

Strasbourg, November 2002

EG (2001) 3 rev.  
Volume II

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

**VOLUME II**

**MALTA to UNITED KINGDOM**

\* \* \*

**Appendix containing  
examples of good practices**

## TABLE OF CONTENTS

	<u>Page</u>
Malta .....	3
Moldova .....	9
The Netherlands .....	11
Norway .....	20
Poland .....	33
Portugal .....	41
Romania .....	49
Slovak Republic .....	56
Slovenia .....	65
Spain .....	71
Sweden .....	82
Switzerland .....	94
“The Former Yugoslav Republic of Macedonia” .....	100
Turkey .....	107
Ukraine .....	115
United Kingdom .....	118
Good practices .....	136

## MALTA

---

The Department for Women in Society, Ministry for Social Policy, with the assistance of the social welfare Development Programme, supplied the information relating to violence against women in Malta.

### Introduction

Relevant sections of Maltese national legislation from the Criminal Code are mostly from the section on Crimes against the Peace and Honour of Families and against Morals. These cover rape and violent indecent assault; crimes against the person; private violence; abduction; defilement of minors; pornography; prostitution; trafficking in women.

### 1.2 Domestic Violence

There is no specific legislation concerning domestic violence. However, a White Paper has been published following a report by a committee set up by the Parliamentary Secretary for Women's Rights. This White Paper sets out proposals for amendments to Maltese legislation to provide for better protection to victims of domestic violence. Domestic violence is prosecuted under violence against the person: causing bodily harm; grievous bodily harm; grievous bodily harm caused by weapons. There is a clause which defines when wives and husbands are permitted to give evidence against each other. Husband and wives cannot give evidence for or against each other, except when the offence is committed against a wife or husband or his/her ascendants, descendants.

A national seminar was organised in May 1999 for wider consultations and deliberations. It is envisaged that the relevant legal amendments will be presented to Parliament in the near future.

### 1.3 Rape/Sexual Assault

Rape is defined as "*carnal knowledge by violence of a person of either sex*". The sanction is imprisonment from 3-9 years, with or without solitary confinement.

Proof of carnal connection:

*"A carnal connection shall be deemed to be complete by the commencement of the connection, and it shall not be necessary to prove further acts"*.

Violent Indecent Assault is defined as: "*any violent indecent assault, which does not, in itself, constitute any of the crimes above*". The sanction is between 3 months - 1 year of imprisonment.

*"Unlawful carnal knowledge and any other indecent assault, shall be presumed to be accompanied with violence when the person abused was unable to offer resistance owing to physical or mental infirmity, or for any other cause independent of the act of the offender, or in consequence of any fraudulent device used by the offender".*

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

*"Whosoever, by lewd acts, defiles a minor of either sex shall, on conviction, be liable to a sentence of imprisonment for not more than two years, with or without solitary confinement".*

Punishments for any of the above crimes shall be increased by one degree in each of the following circumstances:

- When the offence is committed on a person under 12 years of age or with violence
- If the offence is committed by means of threat or deceit
- If the offence is committed by any ascendant, adoptive father or mother, or by the tutor of the minor, or by any other person charged even temporarily with the care, education, instruction, control or custody of the minor.

Prosecutions will not be instituted without a complaint from the injured party, and complaints are not admissible after a lapse of one year from the day the act was committed or knowledge thereof was obtained by the person entitled to lodge a complaint in lieu of the injured party.

#### **1.5 Sexual Harassment**

There are no specific laws in Malta governing sexual harassment.

#### **1.7 Pornography**

An article is deemed pornographic if:

*"Its dominant characteristic is the exploitation of, or undue emphasis on, sex, or any one or more of the following subjects, namely, crime, horror, cruelty and violence; or it directly or indirectly advertises or gives information on any article considered to be pornographic or obscene under these regulations".*

An article shall not be considered pornographic or obscene to the extent that it serves the public good on the ground that it is in the interests of science, literature, art or learning or other subjects of general concern.

### Related Offences

- Distribution of pornography in a public place or in a place accessible to the public;
- Manufacturing, printing or otherwise making pornography or introducing it into Malta;
- Acquiring, keeping, trading or putting pornography into circulation;
- Exporting any pornographic or obscene print, painting, film, book, card or writing or any other pornographic or obscene article whatsoever, whether similar to the above or not.

### Sanction

Imprisonment for a term not exceeding 6 months or to a fine not exceeding 200 liri, or to both such imprisonment and a fine.

A committee is appointed to consult with the Minister to make regulations defining pornography or obscenity.

## **1.8 Prostitution**

### Prostituting a Descendant Under Age

*"Any ascendant ... who, by the use of violence or by threats compels, or by deceit, induces any descendant under age to prostitution shall on conviction be liable to imprisonment for a term from 3-6 years with, or without solitary confinement".*

The same punishment shall apply to any husband or tutor who, by the use of violence or by threats compels, or by deceit induces to prostitution his wife or a minor under his tutorship.

If the above offences are committed by a husband, proceedings will only be initiated on a complaint of the wife if she is of age, or if under age, on a complaint of the person under whose authority as parent she would have been if she were unmarried. A husband convicted under this section loses his authority; a tutor convicted under this section is perpetually disqualified from being a tutor.

### Inducing a Person Under Age to Prostitution

Inducing, encouraging or facilitating a person under age to practise prostitution, is punishable with imprisonment for a term from 18 months - 2 years, with or without solitary confinement.

The sentence rises to a term of between 2 and 6 years in each of the following circumstances:

- If the offence is committed to the prejudice of a person under 12 years of age;
- If the offence is committed by deceit;

- If the offence is committed by an ascendant, tutor, adoptive parent or person with temporary care, control or custody of the minor;
- If the offence is committed habitually or for gain.

#### Compelling or Inducing Women of Age into Prostitution

Inducing a person of age to practise prostitution, where the act committed does not constitute a more serious offence, is punishable with imprisonment for a term not exceeding 2 years, with or without solitary confinement (of age means 21 years/+, under age is under 21).

The maximum sentence rises to from 1-4 years if it is committed:

- With abuse of authority, trust or domestic relations;
- Habitually or for gain.

#### Trafficking in Human Beings

"White Slave Traffic" Suppression Ordinance 1930, has been amended several times, most recently in 1989.

*"Inducing ... by means of violence, or threats by deceit a woman over age to leave Malta for the purposes of prostitution elsewhere, is punishable with a maximum of 2 years, with or without solitary confinement".*

The sentence rises to between 1 and 4 years if the offence is committed:

- By an ascendant, adoptive parent, husband, brother or sister;
- By means of abuse of authority or trust or domestic relation- in this case, the offender loses all authority;
- Habitually or for gain.

Inducing, encouraging or facilitating by means of violence, threats or by deceit a woman under age to leave Malta for the purposes of prostitution elsewhere, is punishable with a maximum of up to 2 years of imprisonment, with or without solitary confinement.

The sentence rises to between 2 and 6 years if:

- The girl is under 12 years;
- Offence is committed by means of violence or deceit;
- It is committed by an ascendant, adoptive parent, husband, tutor or person charged with care, custody, education (such persons forfeit their authority over the person);
- Habitually or for gain.

### Prostitution Related Offences

- Detention of a woman or girl against her will in a brothel, sanction: up to two years' imprisonment; no legal proceedings, criminal or civil, shall be taken against any such woman or girl for taking away or being found in possession of, or wearing apparel as was necessary to enable her to leave the brothel;
- The police are empowered, where there is suspicion, to issue a search warrant for any woman or girl and take her out of such a place;
- Living on immoral earnings; sanction up to 2 years of imprisonment;
- Soliciting: sanction: between 18 months and 2 years of imprisonment;
- Brothel keeping: sanction: up to 2 years, rising by two degrees for subsequent convictions;
- The police can close any premises and the courts may revoke licences.

### **3.1 Support/ Protection**

The Social Welfare Development Programme is an agency, inaugurated in 1994, for specialised social work and service development work, set up by the Ministry for Social Development. The main aim of the programme is the development of social services that serve and empower those who are most vulnerable, poor and in distress.

The Social Welfare Development Programme provides for a catalogue of services:

The Domestic Violence Unit is made up of specialised social workers who support and empower victims of domestic violence. Social workers within the Domestic Violence Unit assist clients in finding shelter when it is requested, and link them to other necessary services. The Unit has started providing services for perpetrators of domestic violence in the form of a group programme where abusive beliefs are challenged. The Unit is also committed to the prevention of violence through education and media, and participates actively in the lobbying for changes in legislation.

Support line 179 is a free phone helpline run by trained volunteers with the aim of providing accessible and confidential support and information, and to provide help in accessing emergency services for people who have experienced, or are concerned about, domestic violence or child abuse.

The Child Protection Services Unit and the Children's Support Group Service, as well as Support to Interagency Fostering Team and the Supervised Access Visits Service aim to provide effective Support to children facing violence and sexual abuse. The Service of Family Therapy focuses on the family as a whole system.

There are three shelters for women victims of domestic violence and their children, run by NGOs and subsidised by the State.

