and Men:

*“The violation of equal rights of women and men (discrimination) is a passive or active conduct, which expresses humiliation, contempt, the restriction of rights, or the application of privileges due to the gender of a person.*

*Exceptions:*

- 1) *To apply a special protection of women during pregnancy, delivery and breast feeding;*
- 2) *To require conscription only of men;*
- 3) *To apply different ages for women’s and men’s retirement;*
- 4) *Enterprises can use safety requirements for women at work, with the aim of protecting women’s health, taking into account her physiological features;*
- 5) *The performance of certain jobs that may be done only by a person of a particular gender. “*

The Seimas has approved an *Ombudsman for Equal Opportunities between Women and Men*.

Even before the *Law on Equal Opportunities of Women and Men* was passed, with the aim of ensuring that men and women should have not only equal rights, but also equal opportunities to participate in political, social, economic and cultural life, the *Programme for the Advancement of Lithuanian Women* was approved by the Government. The programme was in accordance with the “Beijing Declaration” and the “Platform for Action” adopted by the 4<sup>th</sup> UN World Conference on Women in Beijing on 4-15 September 1995. The programme covers the stipulated areas to achieve by the Action Plan for the Implementation of the Women Advancement Programme for 1998-2000. The Ministry of Interior Affairs is responsible for the implementation of the protection of

women's human rights, the economic and social position of women, and abuse and violence against women and girls.

## 1.2 Domestic Violence

There is no law concerning domestic violence. The Penal Code, Section 3 includes "crime against a person's life, health, freedom and dignity".

## 1.3 Rape/Sexual Assault

The sexual crimes in the Penal Code are crimes against life, health, freedom and dignity. The Penal Code, article 118 defines rape/sexual assault as: " *Sexual intercourse through physical coercion or threats, or when the perpetrator take advantage of a woman in a helpless situation* ". The sentence is 3-7 years of imprisonment.

### Rape

The term "rape" comprises several types of abuse and covers several levels of rape.

The term "consent" is not defined. The main criterion is "against a woman's will". Technical evidence is not necessary in court proceedings against a rapist. Cross-examination is used during the hearing.

Normally, rape cases fall under the jurisdiction of local courts. The case falls under the jurisdiction of district courts though, if the perpetrator is a dangerous recidivist, or if the rape resulted in exceptionally grave consequences, or if it was a young girl who was raped.

The sentence for rape is 3-7 years of imprisonment (Art.118, Par. 1) or:  
 5-10 years of imprisonment (Art. 118, Par. 2).  
 5-15 years of imprisonment (Art. 118, Par. 3).  
 8-15 years of imprisonment (Art. 118, Par. 4).

### Rape/Sexual Assault in Marriage

There is no law specially designed to tackle rape and sexual assault in marriage, however article 118 of the Penal Code is also applied by courts in cases of rape in marriage if the requirements defined in this article, i.e. abuse, physical coercion, helpless position of a victim, etc. are fulfilled. The same sanctions are applied for rape in marriage as in rape outside marriage.

## 1.4 Child Sexual Abuse/Incest

Article 20 (120) of the Penal Code defines child sexual abuse as " *sexual intercourse with a sexually immature person* ". The sentence is up to 5 years of imprisonment. The offence " *depraved acts* ", i.e. to rouse an immature person's sexual excitement or to cause a too

early interest in sexual acts or to provoke erroneous or unhealthy imagination about sex life or intercourse. The punishment is 3 years of imprisonment (Art.121 of the Penal Code).

### Sexual Abuse of Girls

The age of majority is 18. Sexual intercourse with a girl under the age of 14 years is rape. If a 14 –16 year-old girl gives her consent to have sexual intercourse, a physician shall examine the questions about her sexual maturity.

If a witness is under the age of 14 years, his/her teacher shall be called for the examination. The witness's parents or other legal representatives could also be summoned (Art. 315 of the Penal Process Code). Article 4 of the Penal Process Code states that a person under the age of 16 years is usually called to give witness through his/her parents or other legal representatives. Art. 312 provides that a witness under the age of 16 years shall not be warned about criminal liability for refusal to witness, or for knowingly giving false statements.