## Other Measures Taken Against Domestic Violence Against Women

### National plan of action

In 1991, an Action Committee was set up with the aim of developing an action plan to deal with domestic violence. A report was issued in January 1992. A number of points suggested in the plan have been implemented, one of which was the setting up of the Victim Support Unit of the Malta Police Force. This Unit works not only with victims of domestic violence, but also with a number of other categories of victims such as those of child abuse, rape, and incest. This unit gives police services of protection and prosecution in Court.

The Domestic Violence Unit of the Social Welfare Development Programme and the Malta Police Force organised training programmes for the police.

Other active bodies in this field are the Parliamentary Secretary for Women's Rights, the Department for Women's Rights and the University of Malta.

## **MOLDOVA**

---

Information supplied by the Division for Pensions, Social Assistance and Family Protection.

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

Violence against women is considered a violation of human rights. The Constitution and the Penal Code confirm the protection of women against any kind of violation. All citizens of Moldova are equal before the law; respect and protection of human beings is the main obligation of the State. The World Declaration on Human Rights is respected in the Constitution. The Constitution is in conformity with all international pacts and treaties Moldova has adhered to.

### **1.2 Domestic Violence**

#### Criminal Law

There is no specific law relating to domestic violence, but it is covered by the Penal Code prohibiting intentional bodily injuries. The sentence is 3 to 10 years of imprisonment, if death is caused: 5 to 15 years of imprisonment, and if the crime is committed by a recidivist: 8 to 25 years of imprisonment.

Intentioned bodily injury of less gravity is sentenced to up to 3 years of imprisonment or 2 years of corrective labour. If the offence had the character of torture or was committed against a person fulfilling an official duty, the sentence is up to 5 years of imprisonment.

Systematic assault or torture, if not provoked, leads to up to 3 years of imprisonment.

#### Civil Law

The mother and her children, including children born out of wedlock, have the right to social assistance and social protection in case of domestic violence.

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

Rape means a forced sexual relation. Threat of violation or violation profiting from feebleness of the injured party. The sentence is 3 to 7 years of imprisonment.

The penalty for rape/sexual assault increases in the following circumstances:

- If it was the second or subsequent offence: 5 to 10 years of imprisonment;
- If the offence was committed by a group, or against a minor: 5 to 15 years of imprisonment;

- If the offence was committed by a "very dangerous recidivist": 10 to 25 years of imprisonment;
- If the offence caused extremely grave injuries;
- If the offence was committed against a minor under the age of 14 years: 10 to 25 years of imprisonment or death penalty.

Threat or rape or profiting from the weakness of the victim is sentenced with 5 to 10 years of imprisonment. A forced sexual relationship with a woman, by exploiting material service or by any other dependence of the victim, sentenced with 1 to 5 years of imprisonment.

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

The age of consent is 16 years. Intercourse with an under age child is penalised with 2 to 6 years of imprisonment.

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

To cause an unwanted abortion is criminalised and punished as bodily harm injuries. The sanction is 3 to 10 years of imprisonment, if death is caused: 5 to 15 years of imprisonment, if the offence is committed by a recidivist: 8 to 25 years of imprisonment.

## THE NETHERLANDS

---

Information by the Department for the Co-ordination of Emancipation Policy, Ministry of Social Affairs and Employment, in December 2000.

### **Introduction**

At the end of the 1970s, the Women's Liberation Movement in the Netherlands played an important role by drawing the government's attention to the maltreatment of women, incest, pornography, rape, sexual assault and sexual harassment at work, as consequences of the imbalance of power between women and men.

The government responded by establishing a congress of experts that met in 1982, and published its findings in a policy memorandum in 1984 ("Combating Violence Against Women"), and a follow-up memorandum in 1990 ("Combating Sexual Violence Against Women and Children").

These two memoranda formed the basis of a policy developed to combat sexual violence against women: the ill-treatment of women; sexual abuse of children; sexual violence at work; sexual violence by care providers, pornography, prostitution, sex tourism, trafficking in women, women refugees and minority ethnic women.

The principles underlying the policy are:

- The right of women to independence in relationships and behaviour;
  
- The constitutional rights of women to the protection of their personal life and the inviolability of their bodies. The right of women to paid employment and an independent income was expressly identified as an important element.

The policy addressed legislation, enforcement, preventive measures, research, victim relief and assistance. In addition to government action, lower authorities and private institutions have taken measures. However, there has not been any general overview of the problem or monitoring of new policies. Because of the range of policy issues and the diverse nature of sexual violence, a study is considered necessary to ascertain policy research options.

As sexual violence is a major obstacle to equality between women and men, combating sexual violence against women has to be seen as part of an emancipation project.

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

In 1983, the Constitution of the Netherlands was revised to include the right to protection in the private sphere, and the right to the inviolability of the human body.

The phrase "sexual violence against women" as used in the Netherlands, generally means the same as the UN concept "violence against women".

## **1.2 Domestic Violence**

### Criminal Law

General provisions of criminal law cover domestic violence. All kinds of violence like abuse, causing grievous bodily harm, manslaughter or murder, entering a dwelling unlawfully, criminal damage, rape or sexual assault are criminal offences, irrespective of whether it takes place in the public or private sphere. Only criminal damage or theft is not criminalised when they occur within marriage. When husband and wife "are separated from bed and board", prosecution is only possible after a complaint has been made. Furthermore, when common assault and grievous bodily harm take place within marriage, the punishment can be raised by one third of the maximum penalty. Simple assault has a maximum sentence of 2 years and grievous bodily harm 4 years.

It is not always possible to arrest a suspect. It is only possible when the man is suspected of a serious crime like murder, manslaughter, gross maltreatment, rape, sexual assault and threat of a criminal offence.

### Civil Law

In case of a wrongful act, it is possible to bring interim injunction proceedings and apply for a banning order, e.g. a street ban or contact ban. Banning orders are useful in situations where a woman has filed for divorce and the man continues to be violent and to break the woman's right to privacy.

### Policing Domestic Violence

Research conducted in 1985 on the policing of domestic violence in Utrecht by Vosman, and in Eindhoven by Zoomer, has shown that domestic violence is often not recognised as a crime by the police. However, since 1990, initiatives have been taken in various cities to encourage the police to recognise and respond to domestic violence as a serious crime. There are still no specific guidelines for the police or the public prosecution department.

### Support Services

In 1997, the Netherlands has 22 refuges that provide accommodation for victims of domestic violence. These are partly funded by the state.

## **1.3 Rape/Sexual Assault**

Rape and sexual assault are offences against public decency/morality.

A number of amendments to the "Offences against decency" in the Netherlands Criminal Code came into force in January 1991. These were aimed to offer a greater protection against serious sexual violence against women, and to update the law in this area to reflect a more recent public opinion.

The amendments included:

- To criminalise marital rape;
- The old-fashioned term "sexual intercourse" was replaced by the phrase "sexual penetration of the body";
- Mentally handicapped people and patients under treatment were offered greater protection against sexual violence.

This legislation is currently under evaluation.

### Preventative measures

In some cases, preliminary relief hearings can be used to declare certain areas off limits to offenders. Offenders can be fined or prosecuted for breaking these injunctions. Similar measures can be included in sentencing.

A Bill to bolster the victim's legal position during criminal procedures was passed to improve the legal position of victims. This includes the provision of oral and written information to victims, and to increase their chances to receive compensation.

The Attorney general has introduced guidelines concerning arrest and prosecution, trafficking in women and treatment of victims. Police training, especially of the vice squad was introduced. The purpose was to learn how to deal with victims reporting sexual assault, tracing of suspects, medical examination and provision of assistance and information. Training of women policemen was prioritised, as women prefer to speak to women officers.

The Ministry of Justice has included sexual violence in the "Victim Support Brochure" and produced pamphlets on what to do after an assault or rape, and on compensation schemes.

### Problems

- The high threshold of proof deters victims from reporting;
- The emotional ordeal of a court case;
- It often takes many years for a victim to report an offence;
- It is difficult for a victim to gather evidence; usually there are only 2 statements, those of the victim and perpetrator, and they are usually contradictory, this is even more difficult when the offence is reported many years later.

## 1.4 Child Sexual Abuse/Incest

Incest has been redefined to include perpetrators other than blood relatives, e.g. foster fathers, stepfathers and unmarried partners.

A draft Bill has been introduced to change the period of limitation, i.e. the period an offender can be prosecuted for incest offences. It is proposed that the period of limitation should commence when the victim comes of age. This is in accordance with the opinion that victims are usually able to make a report when they get older.

A "multiple track" approach to incest has been initiated by many organisations. It aims to provide individual help and treatment for the victim, the mother and possibly other family members, as well as the perpetrator.

Close co-operation takes place between the Department of Public Prosecutions, the courts, probation and after-care staff and certain centres for outpatient mental health care.

The perpetrator may get the sentence suspended, provided that he/she is prepared to undergo treatment. Investigation takes place prior to a trial in order to establish whether a "multi-track" approach can provide an appropriate treatment.

Research has been commissioned linked to the support project, with the aim of learning more about perpetrators and thereafter improve treatment programmes and building up knowledge. The "multi-track" approach is being evaluated.

## 1.5 Sexual Harassment

A draft Bill amending the *Working Conditions Act* with regard to sexual harassment, aggression and violence has been introduced. The Bill proposes to compel employers to develop a policy to prevent and combat sexual harassment at the workplace.

The term "sexual harassment" has been replaced by the term "sexual intimidation".

### Sexual harassment in sports

The national sporting umbrella organisation NOC\*NSF (Netherlands Olympic Committee and Sports Confederation) has drafted a policy plan entitled *Sporting Policy against Sexual harassment, 1996-1999*. This plan concentrates on ways of preventing and combating sexual harassment in sports. The Minister of Health, welfare and Sports supports this plan.

In May 1997, the national sporting associations affiliated to the NOC\*NSF drew up a code of conduct for professional and voluntary workers in the sport industry. Since 1 January 1998, special telephone lines have been opened so that people can report incidents of sexual harassment in sports.

## 1.7 Pornography

Within certain limits, there is no ban on pornography in the Netherlands. It is however a criminal offence to:

- Confront members of the public, with undesired and unsolicited pornographic material;
- Show pornographic material to children under the age of 16 years;
- Disseminate material showing sexual acts involving children under the age of 16 years.

In 1985, a study of child pornography was conducted and the following recommendations were made to the chief prosecutors:

- Regular inspections of sales outlets should be carried out by the police, with a view to search for child pornography;
- In general, criminal investigations should be initiated where child pornography is openly displayed or sought after;
- In general, a preliminary judicial investigation should be initiated when a commercial production of child pornography is found;
- The search of premises should be carried out as early as possible;
- The Central Criminal Investigation Department maintains a record of child pornography found in the Netherlands.

## 1.8 Prostitution

The law on abolition of the ban of brothels was passed on 1 October 2000. The abolition of the ban of brothels is seen as one of the weapons in the fight against trafficking in women. The aim is that by decriminalising prostitution, setting up a licensing system for brothel operators and improving working conditions for prostitutes, the industry will be less susceptible to crime. An important additional advantage is that the licensing system will make the industry more transparent and easier for the police to monitor.

If a brothel owner employs women who do not have valid residence permits, this will affect the licence one needs to operate a brothel, and may in some cases lead to closure of the premises. The introduction of stringent regulations will make it unattractive and largely impossible to employ illegal immigrants as prostitutes, trafficking in women will lose a key market in the Netherlands.

Municipal policy is organised along three lines. Firstly, the municipalities operate a licensing policy to control the number and type of brothels. Secondly, regulations are introduced to govern the construction and design of brothels, for examples as regards

hygiene, prevention of sexual transmitted diseases and fire safety. Finally, regulations are introduced to ensure that the way brothels are operated does not adversely affect the position and status of prostitutes. This includes the protection of their mental and physical well being and prohibiting the employment of minors or illegal immigrants.

### Trafficking in Human Beings

Although trafficking in women is not a new phenomenon, attention to the problem has increased during the last 15 years. It usually involves women from countries stricken by poverty.

The law was amended in 1994. The offence was redefined as "trafficking in people", the legislation was specified in greater detail and the sanctions were increased.

In 1989, guidelines were issued regarding the investigation and prosecution of "trafficking in people". An evaluation study was undertaken, and a brief was published in 1994.

Measures that have been taken to encourage victims to report offences:

- Some women are given residence permits for the duration of the investigation and trial to allay the fear that the victim will be deported from the Netherlands after reporting an offence.
- "The Foundation Against Trafficking in Women", a voluntary organisation, provides relief and assistance to victims by providing safe houses, legal aid and support during the investigation and the trial.

### National rapporteur on traffic in persons

On 26 April 1997, under the Dutch presidency, a conference of EU Ministers of Justice and Emancipation adopted the Hague Ministerial Declaration on European guidelines for effective measures to prevent and combat trafficking in women for the purpose of sexual exploitation. The declaration urges signatory states to appoint a national rapporteur to report to their respective governments on the scale, nature and mechanisms of traffic in women and on the effects of the policies they pursue. As initiator of the declaration, the Netherlands was the first member state to appoint a rapporteur. The rapporteur, who took office on 1 April 2000, is assisted by a small team of researchers and a secretary. The office is funded by five ministries. The rapporteur is independent and will make recommendations to the government based on his own views. He and his staff are authorised to consult police and criminal records.

The rapporteur's mandate is based on article 250a of the Criminal Code. He is required to present an annual report to the government with facts and figures on:

- The nature, incidence and mechanisms of traffic in persons, including information on offenders, victims and potential offenders and victims;

- Investigations by the police and legal proceedings against offenders (in cases abroad, if relevant);
- Information and assistance to victims or potential victims; repatriation;
- Indications of any change in the nature of traffic in persons or the way it operates which might have implications for the implementation of national, regional or international policy.

The rapporteur is also responsible for fostering international co-operation within the existing international frameworks to curb the traffic in persons. This involves promoting international consensus on the collection and management of data.

The rapporteur's recommendations may be addressed to central or local government or other administrative authorities, or international organisations or NGO's. His annual reports will be published and submitted to parliament. His work will give the government a better understanding of the nature and scale of the problem in this country.

### Problems

The complexity of the phenomenon of trafficking; it is a multi-faceted offence and difficult to trace. Consequently, experts are required for the investigation and prosecution of offenders, and a high level of co-operation between the different authorities. It is necessary to stimulate proactive network-orientated investigation to facilitate co-operation and information exchange at a national and international level.

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

The government was alerted to this subject by an increased number of refugees from Somalia, a country where women traditionally are circumcised. Netherlands legislation prohibits female genital mutilation based on the right every person has to personal integrity. Female genital mutilation is contrary to the Dutch social view regarding equality between women and men, and women's place in society. In the Netherlands female genital mutilation is seen as a violation of women's human rights. This belief reflects policy and practice; women are informed of their rights and receive, if necessary, support ("Care Centre for Refugees" advised the government to permit the less harmful forms of circumcision, believing this would prevent more extreme practices).

#### **1.11 International Conventions**

The basis of the policy is laid down in:

- The Constitution of the Netherlands, revised in 1983, include the right to protection in the personal sphere and the right to the inviolability of the human body;
- The European Convention for the Protection of Human Rights and Fundamental Freedoms;

- The International Convention on Civil and Political Rights.

## **2.0 Sentencing**

To prevent the offender from seeking new victims and to prevent existing victims from further abuse, the way offenders are dealt with is important. Custodial sentences temporarily remove offenders from the society, but they will eventually return. Traditional sanctions do not change their behaviour and many perpetrators relapse criminal. In recent years, offenders have been placed under treatment. Under Dutch law, a custodial sentence can be linked to a compulsory treatment, or a course of treatment can be a condition for a suspended sentence. Research suggests that recidivism is reduced after a course of treatment.

## **3.1 Support/Protection**

### Possible Prevention Measures Against Sexual Violence:

- To increase the awareness of the problem among professionals;
- Increased opportunities for women to resist sexual violence;
- Nationwide self-defence programmes have been organised;
- In 1991, a preventive campaign aimed at men and boys was introduced. The target group were informed via mass media, TV, radio, posters, advertisements, magazines, pamphlets and via intermediaries (teachers, youth workers etc). Workshops and conferences were organised for intermediaries to provide information for them to work within the target groups. There are, however problems with the co-operation between the intermediaries. The intermediaries also need to do more work to recognise the problem at an early stage.

### Possible Prevention Measures Against Trafficking in Women:

- To inform potential victims of the risks involved;
- To make trafficking in women less lucrative for the traffickers.

## **3.8 Violence Against Women as an Obstacle to Equality**

Violence against women is recognised as an obstacle to equality between women and men. The Netherlands policy on violence against women is part of their emancipation programme.

## **3.9 Refugee Status**

From a purely legal perspective, the 1951 Geneva Convention relating to the Status of Refugees does not offer clear-cut protection for women who have been victims, or fear

becoming victims, of sexual violence. Sexual violence could constitute grounds for admission, if the individual has a well-founded fear of persecution by the authorities in the country of origin, or if the authorities fail to, or are not willing to, offer protection against serious acts of violence.

Women who have been victims of sexual violence and who cannot be granted conventional refugee status may, however be given exceptional leave to remain in the country. The exception may be granted if there are pressing humanitarian reasons that militate against an individual to be sent back to the country of origin.

The Ministry of Justice has appointed 7 women liaison officials (responsible for interviewing asylum seekers in respect of their claim to asylum) as a result of a study on sexual violence against women refugees, commissioned by the Ministry of Social Affairs and Employment. Women refugees who have been raped or sexually assaulted often prefer to speak to women liaison officials, rather than to discuss the details of the rape/assault with a man.

“The Refugee Health Care Centre” (under the responsibility of the Ministry of Welfare) has the task to ensure adequate health care facilities for refugees and asylum seekers; special attention is paid to sexual violence.