### Statistics

The data gathered by the Ministry of the Interior shows that adults committed 317 crimes of abuse against children in 1998 (377 in 1997). Among these there were 5 cases involving prostitution (none in 1997). The analysis of the crimes committed in 1998 shows that 96 crimes were performed based on the motives of sexual abuse.

Children Subjected to Sexual Crimes:

#### Crimes Detected

According to:	1995	1996	1997	1998
Penal Code Art. 118 (Rape)	84	83	80	71
Penal Code Art. 120 (Sexual Intercourse with a Sexually Immature Person)	9	5	2	5

Abuse and violence against children gives rise to further violence. Abused children often become ruthless to other people.

Crimes Committed by Children:**Crimes detected**

According to:	1995	1996	1997	1998
Penal Code Art. 118 (Rape)	33	29	16	21
Penal Code Art. 120 (Sexual intercourse with a sexually immature person)	1	1	-	-

National Programme Against Commercial Sexual Exploitation and Sexual Abuse of Children

Resolution No 29 of the Government of Lithuania on the national programme against commercial sexual exploitation and sexual abuse of children was adopted on 11 January 2000.

Two major stages of implementation are established:

Stage I covers the period 2000-2001. It is essential during this period to determine the extent of sexual exploitation and sexual abuse against children. It is also important to consider strengthening control and preventive actions and to ensure the implementation of other related programmes.

Stage II covers the period 2002-2004. The fundamental principles of a control and preventive system should be created, i.e. the elaboration of a legal regulatory basis, the development of the system for preventive and control entities as well as the system of legal, economic, social, organisational and information analytical measures allowing to monitor the extent of commercial sexual exploitation and sexual abuse of children. Simultaneously, the implementation of Stage I of the programme should be assessed and, if necessary, the objectives of Stage II should be redefined and further objectives should be set, taking into consideration potential changes and the situation in general.

The development of a preventive system against commercial sexual exploitation and sexual abuse of children is linked to legal, economic, social, information, analytical, organisational and other measures covered by this programme.

It is anticipated that the implementation of the programme will bring essential changes to the following areas:

- The development of the legal system;
- Education;
- The design of methodological material;

- Training of specialists;
- The development of rehabilitation and reintegration system for sexually abused children;
- International cooperation.

The state of children who have been victim of sexual abuse is, on a regular basis, analysed. The results are thereafter transmitted to the Family and Child Committee of the Seimas and other concerned authorities.

## **1.5 Sexual Harassment**

Women's dignity is protected by the Constitution (art. 21), and the Law on Equal Opportunities of Women and Men protects women's dignity at work. Article 5 of the law lays down the employer's responsibility to prevent sexual harassment and to take measures to ensure equal opportunities of women and men.

Sexual harassment is defined in the Law on the Penal Code Equal Opportunities for Women and Men. Article 119 of the Penal Code provides criminal liability for forcing a woman to have sexual intercourse. Article 41<sup>6</sup> of the Administrative Offences Code stipulates a fine of 100 to 2 000 litas for public officials, employers and persons authorised by the latter, for the violation of equal rights of women and men (i.e. for sexual harassment).

## **1.7 Pornography**

Article 242 the Penal Code; "*Production and Distribution of Pornographic Items*", states that a person who produces and stores written pornographic materials, published materials, images, or other pornographic items with the aim of distributing them, as well as their distribution is ordered to pay a fine or is sentenced to up to 2 years of imprisonment. To exploit children under the age of 18 years for the production of pornographic publications, images, video films, cinema films or other items of a pornographic nature is punished by 1 to 4 years of imprisonment, or by a fine.

Article 242(1) of the Penal Code treats the issue of production and distribution of products promoting violence and cruelty.