#### Women with Dependent Residence Status

Foreign women, who terminate their relationship with their husbands or partners as a result of sexual violence, can find their residence status affected. If the woman does not hold a residence permit, her right to remain is dependent on the continued existence of her relationship, unless the relationship commenced 3 years prior to the time of separation. In exceptional cases, the right to remain can be granted if there are pressing reasons for doing so. In this context, account is taken of the position of women in the country of origin and the existence of acceptable reception facilities there.

## NORWAY

---

This report is based on the following information submitted by Norway:

- UN Convention on the Elimination of all Forms of Discrimination against Women, 3rd Report, 1987-1991, Ministry of Children and Family Affairs, 1991;
- UN Convention on the Elimination of all Forms of Discrimination against Women, 4th Report, 1991-1993, Ministry of Children and Family Affairs, 1994;
- State Compensation Scheme for Victims of Assault;
- The General Civil Penal Code, 1902 with subsequent amendments until 1994;
- Gender Equality in Norway: National Report to the 4th UN Conference on Women in Beijing, 1995;
- Domestic Violence: Report to the UN Special Rapporteur on Violence Against Women, 1998;
- The information was updated in November 2000.

### 1.1 Legislation Relating to Violence Against Women

In 1994, a bill was introduced to improve the situation of all crime victims by allowing them more information about their cases, increased access to documents, and by making the task to give evidence in court less of a strain.

- Victims are to be informed whether an indictment has been preferred and the details of its content;
- The court will be empowered to order the accused to leave the court while a victim is giving evidence;
- Rules have been adopted to make police and court interrogations less of an ordeal;
- Legal aid has been strengthened;
- Compensation has been made more accessible;
- The court has been empowered to ordain a restraining order to provide protection for women who are threatened, persecuted or harassed, e.g. by a former spouse.

Assaulted and sexually abused women can now be *protected against repeated violence from the abuser*. In an amendment, January 1 1995 to the Criminal Procedure Act (§ 222a), a person can be prohibited from entering a specific area, following, visiting or otherwise contacting another person. This can be done if there is specific reason to believe that the person will commit a criminal act against or otherwise violate the other person's right to be left peacefully alone. Police districts have reported that to deny

access to the victims to persons who have been sentenced for violence against family members, has been an efficient means of combating violence against women.

## 1.2 Domestic Violence

Domestic violence is no specific offence. Violent attacks in the private sphere come under the general provisions of the Penal Code relating to assault, bodily harm, rape etc.

It has been ruled that the provision regarding free legal aid for abused women, includes women subjected to domestic violence from spouses and cohabitants, as well as prostitutes and pimps.

In 1988, unconditional prosecution was introduced in cases of domestic violence. A criminal case may be brought before the court, even if the woman withdraws the formal report.

Norway has no statistics relating directly to domestic violence as such, but violence against women can be viewed from different angles. According to a national survey in 1997 by the Central Bureau of Statistics, 6 percent of adult women (5 percent of men) have experienced violence or have been threatened and one percent of women had experienced violence from a family member during the last year. From 2000-2003 the Norwegian Research Council will undertake a research programme (financed by the Ministry of Children and Family Affairs and the Ministry of Justice) that is focusing on “domestic violence” and “youth and violent crimes”.

The shelters for women have some statistics showing how many women seek their assistance, by phone or by staying in the shelters.

The police report on violence, according to the law formulations. So far only a few police districts have been registering the offender or the victim’s sex, age and where the crime was committed. Oslo police district had a project on investigating where reported violence in 1997 took place, the seriousness of the violence and who the involved persons were. They discovered that very many incidents happened in people’s homes and were caused by a person closely related to the abused person. Domestic violence constituted 624 of the 2.172 incidents researched. The project also revealed that domestic violence is a very serious matter that lasts a long time before women seek help, and that many children witness their father assaulting their mother. The Oslo police district is now escalating work against domestic violence because of its serious character.

34% of the assaulted victims were women (740 of 2172 cases) of the registered assaults in Oslo police district in 1977. In 50% of these cases, present or former partners were responsible for the violence.

During a 12-month period in 1994-1995, all victims of assault were recorded at Bergen Accident and Emergency Department (Bergen being the second largest town in Norway). 24% of the assaulted victims were females (241 of a total of 994). 131 of the females were victims of domestic violence, while 102 were injured in public places. Women

injured in public places tended to be younger and more likely to be under influence of alcohol than those injured by domestic violence.<sup>1</sup>

Shelters for battered women (from 1978) are the most important single provision for battered women and their children. They are run on the basis of “support to self-help”. The means for running the shelters come mainly from the municipality and the state. Centres for victims of incest are run on the same basis (from 1986).

### Training

Qualifying complementary education focusing on violence is implemented at University level.

The Police Academy has since 1992 offered training courses for the police and the prosecuting authority on the investigation of sexual abuse of children. The scope of the training courses was extended in 1999 to cover sexual violence in general. The training is at present under evaluation in order to find appropriate ways to improve the competence of the police. There is no training for judges addressing directly problems relating to sexual violence.

### Programme of Action Against Domestic Violence

In 2000, the government launched a programme of action against domestic violence. An interdepartmental group with representation from the Ministry of Children and Family Affairs, the Ministry of Health and Social Affairs chaired by the Ministry of Justice and Police has been established. The group is responsible both for co-ordinating action on domestic violence and violence against women in general and for implementing the activities from the programme of action. The programme consists of a wide range of activities to reduce domestic violence and to improve services to victims:

- As part of the programme, a new position was established in Ministry of Justice to co-ordinate action and policies.
- Provide financially support to local projects based on a multi-agency approach, involving all key agencies to promote co-operation in order to provide assistance to women who experience domestic violence.
- Improve the expertise and competence of personnel and occupational groups who are likely to be approached by woman experiencing domestic violence including police, doctors, nurses, midwives, staff from the shelters for women etc.
- Increased attention is to be given to men who commit acts of violence against women. In order to ascertain which methods are suitable and effective, treatment methods for men are to be surveyed. The results of the survey should be reported at latest by June 2002.

---

<sup>1</sup> Steen & Hundskår, 1997

- A work group has been set up to propose a change in the legislation to make it possible for women who experience severe threats to get a new identity / identification number.

Consultative offices for victims of crime have been established as a test project in Norwegian towns since 1996. The offices are intended to give help, advice and guidance to victims of crime. By 2001 there will 10 consultative offices in Norway.

A “Competence Centre for Aid to Victims of Violence” was established as a four-year project with governmental funding in 1996. The period for the project has been extended and the centre will receive governmental funding another three years until 2002. Its mandate is to chart and disseminate information on violence among professionals, to provide education on psychological and social consequences of acts of violence and to strengthen competence within the field.

Alarms are supplied to women who have been violently treated or threatened by their ex-husbands or ex-common law husbands. The alarms give immediate access to the police in an emergency. Efforts will be undertaken to develop mobile alarms.

If a ban pursuant to section 222a of the Criminal Procedure Act on visiting another person is violated, the person violating the ban, if certain conditions are met, is arrested and remanded in custody.

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

#### Amendments to the General Civil Penal Code relating to rape

An amendment to the provision relating to rape in the General Civil Penal Code, entered into force on 11 August 2000. After this amendment the provision on rape covers not only acts where the intent can be proved, but also acts where gross negligence can be proved. In addition, the definition of rape is extended to cover all kind of threats that force a person to commit an act of indecency (only threats inducing fear for a person’s life or health were previously covered). Furthermore, acts of indecency with a person incapable of resisting the act due to unconsciousness are covered. In the preparatory work to these amendments, it is mentioned that the courts in their practice should increase the penalty level in grave cases of rape.

It should also be noted that the scope of the competence of the courts to use the maximum penalty for rape, i.e. 21 years of prison is extended.

This recent changes in the law is the result of the extensive work of the Sex Crime Committee appointed by the Ministry of Justice in 1995.

## Legal Definitions

Rape is defined as a “Felony Against Public Morals”:

*"Any person who by force or by inducing fear for a person's life or health, compels a person to commit an act of indecency or is an accessory thereto, shall be guilty of rape and liable to a term of imprisonment not exceeding 10 years, but not less than 1 year if the act of indecency was sexual intercourse".*

Sexual intercourse is defined as: vaginal or anal intercourse, insertion of the penis into the mouth or insertion of an object into the vagina or rectum. No penalty is imposed and a conviction will be of no effect, if those who have committed the act of indecency subsequently marry each other.

The aggrieved party in a rape case is entitled to legal counsel at public expense. The lawyer's role is to protect the victim's interests during the investigation. Free legal aid extends to compensation claims.

## Aggravating Circumstances

The maximum sentence is increased to 21 years of imprisonment if:

- The aggrieved person dies or sustains serious injury to body or health (including venereal disease);
- The offender has previously been convicted and sentenced for rape or child abuse.

Indecency against an unconscious person or person unable to resist is an offence, punishable by a prison sentence of up to 5 years.

There is also a maximum of 5 years of imprisonment for:

- Any person who exploits, or is an accessory to, another person's exploiting mental illness, lack of intelligence, or morbid disturbance of mental facilities in order to commit an act of indecency with any such person;
- Any person who commits or is accessory to another person committing an act of indecency by means of threat, especially underhand conduct, or misuse of a dependant relationship (prosecution will only be initiated if requested by the aggrieved person, unless it is required in the public interest);
- Any person who commits an act of indecency with another person by misuse of his position as a public servant or as an employee at a hospital, sanatorium, nursing home, or by misuse of his position as a doctor, spiritual advisor, teacher, superior, nurse or supervisor of the person concerned - anyone aiding or abetting another person is similarly liable;

- Any person who commits an act of indecency with an inmate of any institution under the charge of child welfare authorities, the prison administration or the police, and who is subject to his authority or supervision (or aiding and abetting);
- Any person who commits an act of indecency with a blood relative in the descending line - rising to maximum 8 years of imprisonment if the act of indecency is sexual intercourse.

A maximum penalty of two years is provided for any person having sexual intercourse with a sibling.

#### Problems with the law

Studies indicate that only about 10% of committed rapes are reported. There are several reasons why offences are not reported i.e, the victim does not expect to be believed or feels she was to blame. There was an increase of reported cases in the 1980s. It is unclear if this represents an actual increase or more frequent reporting.

The definition of rape based on force, as opposed to lack of consent, is problematic since the woman has to prove that she gave resistance.

#### Gender sensitisation

The Police Academy in Oslo will implement a research project in 2001 on how victims of rape are treated by the police.

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

As mentioned before, the chapter on Sex Crimes (previously called Felonies against public morals) in the General Civil Code was amended in 2000. The rules mentioned below are also applying to accessories to such crimes.

To increase and strengthen the regional competence in this sector a three year project is being implemented.

#### Sex with a person below the age of 14

Any person who commits a sexual act with a child under the age of 14, shall be sentenced to a term of imprisonment not exceeding 10 years. If the sexual act included sexual intercourse, the sentence shall be no less than 2 years.

The maximum sentence is 21 years of imprisonment if:

- The aggrieved person dies or sustains serious injury to body or health (including venereal disease);
- The offender has previously been convicted and sentenced for rape or child abuse;
- The act was committed in a particularly painful or particularly offensive manner;
- The offense was committed against a child under the age of 10 years and there have been repeated assaults.
- The act was committed by several persons; this is a new provision following the amendment in 2000.

A mistake regarding the child's age shall not exclude criminal liability. A penalty may be remitted, if those who have committed the act of indecency are about the same age and reached the same stage of development.

Sex with a person below the age of consent

Any person who commits a sexual act with a child below the age of 16, shall be sentenced to a prison term not exceeding 5 years. A sentence not exceeding 15 years may be imposed, given the same aggravating circumstances as mentioned before concerning children below the age of 14.

Incest

Any person who commits a sexual act with a relative in descending line, shall be liable to a term of imprisonment not exceeding 5 years. Relatives in this context are biological as well as adopted descendants.

Any person who has sexual intercourse with a brother or sister shall be liable to a punishment not exceeding one year. No penalty shall be imposed on persons under 18 years of age.

Like when other crimes are concerned, the punishment level of sentences in incest cases are depending upon whether or not other sections of the Penal Code have also been violated.

Special courses on child sexual abuse were introduced at the Police College.

Treatment projects for those convicted of sexual crimes were introduced in 1994.

In 1995, a national centre for sexually abused children was established. The centre is focusing on improving the expertise of personnel and occupational groups who have contact with children and young people.

New guidelines for judicial examination of children were introduced in 1998.

In 1998, Texmo and Aarvik made a report on behalf of The Northern Feminist University about children's and women's legal position and treatment in cases involving sexual abuse. The report showed an alarmingly high rate of dismissals in cases of rape and child sexual abuse. As many as 80% of the cases were dismissed, of the cases under "repeated sexual abuse of children under the age of 10 years". According to this report based on findings in three counties in Northern Norway, two of the main problems in these cases are negative attitudes in the police and the legal system and a lack of knowledge in this field.

Concern has been voiced in Norway regarding if children are being well enough protected in cases of suspected incest. This concern has been particularly serious in cases where there is not sufficient evidence for a trial pursuant to the Penal Code, their father or sometimes mother is the suspected abuser, their parents are separated/divorced/not living together, and a civil court shall decide upon the issue of contact with the child pursuant to the Children Act. A Supreme Court decision is pinpointing that in cases where there is a danger of child sexual abuse, no risks shall be taken. A circular letter from the Ministry of Children and Family Affairs in December 2000, is requesting municipal child welfare services to contribute to making the bases of such court decisions as thorough as possible. In this letter, the municipalities are also requested to provide assistance to other involved agencies as regards protecting and serving the best interests of the children.

## **1.5 Sexual Harassment**

Research in Norway shows that sexual harassment has to do with a unequal power balance between women and men. Women are subordinated in the work place to men because of their sex. Sexual harassment experiences are not individual incidents but rather the result of a social system in which male values have priority over female values. For this reason, sexual harassment is a problem of the work environment. Women experience sexual harassment from their supervisors, fellow male employers, as well as from patients and clients. Students may also experience sexual harassment.

Unlike many other countries, the Norwegian government has not yet been involved in research on sexual harassment at work; the universities and the labour unions were the initiators of the studies. "Norsk Kommuneforbund" (Norwegian Union for Municipal Employees) were the first union to make reports on this issue. "LO" ( Norwegian Confederation of Trade Unions) in Norway has implemented a plan against sexual harassment in the workplace.

Sexual Harassment is prohibited under the Working Environment Act. The Norwegian government is preparing to include a clause for protection against sexual harassment in the Gender Equality Law. This change will be forwarded to the parliament in the spring 2001.

### Public Indecency

*Any person or partner in crime who by indecent conduct in word or deed commits an offence against modesty in public, in the presence of, or against any person who has not consented thereto, or in the presence of, or against a child under the age of 16 years, is sentenced to a term of imprisonment not exceeding 1 year.*

## **1.7 Pornography**

### Legal Definition

Any person who:

- Publishes, sells or in other ways tries to spread pornography;
- Imports pornography while aiming at distribution;
- Delivers pornography to persons under the age of 18;
- Produces, imports, possesses, delivers to others or by paying for it gets access to child pornography;
- Gives a public lecture or arranges of public performance of a pornographic nature;
- Misleads any person below the age of 18 years, as a part of a commercial performance to be shown is movable and immovable pictures with a sexual content, or produces such performances which are showing persons below the age of 18 years;

shall be liable to fines or imprisonment for a term not exceeding 2 years.

Pursuant to the Penal Code, pornography means sexual depictions that seem offensive or in any other way are likely to have a degrading or corrupting effect, including sexual depictions showing children, corpses, animals, violence and coercion. Child pornography mean sexual depictions in movable and immovable pictures which are using children, persons who must be considered to be or are represented as being children. Pornography does not include sexual depictions which must be considered defensible for an artistic, scientific, informative or similar purpose.

Over recent years, pornography has become more "hard-core" and found new channels of distribution, including computer pornography. The Penal Code has provisions prohibiting the publication, sale, rental or other distribution of indecent or pornographic materials. It has been revised several times in the last 10 years.

## 1.8 Prostitution

Buying sexual services from persons under the age of 18 years is a criminal offence that came into force on 11 August 2000. Whether buying sexual services shall be made a criminal offence or not will be considered during the two following years.

Promoting prostitution by others is prohibited (pimping). This is defined as follows:

*"Any person who misleads another person into engaging in prostitution or continuing such an occupation, or who is an accessory thereto shall be liable for a term of imprisonment not exceeding 5 years.*

Any person who assists or exploits another person engaging in prostitution shall be liable to fines or a sentence of imprisonment not exceeding 5 years. The same applies to any person who, for the sake of gain, aids and abets or exploits another person's commission of acts of indecency.

A proposal to prohibit the rental of properties for brothel activities was decided upon in 1995.

Prostitutes subjected to violence or abuse from their pimps are eligible to free legal aid if they make a complaint. Free legal aid extends to compensation claims.

The extent of prostitution in Norway is assumed to be limited, but may have increased recently due to problems in the labour market and the international sex industry reaching Norway, as indicated in the rise of foreign women in prostitution. The women come from East Europe, Asia and Latin America. There has been a marked growth of prostitution in northern Norway in the county of Finnmark. Norwegian men, in growing numbers are buying sex from Russian women. It is reasonable to believe that this prostitution is organised both at the Norwegian and Russian sides of the border. There has been a quite active mobilisation against the buying and selling of sex from people living in the villages where the prostitution is taking place.

There has been an increase in the number of "massage parlours" which sell sexual services and a growth of "mobile-massage".

The Norwegian policy is that prostitution is not a desirable phenomena because of its damaging effects for the women involved, and because of its negative consequences for building gender equality in society. The Norwegian government has therefore provided financial support to organisations working against prostitution and trafficking in women. Among these are "Coalition Against Trafficking in Women" (CATW) and "Network North Against Prostitution and Violence". "PION", an organisation for women in prostitution, has also received money for their health information work among foreign women working in massage parlours.

An action plan to combat trafficking is being prepared and is supposed to be finalised in spring 2001.