## **1.8 Prostitution**

Any behaviour that meets the usual indications of prostitution is not punishable under the laws of the Republic of Lithuania. Prostitution is, however, an offence and is punished by a fine of up to 500 litas, or in the case of repeated occurrence, up to 1 000 litas, or up to 30 days of administrative arrest (art. 182(1), 1§ of the Administrative Offences Code).

## Trafficking in Women

Due to economic and social circumstances in recent years, the problem of prostitution has become more urgent in Lithuania. The Ministry of the Interior prepared, and the Government approved the long-term, comprehensive *Programme for Combating Organised Crime and Corruption*, which, among other measures, provided for the drafting the *Programme for the Control and Prevention of Prostitution and Women Trafficking* in 1999.

In June 1998, the Service of Organised Crime Investigation, the Service of Criminal Offences Investigation and the Municipal Police, made an assessment of the situation regarding the fight against trafficking in human beings. They submitted recommendations concerning the future programme for combating trafficking in human beings and prostitution.

In recent years, Lithuania has adopted quite a few laws regulating coercive prostitution and trafficking in human beings. On 2 July 1998, article 131 (3) of the Penal Code was amended. This article provides criminal liability for trafficking in human beings. During 5 months in 1998, no prosecution was brought to court under this article. The reason was that 90 percent of the women deported from foreign countries, made a written statement that they knew in advance what kind of work they would have to do. Therefore, this cannot be considered trafficking in human being in a literal sense. One case for trafficking in human beings was brought to court in 1999.

The same law sets forth a stricter liability for procuring. Procuring is punishable under article 239 of the Penal Code, which stipulates a sentence of up to 5 years of imprisonment. Under this article, 57 prosecutions were brought to court in 1998.

The drafting of *the Programme for Control and Prevention of Prostitution and Trafficking in Human Beings* is envisaged for 1999. The Ministries of Interior, Education and Science, Social Security and Labour, Health Care, Justice, the General Prosecutor's Office, as well as the Lithuanian Centre for Crime Prevention are responsible for the preparation of the programme.

Crimes related to prostitution and trafficking in human beings will be covered in the new Draft of the Penal Code. Procuring for prostitution will be emphasised (art. 313). Stricter sentences are provided for procurers for prostitution in Lithuania or outside the country, for people organising and managing prostitution, and for traffickers of human beings to Lithuania. Art. 317 of the Draft Penal Code give a definition of procurement. The Draft includes some new articles, art. 314 providing sentences for the establishment and keeping of brothels; art. 315 stipulates liability for public demonstration or advertisement of pornographic items, Art. 316 lays down liability for using children under the age of 15 years for the purpose of pornography, etc.

### **1.11 International Conventions**

The Seimas ratified the Convention on the Elimination of all Forms of the Discrimination of Women in 1995.

### **1.13 Protection of Pregnancy /Pregnant Women**

Labour laws regulate the protection of pregnant and breast-feeding women.

The Law on Safe Work in Enterprises (adopted on 7 October 1993) plays an important role in securing safe working conditions for women. Article 63 stipulates that the pregnant woman, upon submission of a medical opinion, shall be entitled to a smaller workload, or transferred to another position that is not harmful to her health. The pregnant woman's remuneration shall not be lower than the average wages she received before. In case a transfer to another position is not possible, or during the period of resolving the issue of the transfer, a pregnant woman shall not work but shall retain the average wages for all the working days she is not working. A pregnant woman shall not, without her own consent, work extra hours or night shifts, neither shall she work weekends or holidays, or go on business trips. A woman with a child younger than a year and a half and who therefore, is not able to work, shall, upon her request, be transferred to another position and retain her average wages. Furthermore, beside a general break for rest and meals, the woman shall have at least half an hour's break every three hours for feeding her baby. On the mother's request, the breaks for feeding her baby can be added to the breaks for rest and meals, or transferred to the end of the working day. Average wages are paid for the feeding breaks. Article 46 provides that an employee upon agreement with his/her employer can work part-time. Article 47, 4 § regulates duty in enterprises or at home provides that a pregnant woman and a person under 18 years of age as well as a disabled person shall not be appointed to be on duty in an enterprise or at home. "To be on duty," means here that in special cases, the employer can ask the employee to work longer during holidays or weekends than foreseen in the working contract.