### **1.9 Obscene Phone Calls/Telephone Sex**

A telemarketing service via public telephone service (Norwegian Telecom) was launched in 1990 and became quickly a telephone sex service, offering sex stories and "live" conversations with sex hostesses. It was advertised in the national press and reached a wide audience. In 1993, Norwegian "Save the Children" produced evidence of widespread child sex on the telesex market. The public protest led to the withdrawing the advertisements from the national papers.

New regulations are expected to prevent the sexual exploitation and harassment of women and children through telemarketing. Contact services and "chat lines" aimed at sexual relations are now forbidden.

### **1.10 Female Genital Mutilation**

It has been roughly estimated that 4000 women and girls from countries practising female genital mutilation are presently living in Norway. It is a challenge to offer these women and girls adequate medical services and to prevent female genital mutilation. (Ref. NOU 1999:13 "Women's health in Norway").

An Act prohibiting this practice entered into force in 1996. In the act the term "genital mutilation" was used instead of "circumcision", as the former term indicates the damaging effects of this practice.

The Act prohibits female genital mutilation; i.e. operation on the female genitals that damage or permanently change the genitals. The Act also prohibits reconstruction of a genital mutilation, for example after a birth.

Breaches of the law are punishable with imprisonment for up to 3 years. If death or severe damage occurs as a result of genital mutilation, the punishment may be imprisonment for up to 8 years. Assistance is punished equally. Consent from the woman or girl does not absolve from punishment.

The Norwegian Board of Health issued in October 2000 guidelines for health personnel in providing comprehensive medical care for girls and women who have undergone female genital mutilation, and in prevention of new cases.

The Norwegian Government will present a comprehensive plan of action against female genital mutilation in December 2000.

### 3.1 Support/Protection

#### National Action Plans

In 1983, the first programme of action against abuse of women, including emergency centres, health and social services and training courses for health, judicial and social workers, was launched.

In 2000, a new plan of action was launched (ref. 1.2. Domestic Violence).

In 1986, a “Rape Victim Reception Centre” (RVRC) opened in Oslo. “RVRC” works on the principle that rape is a trauma on a par with torture, war crime or natural disaster. “RVRC” offers the following services: medical examination and treatment; collection of evidence; counselling, to contact a lawyer and the police if the victim desires, and follow-up services.

In 1986, a programme of action against domestic violence was introduced as a part of the “National Plan for Health Year 2000”. The programme emphasised public information, training of health workers and other key personnel. Colleges and universities are requested to integrate tuition on sexual violence in the health and social sectors and the judicial system.

In 1992-1993, a programme of action against child sexual abuse was implemented. The programme aimed to:

- Strengthen and systematise efforts to prevent sexual abuse of children;
- Rationalise the effort to disclose, investigate and bring to court cases of child sexual abuse;
- Strengthen and coordinate welfare measures for the children;
- Improve the expertise of personnel and occupational groups who have frequent contact with children and young people.

Funding was provided for a special hospital ward, to be expanded into a centre of expertise on child sexual abuse. Funding for 3 treatment projects for those convicted of sexual crime was also provided.

In 1994, a Centre of competence relating to victims of violence was established as a pilot project. The aim was to expose domestic violence and the conditions that create and conceal it, and to propose measures for its prevention. (Ref.1.2)

A national centre (“Pro-centre”) of expertise in matters relating to prostitution has been set up in Oslo. Its task is to:

- Develop methods to work with prostitutes of both sexes;
- Provide guidance for welfare services;
- Engage in general information and education activities.

General assistance for women, and men in prostitution is provided by welfare services and special outreach programmes.

### **3.10 Suggested Reform**

#### Violence Against Elderly Women

Nordic studies show that between 2%-4% of elderly women are abused by close relatives. Services are therefore needed. Elderly victims of violence need a place to turn to, and expertise needs to be developed.

#### Research

Research projects have provided important knowledge and expertise to understand the problem of violence against women. In the process, the focus has shifted from women as vulnerable to men as perpetrators, and to the relationship between victim and perpetrator, including that between men and children.

Researchers have found considerable resistance to this knowledge; it is important to analyse this resistance.

## POLAND

---

This information, which originated with the Max Planck Institute, comes from a document drawn up for the Fourth World Conference on Women (Beijing, September 1995) by the Sub-Committee on Violence towards Women. Additional information was provided in 1997 by the Department for Family Affairs, Office of the Prime Minister, Republic of Poland.

### **Introduction**

Insufficient attention is given in Poland to the problem of violence towards women. There have been very few studies on the subject, and the available statistics do not distinguish between male and female victims of violent acts.

Under the Polish Criminal Code of April 1969, crimes against women fall into the category of “offences against life and offences causing bodily injury”, which include murder and both serious and minor bodily assault. In criminal law, the illegal deprivation of freedom, the illegal use of threats and coercion of others to behave in a certain way are classed under “offences against freedom”.

In addition to the phenomenon of marital violence, Poland acknowledges the existence of so-called “institutional” violence in police forces, prisons and courts. The authorities state that significant measures have been taken to prevent women from being subjected to ill-treatment in prisons.

Feminist movements also complain that women in labour have been ill-treated in maternity clinics.

Violence towards prostitutes is seen as a separate and increasingly serious problem.

### **1.1 Domestic violence**

Article 184 of the Polish Criminal Code makes domestic violence an offence.

*“Anyone who inflicts ill-treatment of a physical or psychological nature on a member of his/her family, a person permanently or temporarily in his/her care or a minor or vulnerable person is liable to imprisonment for between six months and five years.”*

The custodial sentence is extended to ten years if the perpetrator’s acts have endangered the victim’s life.

This form of violence most commonly affects women.

The official statistics do not distinguish ill-treatment of women from that affecting

children. Most women convicted of ill-treatment are guilty of violence towards children. However, researchers believe that the figures provided far from reflect the true extent of domestic violence.

In 1992 there were 10,406 convictions, 10,218 of which concerned male offenders;  
 In 1993 there were 10,469 convictions, 10,265 of which concerned male offenders;  
 In 1994 there were 10,969 convictions.

### Sanctions

Although the statutory prison term ranges from six months to five years, 75% of those convicted are sentenced for less than one year. Moreover, 87.6% of offenders receive a suspended sentence, with only 11.2% of convictions leading immediately to imprisonment.

There are many reasons for the disparity between the true incidence of violence in the home and the number of cases reported:

- Women have little confidence in the prosecuting authorities;
- They fear the need to provide details about their ill-treatment;
- They harbour feelings of shame;
- Perpetrators of domestic violence receive minimum sentences;
- Female victims of violence have no guarantees of effective protection;
- Women in rural areas in particular are seen as responsible for keeping the family together, whatever the cost.

Although ill-treatment can be reported by anyone with grounds for suspicion and automatically leads to investigation, the police and the prosecuting authorities are disinclined to intervene. Not only is the psychological effect on victims poorly understood, but they may very well withdraw charges.

Marital violence is seen as a corollary to alcoholism, which is an increasingly serious problem in Poland.

A survey conducted in 1993 by the Public Opinion Research Institute in co-operation with Oxford University revealed that marital violence was extremely common:

- 9% of married and divorced women claimed to have been beaten regularly;
- 9% claimed to have been beaten from time to time;
- 60% of divorced women said that their former partners had struck them at least once;

- 25% of divorced women claimed to have been beaten on many occasions.

The survey also revealed a link between marital violence and unemployment, which those interviewed described as a cause of marital difficulties.

Alcoholism and marital violence were cited as grounds for divorce by 33% of women aged under 25 or over 60 and by more than 50% of women between 30 and 50.

Marital violence in country areas is usually discovered only when it becomes particularly severe, chiefly when it results in the victim's serious permanent injury or death or culminates in divorce proceedings (the divorce rate in rural areas being far lower than in towns, where the influence of the Catholic Church is less pronounced). Alcoholism and acts of violence towards family members are cited in 50% of divorce petitions introduced by women in the countryside, a figure which peaks at 67% for women aged between 40 and 44. In 52.5% of divorce proceedings instigated by women on grounds of physical ill-treatment, the couple had four children, and in 66.7% of cases they had five.

Article 184 of the Criminal Code makes marital rape an offence. However, in this case too – and for the same reasons - the number of complaints registered concerning such acts is lower than the real figure. Moreover, few women are aware that marital rape is an offence.

## 1.2 Rape and sexual assault

### Rape: Article 168 of the Criminal Code

*“Anyone who uses force (violence), threats or illegal means to compel another person to perform or submit to an act contrary to morality is liable to imprisonment for between one and ten years.”*

### Exacerbating circumstances

*“Acts of a particularly cruel nature and gang rape carry a penalty of at least three years’ imprisonment.”*

In cases of rape, it is incumbent on the victim to instigate proceedings. This is a consequence of the desire to avoid interference in the private affairs of those who would perhaps prefer, for various reasons, not to become involved in criminal proceedings.

The definition given above includes marital and homosexual rape. Nonetheless, since women are poorly informed of the law on marital rape, the precise incidence of this phenomenon is unknown, and statistics essentially relate to rape outside marriage.

### Official statistics on the incidence of rape

1992: 897 convictions, three of which concerned female offenders<sup>2</sup>;  
 1993: 930 convictions, three of which concerned female offenders;  
 1994: 1,174 convictions, four of which concerned female offenders.  
 In 1993 the police received 1,313 reports of rape (a 40% rise in comparison with 1992).

### Criminal proceedings

Studies (Masney-Sokolowska) have shown that an attempt is often made during criminal proceedings to place the blame on the victim of rape. This observation, which has been confirmed by female rape victims, also indicates that the criminal justice system applies different rules and moral criteria to its treatment of men and women.

Experts claim that the official figures for cases of ill-treatment or rape account for fewer than half the real number of such offences.

### Compensation

Under Article 445 of the Polish Criminal Code, compensation for non-pecuniary damage is payable in cases of rape.

## **1.3 Child sex abuse and incest**

Ill-treatment of children is included in the category of violent acts towards family members. Statistics relating to marital violence and child abuse can be found in section 1.2.

Incest is illegal (Article 175 of the Criminal Code).

Sex acts (lechery) involving children under fifteen years of age are likewise illegal (Article 176 of the Criminal Code).

## **1.4 Sexual harassment**

Article 170 of the Criminal Code makes it an offence to exploit a relationship of dependence. This clause is invoked in serious cases of sexual harassment.

*“Anyone who abuses a relationship of dependence or takes advantage of critical circumstances to compel another person to perform or submit to an act contrary to morality is liable to imprisonment for between six months and five years. It is incumbent on the wronged party to instigate proceedings.”*

---

2

Women sentenced for their part in gang rapes.

Although the provisions governing violations of employees' rights may apply in certain cases of sexual harassment, this approach is controversial.

*“Any person responsible for matters relating to employment in a firm who deliberately or persistently violates an employee’s rights deriving from a work situation or from social insurance regulations, thereby exposing the party concerned to serious prejudice, is liable to imprisonment for a maximum of three years.”*

The rules governing obstacles to the workings of government and the functioning of society may be invoked when the facts do not contain the elements of another offence or when the abuse of authority or the failure to perform official duties are not included among the elements used to determine the offence.

*“Any public official who contravenes public or private interests by abusing his/her authority or failing to perform his/her official duties is liable to imprisonment for between five months and five years.”*

Defamation and assaults on personal inviolability; insults (Article 181 of the Criminal Code):

*“Anyone who defames another person, whether in his/her presence, publicly in his/her absence or with the intention that he/she will hear of the insult ...*

*If the insult is a reaction to provocative behaviour on the part of the person concerned or if he/she responds with an assault on personal inviolability or with a like insult, the court may decide not to impose a penalty.”*

Prosecution is dependent on the bringing of a personal complaint.

## **1.7 Pornography**

Pornography is covered by Article 173 of the Criminal Code:

*“Anyone who disseminates written or printed material, photographs or other objects of a pornographic description is liable to imprisonment for up to two years, restrictions on his/her freedom or a fine” (Article 173§1 of the Criminal Code).*

*“Anyone who produces, stores, transfers or disseminates such written or printed material, photographs or other objects, or transports them with the intention of disseminating them, is liable to the same penalties” (Article 173§2 of the Criminal Code).*

There is no definition of what constitutes material “of a pornographic description”.

## 1.8 Prostitution

Incitement to prostitution:

*“Anyone who incites others to engage in prostitution is liable to imprisonment for between one and ten years”* (Article 174 of the Criminal Code).

Procuring, degrading treatment and the exploitation of immoral earnings are prosecutable offences.

In accordance with the United Nations Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others - an instrument which Poland ratified in 1952 - those running commercial activities linked with prostitution, and not those engaging in prostitution, are liable to prosecution. Consequently, the police have stopped maintaining registers of prostitutes, who are no longer subjected to any discrimination.

As a consequence of the United Nations Conventions, new offences were introduced into the Polish Criminal Code. Of particular note were the enslavement of others, the recruitment of others for the purposes of prostitution and the traffic in women.

*“Anyone who enslaves another person or engages in the traffic in slaves is liable to imprisonment for a maximum of three years.*

*Anyone who engages in the traffic in women, even with their consent, or in children is liable to the same penalty”* (Article IX of the introductory provisions to the Criminal Code).

New sex trade practices have caused an upsurge in the traffic in women. Such practices generally consist of recruiting Polish women for brothels in Germany, the Netherlands and Belgium. They are attracted by false promises of employment as seasonal workers, domestic staff or waitresses, but on their arrival psychological pressure and physical violence (including rape) are used to force them into prostitution. These networks may be headed by Poles or by foreign nationals.

Despite the difficulties of bringing cases to court, between 1991 and 1993 some 502 people were convicted of incitement to prostitution. In addition, proceedings were instigated in respect of several offences against the prohibition on exploiting immoral earnings, with four cases in 1991, 423 in 1992 and 75 in 1993.

## 1.9 Protection of pregnancy and pregnant women

Under Polish law, abortion is an offence when it is carried out without the mother's consent.

*“Anyone who uses force (violence) or any other means to cause the death of an unborn*

*child without the pregnant woman's consent, and anyone who uses force, threats or illegal means to encourage a pregnant woman to interrupt her pregnancy, is liable to imprisonment for between eight months and ten years” (Article 149b of the Criminal Code).*

This article was repealed under amendments to the law on family planning, protection of the human foetus and allowable circumstances for abortion and changes made through other laws. A new provision (Article 152) was added to the Criminal Code and reads as follows:

*“Anyone who uses force (violence) or any other means to carry out an abortion without the woman's consent, and anyone who uses force, threats or illegal means to encourage a pregnant woman to interrupt her pregnancy is liable to imprisonment for between six months and eight years” (Article 152a§1).*

*“Anyone who commits an act described at paragraph 1 where the foetus is capable of independent existence outside the body of the pregnant woman is liable to imprisonment for between two and ten years” (Article 152a§2).*

### **3.1 Support and protection**

The national agency with responsibility for alcohol-related problems (Ministry of Health and Social Welfare) has linked with the Psychology Institute for Health and Alcoholism-related Problems (a non-governmental organisation) to set up a programme to tackle violence in the family. There is a twofold purpose: to lay the foundations for a coherent system of support for victims of domestic violence, especially in its most serious manifestations (families confronted with the spectre of alcoholism), and to bring about changes in people's attitude towards such acts.

The National Centre for Emergency Relief for Victims of Family Violence is responsible for:

- gathering relevant information;
- maintaining a register of institutes, organisations and individuals offering their support for victims of domestic violence;
- informing those in need of support what options are available to them a freephone number and qualified staff manning a round-the-clock telephone help-line;
- determining means of response - modern methods have been developed in co-operation with the Warsaw police to respond to incidents connected with acts of domestic violence requiring police intervention;
- providing moral and practical support for NGOs assisting victims and working with perpetrators of acts of domestic violence;

- designing teaching materials and handbooks for victims and those helping them;
- raising public awareness of the problem of domestic violence and ways of containing it.

According to Ewa Widel, the programme can depend on a loyal and dynamic staff, but it lacks resources and is restricted by its mandate to taking action in cases of alcohol-related domestic violence. Under the theme “Sober men can be violent too”, women are campaigning for recognition and support for all victims of domestic violence.

## PORTUGAL

---

Information concerning Portugal was taken from the replies to a questionnaire sent initially in 1996 by the Portuguese Commission for the Equality and Rights of Women (CIDM), which at that time was answerable to the Ministry of Labour and Employment, and by *Associação Portuguesa de Apoio a Vítima*, the Portuguese Victim Support Association – APAV. The information was verified and updated in December 2000 by the Portuguese Commission for the Equality and Rights of Women (CIDM), which is now answerable to the Prime Minister’s office.

### 1.1 Legislation relating to violence towards women

Law No. 61/91 of 13 August 1991 was designed to provide appropriate protection for women who were victims of violence. Since then, several legal measures have been adopted and several information and education campaigns have been conducted, in particular by the Commission for the Equality and Rights of Women answerable to the Prime Minister’s office. These measures include the publication and distribution of leaflets informing the public of measures for the prevention of violence in the home and in public places and measures to be taken in the event of violence as well as a handbook for women who have been victims of violence. Since 1998 there has been a national emergency hotline to provide victims of domestic violence with legal information on the subject. The hotline has been open round the clock every day since May 2000, with the help of the APAV.

As regards legislation, there are measures to support non-governmental women’s organisations, including associations involved in combating violence, and legislation on shelters and centres for women who are victims of violence.

Law No. 59/98 of 25 August 1998, amending the Code of Criminal Procedure, makes provision under Section 200/1 for barring the assailant from the family home, which public prosecutors can apply whenever there is justification for doing so.

### 1.2 Domestic violence

According to the Portuguese Victim Support Association, the number of cases of domestic violence rose by 10% between 1992 and 1994. No cases of marital rape were reported to it. The records of the Ministry of Justice mention 33 convictions for ill-treatment of spouses.

Domestic violence is an offence under criminal law; it is classified as “(physical or psychological) ill-treatment of a spouse, minor or disabled person” and carries a prison sentence of between one and five years. The amendment on 1 October 1995 of the legal provisions in this field means that they now also apply to “persons living together as husband and wife”. Law No. 7/2000 of 27 May 2000 made the ill-treatment of a spouse

an offence in respect of which not only the victim but anyone who has knowledge of such violence can lodge a complaint and/or institute proceedings.