According to the Law on Vacation, vacation for the first year of work shall be available after six months of uninterrupted work in that enterprise, and shall not be granted later than at the end of the first year. Women can, upon request, use their vacation before or right after their maternity leave, even before six months of uninterrupted work have passed (Article 8). Pregnant women have the right to choose the time of their annual vacation after six months of uninterrupted work in that enterprise. The Law on Vacations also provides for maternity leave (pregnancy and childbirth) and vacation for baby care. Women are entitled to 70 days of maternity leave before delivery, and 56 days after delivery (in case of a complicated delivery or the delivery of two or more children, the woman is entitled to 70 days).

## 2.0 Sentencing

### Domestic Violence

The courts of the Republic of Lithuania pass sentences on domestic violence under the following articles of the Penal Code:

- Manslaughter (art.109);
- Bringing to suicide (art. 110);
- Intentional grievous bodily harm, transmission of an infectious disease or inflicting harm in other ways (art.111);
- Intentional grievous or grievous-like bodily harm in the state of emotional stress (art.113);
- Grievous or grievous-like bodily harm, transmission of an infectious disease or inflicting harm in other ways, due to recklessness (art.115);
- Intended lenient bodily harm, transmission of an infectious disease or inflicting harm in other ways (art.116);
- Assault and cruel torture (art. 117).

## 3.0 Effectiveness of Legislation

While implementing the *Programme for the Advancement of Lithuanian Women*, the Government has undertaken major steps to reduce domestic violence and violence against women to prevent such crimes. The above problem is one of the most urgent problems, related to other social problems (temporary unemployment, permanent unemployment, alcoholism, family conflicts, etc.).

In the majority of cases, it is the Municipal Police that meet these problems. Its officials prepared a comprehensive report on the implemented measures, and a new package of measures for implementation in order to fight violence against women. In 1998, the Municipal Police investigated 11 409 statements claiming domestic violence (8 982 in 1997), and 2 696 statements claiming negative influence on children (2 665 in 1997). The sanctions the police can apply to influence violent persons are limited, and direct influence by the police is not an adequate measure to bring the desired results. The available data shows that the victims of domestic conflicts are usually women, girls and children (95.6 percent in 1995, 97.4 percent in both 1996 and 1997, and 97.6 percent in 1998).

## 3.1 Support/Protection

In Lithuania, 9 crisis centres have been established where women could get psychological help and find temporary shelter for themselves and for their children. There are 14 telephone lines where abused women can seek psychological advice, legal consultation, and get information about institutions offering shelter. Almost all police stations have confidential telephone lines open for abused women for consultations, or for calling the police. Many of these centres and telephone lines are initiated by NGOs.

## LUXEMBOURG

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This information was supplied in November 2000 by the Ministry for the Advancement of Women, Luxembourg.

### **Introduction**

Via agreements with management bodies, the Luxembourg state supports the activities of reception centres for women in difficulty. In addition, a telephone help-line was set up in March 1998 with the support of the Ministry for the Advancement of Women.

Campaigns against violence towards women are organised on a regular basis. 1999 was declared (national) year against violence towards women and numerous information and awareness-raising activities were conducted as part of this project. A working party has considered legislation applicable in this area. The Government elected in May 1999 is committed to passing legislation on domestic violence.

### **1.1 Legislation relating to violence against women**

Luxembourg does not have specific legislation relating to violence against women. Ordinary law is therefore to be applied.

### **1.2 Domestic violence**

In the area of domestic violence, the 1999 Coalition Agreement provides that:

“The two partners in the coalition agree to ensure that, in the event of domestic violence against a woman, it will no longer be the woman who is obliged to leave the family home. Steps should be taken to ensure that the person who is responsible for the violence is forbidden entry to the home.

The legislation currently in force will also be reviewed, so that women who leave their home to escape from domestic violence will not forfeit their right to maintenance on the grounds that they had deserted the home in the legal sense of the term.”

Violence within a couple is not censurable *per se*, but comes under the scope of the ordinary law governing offences against the person (Articles 392 to 417 of the Criminal Code).

The Criminal Code takes certain factors into account in categorising violent crimes:

- degree of intention (premeditation);
- gravity of the consequences (illness, incapacity, death);

- the relationship between the perpetrator and victim (relationship of descent between the perpetrator and victim);
- status of the perpetrator or victim (ie, where the perpetrator exercises authority over the victim, or an under-age victim);
- specific means of committing the offence (administration of substances).

As regards intentional injuries, it is appropriate to refer firstly to Article 398 of the Criminal Code, which provides that:

*Any person who intentionally injures or assaults shall be punished by eight days' to six months' imprisonment and a fine of 26 to 100 Francs, or by only one of these penalties.*

*In the event of premeditation, the guilty party shall be sentenced to one month's to one year's imprisonment and to a fine of 50 to 200 Francs.*

The penalties range from two months' to two years' imprisonment and a fine of 50 to 200 Francs if the assault or battery resulted in illness or personal disablement (Article 399(1)). In the event of an illness that is apparently incurable or of permanent personal disablement, loss of complete use of an organ or mutilation, the sentence is increased: two to five years' imprisonment and a fine of 200 to 500 Francs (Article 400(1)).

If the assault or battery has caused unintentional death, the penalty will be five to ten years' imprisonment. Where the violent acts, but not the death, were premeditated, the sentence will be ten to fifteen years' imprisonment (Article 401(1-2)).

In the event of intentional administration of substances, Articles 402 to 405 apply.

Extreme cases of physical violence, namely murder and premeditated murder, are punished under articles 393, 394 and 397 of the Criminal Code.

Under Article 393, homicide *“committed with the intention of causing death is classified as murder. It shall be punished by penal servitude for life.”*

Murder committed with malice aforethought is defined as premeditated murder (Article 394).

Murder committed *“by means of substances which may sooner or later cause death, however these substances were used or administered”* is defined as poisoning (Article 397).

Premeditated murder and poisoning are punished by life imprisonment.

Psychological violence is punished as assault and battery, as insults or as threats. According to the Supreme Court of Justice (*Cour Supérieure de Justice*), a psychological shock constitutes an injury, whereas the overall meaning of the words “assault and battery” includes all assaults on a person's physical integrity or health, and consequently

refer not only to external injuries, but also to internal injuries, illnesses and even internal disorders” (*Cour Supérieur de Justice, 13 October 1978, Pasicrisie 24, page 198*).

Verbal threats give rise to sanctions only exceptionally. Article 327(1 –2) of the Criminal Code states:

*Anyone who, either verbally or in an anonymous or signed written statement, or by any analogous method, has threatened to carry out an attack against persons or property that would be a criminally punishable offence shall be punished by six months’ to five years’ imprisonment and a fine of 10,000 to 50,000 Francs.*

*A verbal threat, or a threat made in an anonymous or signed written statement, or by analogous methods, to carry out an attack on persons or property that would be punishable by a criminal sentence, and which does not contain an order or condition, shall be punished by three months’ to two years’ imprisonment and a fine of 5000 to 30,000 Francs.*

Article 330 states:

*A threat, made either verbally or through an anonymous or signed written statement, containing an order or condition, to carry out an attack on persons or property that would be punishable by eight days’ imprisonment or less, shall be punished by eight days’ to three months’ imprisonment and a fine of 2501 Francs to 10,000 Francs.*

Accordingly, verbal threats made without an order or condition are only punishable if they concern an attack against persons (or property) that would be punishable by a criminal sentence. Consequently, simple oral threats to inflict an injury, made without an order or condition, are not punishable. However, this is a common form of domestic violence that is frequently accompanied by physical violence.

As to sexual violence by a husband against his wife, the following section should be consulted.

### **1.3 Rape/ sexual assault**

Sexual violence is covered by Articles 372, 373 and 375 of the Criminal Code, under Book II, Part VII “*crimes and offences against family order and against public morality*”.

Article 373 punishes indecent assault, committed with violence or threats, or committed against persons who are not in a position to give free consent or to offer resistance, by six months’ to 5 years’ imprisonment. The case-law classifies indecent assault as “*a physical action, contrary to the common sense of decency, carried out on another person against his or her will*”.

Since its modification by the Law of 10/08/92 on the protection of young people, Article 375(1) classifies rape as any act of sexual penetration, of whatever kind and by whatever

means, committed against another's person, by the use of violence or threats, or by trickery or artifice, or by taking advantage of a person who is not in a position to give free consent or to offer resistance.

Before the Law of 10/08/92 entered into force, rape was not defined and, in the majority of cases, the case-law reserved the classification of rape for "*the ultimate attack on a person's privacy, likely to lead to pregnancy*". At the most, forced anal or oral penetration of another person, whether male or female, was punishable as indecent assault.

Articles 373 and 375 do not exclude from their ambit sexual violence between spouses and between unmarried consorts. Moreover, the case-law seems to recognise the existence of rape within a couple. In a judgment of 21 June 1994 (Judgment N° 223/94 V), the Court of Appeal stated:

"It is now accepted that rape of a spouse is punishable in the same way as that carried out by the perpetrator against a person to whom he is not linked in matrimony."

However, there is very little case-law as regards marital rape.

#### **1.4 Child sexual abuse/ incest**

Any indecent assault committed against the person or using the person of a child under the age of 16, even in the absence of violence or threats, is punishable by one to five years' imprisonment (Article 372 (new) of the Criminal Code). The sentence is extended to 5 to 10 years if the child is under 11 years old.

In addition, any act of sexual penetration, of whatever nature and by whatever means, committed on the person of a child who has not reached the age of 14 years, is deemed to be rape (Criminal Code, Article 375(2)).

The penalties incurred for indecent assault or rape are aggravated when the perpetrator is an ascendant of the victim (Criminal Code, Article 377).

A recent bill (amending the Criminal Code and the Code of Criminal Procedure, aimed at strengthening the provisions on trafficking in human beings and the sexual exploitation of children) makes it legally acceptable to use audio or video recordings of statements by persons who are under age or vulnerable witnesses in evidence (Section 10 of the bill).

## 1.5 Sexual harassment

### The Law of 26/5/2000 on protection against sexual harassment in the workplace

The purpose of this Law is to compensate for the legislative vacuum with regard to protection against sexual harassment in the workplace, by adopting a comprehensive approach based on the principles outlined in the code of practice presented by the European Commission on 27 November 1991.

Firstly, the Law provides a definition of the phenomenon. Under the law, this concept includes all physical, verbal or non-verbal behaviour based on sex, where the guilty party ought to be aware that such conduct affects the dignity of a person at work and where one of the following three conditions is met:

1. the conduct is inappropriate, offensive and distressing to the recipient;
2. the recipient's refusal of or submission to such conduct is used as the basis for decisions affecting his or her rights in relation to employment;
3. the conduct creates an intimidating, hostile or humiliating environment for the recipient.

It is the victim's responsibility to substantiate the facts and the perpetrator's responsibility to prove that he did not or could not know that his conduct would affect the dignity of a person at work.

Victims and witnesses are protected against reprisals. Thus, any decision taken against the victim on account of her opposition to sexual harassment, for example a decision to dismiss her, is invalid. This also applies to workers who have testified about harassment. In the event of dismissal, the victim and the witness can request reinstatement.

In order to provide maximum protection for workers against the risk of sexual harassment at work, employers are responsible for creating a working environment that is free from sexual harassment, by taking preventative measures and putting a stop to any sexual harassment brought to their notice, whether it is perpetuated by an employee, a client or a supplier.

As regards preventative measures, the law expressly provides that these should include information measures. In addition, in order to put a stop to conduct that is expressly forbidden by law, employers must if necessary apply one of the disciplinary sanctions which, under this Law, will be included in collective agreements.

The equality delegate and the staff committee are responsible for assisting and advising the victim. In this capacity, they are obliged to observe confidentiality, except where the victim has waived this right. The victim may be accompanied and assisted by a staff

representative in meetings with the employer connected with the inquiry into sexual harassment.

Where employers take no action despite their legal obligation to end sexual harassment of which they are aware, the victim may request the President of the Labour Tribunal to compel the employer to put a stop to any activity that it recognises as constituting sexual harassment in the workplace, by a date set by the Tribunal.

The victim may resign without notice, with compensation payable by the employer responsible for the immediate resignation. Employers' responsibility in such cases will be evaluated with reference to the obligations imposed on them by the new law, namely to refrain from any act of sexual harassment, to prevent any form of sexual harassment and to put an end to any sexual harassment of which they are aware.

The Inspectorate of Labour and Mines is responsible for enforcing the Law.

Although the Law is aimed primarily at the private sector, insofar as the majority of its provisions refer to this sector, it also provides for protection against sexual harassment in the public sector. Under the Law, the State and the municipal authorities are obliged to protect their employees against any acts of sexual harassment.

#### Exhibitionism/indecent behaviour

Exhibitionism falls within the scope of Article 385 of the Criminal Code, which classifies affronts to public decency, constituted by immodest acts, as offences. The penalty is eight days' to one year's imprisonment and a fine of 2,501 to 25,000 Francs.

### **1.7 Pornography**

The Criminal Code punishes a series of acts that concern pornography as affronts to moral standards, in particular:

- the manufacture or possession of obscene writings, drawings, photographs, photographic films, etc, with a view to their sale, distribution or public exhibition;
- the import, export, transport, or circulation, by any means, of such material.

The penalty is eight days' to one year's imprisonment and a fine of 2,501 to 50,000 Francs.

A recent bill provides for an increased penalty if these acts involve or depict minors under the age of 18, or a person who is particularly vulnerable on account of his or her illegal or precarious administrative status, pregnancy, illness, infirmity or a physical or mental impairment (Section 4 of the bill).

The same bill classifies as an offence the possession of pornographic material involving or depicting minors under the age of 18 with a view to use (Section 6).

## **1.8 Prostitution**

Luxembourg has ratified the 1949 United Nations Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others. Consequently, all rules governing prostitution have been abolished.

Procuring, in the wide sense, is punishable under Articles 379 *bis* onwards of the Criminal Code. Article 379 of the Code states that any person who affronts public decency by inciting, aiding or abetting immorality, corruption or prostitution among young persons, that is, any person under the age of 21, whilst aware of their age, in order to satisfy the desire of another person, shall be punished by one to five years' imprisonment.

The above-mentioned bill to strengthen the provisions on trafficking in human beings and the sexual exploitation of children punishes trafficking in human beings for the purposes of sexual exploitation (new Article 379(3) of the Criminal Code, as amended by Section 3 of the bill). It also allows the punishment of sexual tourism by Luxembourg nationals and residents (Section 9 of the bill, which inserted an Article 5 *bis* in the Code of Criminal Procedure).

## **1.10 Female genital mutilation**

Luxembourg's legislation does not recognise any specific offence with regard to genital mutilation. However, the provisions of the Criminal Code on deliberate injuries (Article 398 onwards) are applicable. It should be noted that Article 401 *bis* deals specifically with assault and battery on children under the age of 14.

## **1.11 International conventions**

Luxembourg has ratified the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, as well as the 1979 Convention on the Elimination of All Forms of Discrimination against Women.