Women who are subjected to domestic violence in Portugal can apply for legal compensation, payable by the assailant. In cases where the ill-treatment of a spouse is considered a violent crime, Law No. 129/99 of 20 August 1999, approving the system whereby the state advance the compensation owing to victims, stipulates that if the assailant fails to pay compensation the state may do so on his behalf. According to non-governmental organisations, the main problems from the legal standpoint arise, on the one hand, from the fact that women rarely report the violence to which they are subjected and, on the other hand, from the fact that this law is seldom applied.

### Law enforcement

The attitude of the police towards domestic violence seems to have improved over the past ten years, especially since the Commission for the Equality and Rights of Women began organising several information and training seminars as part of police officers' initial and ongoing training to make them more aware of domestic violence.

The “*INOVAR*” (Innovate) Project, run by the Ministry of the Interior, aims to promote further action by police officers, support for the victims of crime in general and special protection for more vulnerable groups (eg elderly people, women and young people). The project team also includes representatives of the security forces. Its tasks include, among other things, the drawing up of a plan to promote support for the victims of domestic violence. This project was the subject of a Cabinet Resolution in February 1999 (Resolution No. 6/99 of 8 February).

Law No. 61/91 of 13 August 1991 provides for the setting up of specialised police stations directly responsible for dealing with women who have been victims of violence. These stations are supposed to be run mainly by specially selected and trained women police officers. In reality, women who have been victims of violence are received by women police officers only if they so request and if the latter are available.

### Support services

The Portuguese Victim Support Association – APAV, which is based in Lisbon and has branches in other Portuguese towns, provides psychological assistance, counselling, financial assistance and information for victims. Its main priority is to provide shelters for battered women, but it has insufficient resources. Victims can also seek help from a private self-help organisation for women. In 1976 the Commission for the Equality and Rights of Women opened a legal aid department for women. Some 25% of the cases dealt with by this department concern ill-treatment by spouses. Since 1997 the Commission has been storing information concerning its consultations in a computerised database.

“The Women’s Association against Violence”, a women’s NGO, also has a welfare and legal support service for women who have been victims of violence. It already runs a

shelter in the Lisbon area, set up with the help of a private company and the Commission for the Equality and Rights of Women. Law No. 107/99 of 3 August 1999, on the setting up of a public network of shelters for women victims of violence, establishes the general framework for the setting up of such shelters.

In 1998 the Commission for the Equality and Rights of Women set up a national emergency hotline for the victims of domestic violence, which provides legal information on this subject. This hotline has been in operation 24 hours a day since May 2000 with the help of the APAV. In addition to the hotline, the APAV and the CIDM have an office to which women who are victims of violence can appeal directly for help.

From the beginning of 2000 to September, the CIDM staff running this hotline received 4,156 calls, 1,807 of which specifically concerned cases of violence. A statistical analysis of these calls has been carried out.

NGOs have set up other local/regional hotlines providing information for women who are victims of violence.

#### Prevention programmes

The APAV believes that the public authorities should finance more prevention programmes. The media are interested in the problem and this has given rise to a wide-ranging public debate and to television debates on domestic violence, with the result that the subject is now more frequently discussed.

Combating violence against women is one of the major objectives of the Global Plan for Equal Opportunities, approved by Cabinet Resolution No. 49/97 of 24 March 1997, specifying various measures for combating violence against women.

A National Plan against Domestic Violence was approved on 15 June 1999 by Cabinet Resolution No. 55/99.

### **1.3 Rape/Sexual assault in marriage**

In 1999 the Ministry of Justice registered 58 convictions for rape. The figures forwarded by the APAV show that the number of cases of rape reported to it rose from 3 in 1992 to 38 in 1994.

#### Legal definitions

The Criminal Code makes rape and sexual assault criminal offences.

The prison sentence for rape is between three and ten years. Following a reform of the relevant provisions in October 1995, anal penetration is considered to be an offence. Law No. 65/98 of 2 September 1998, making major amendments to the Criminal code, also

renders oral penetration illegal. Since 1995, the Criminal Code has also penalised “sex under duress”. This offence is defined as

*“being subjected to or forced to take part in a major sexual act under the constraint of violence, serious threats or the action of a third party making it impossible for victims to defend themselves”.*

The penalty for this offence is one to eight years’ imprisonment. There are few complaints concerning sex under duress but non-governmental organisations say that the existing legislation has been strongly criticised, particularly on account of the failure to apply the 1991 law on the granting of special assistance to women and their legal representation by NGOs.

#### Law enforcement

According to the APAV, the police are now better informed and also respond better to cases of women who have been victims of sexual violence; the victims may, moreover, ask to be heard by women police officers. A 1991 law gives women the possibility of obtaining special assistance but this law has not yet been implemented.

#### Support services

Progress has been made with regard to the work done and information provided by support associations, legal bodies and medical services. Victims can also seek assistance from private self-help organisations and the Association of Women against Violence.

Under Law No. 11/98 of 24 January 1998, reorganising the forensic medicine system, complaints can now also be lodged with the coroner’s services.

#### Reforms required

The APAV would like the media to broadcast more information on the assistance available to women victims; it also recommends that prevention programmes and special training for police officers be introduced and that the government set up a system of compensation. Law No. 93/99 of 14 July 1999, governing the application of measures to protect witnesses during criminal proceedings, establishes a special system for the protection of particularly vulnerable witnesses, thus ensuring that victims are not obliged to appear in court.

### **1.4 Sexual abuse of children/Incest**

The following numbers of cases of sexual abuse of children have been reported:

- 35 in 1992
- 21 in 1993
- 31 in the first half of 1994.

In 1999 there were 76 convictions for sexual abuse of children or minors.

Incest is not an offence as such. However, where rape and sexual assault are concerned, the fact that these acts have been perpetrated by an ascendant, an adoptive parent, a relative of the first or second degree (direct ascendant or collateral) is an aggravating circumstance.

If the victim is under 16 years of age, the public prosecutor may institute criminal proceedings if this is necessary in the interests of the victim.

#### Law enforcement

According to the APAV, there is now more response from the police to cases of sexual abuse of children.

#### Support services

Telephone help lines have been set up and the number of cases of this type brought before youth courts is increasing.

#### Reforms required

It is necessary to launch prevention campaigns and to implement the provisions of the 1991 law on assistance for victims, which is all the more important in cases of sexual abuse of under-age children.

### **1.5 Sexual harassment**

Although rape and sexual assault are offences under the Criminal Code, there are no specific provisions concerning sexual harassment. Nevertheless, Section 163 of Law No. 65/98 of 2 September 1998 punishes certain particularly serious forms of sexual blackmail in the context of a hierarchical relationship or one of financial dependency and in the workplace. They carry a prison sentence of up to two years in the event of sex under duress, while Section 164 lays down a prison sentence of up to three years in cases involving rape. This legislative shortcoming can be explained by the general silence surrounding sexual harassment at work. Despite this, the perpetrators of such acts can be prosecuted and punished in the civil courts. The APAV offers assistance and legal advice to victims of sexual harassment.

The Committee for Equality at Work and in Employment is also entitled to give its opinion on such cases if so requested. The Commission for the Equality and Rights of Women may also provide information on this subject through its Legal Advice Service.

A study on sexual harassment at work (*Assédio Sexual no Mercado de Trabalho*), carried out in 1988-1989, showed that there was little interest in this issue, despite the large percentage of women who had been victims of some form or other of sexual harassment.

#### Reforms required

- A legal framework needs to be established.
- Employers and employees and political leaders need to be made more aware of the problem.

### **1.8 Prostitution**

#### Trafficking in women

Questions concerning trafficking in women are reported to non-governmental organisations and the police but there are no reliable statistics. The Ministry of Justice reported that in 1999 there were 6 convictions for the exploitation of others and trafficking in women and 3 convictions for the exploitation of others and trafficking in under-age children.

On 6 and 7 December 1999, the Commission for the Equality and Rights of Women organised an international seminar on the trafficking and sexual exploitation of women to make governments, non-governmental organisations and the public at large more aware of the problem. The seminar was co-financed by the European Commission's STOP programme and the seminar proceedings were published.

In 2000 the Commission also published a compilation of international laws and legal instruments adopted by the European Commission, the Council of Europe and the United Nations on prostitution and trafficking in women and children.

The CIDM supports projects to help groups of women prostitutes and co-ordinates an interdisciplinary group, of which NGOs and services working with prostitutes are members. The CIDM also co-ordinates an inter-ministerial group which analyses existing legislation on trafficking with a view to proposing new legislation (CIDM, Ministry of the Interior, Ministry of Labour and Solidarity, the Foreigners and Frontiers Department and the Criminal Investigation Department).

In 2000 and 2001 a new application candidature was submitted to the STOP programme concerning a study on trafficking in the northern region of Portugal and the training of staff working with the population in this region. The application was accepted.

In the context of the Working Community involving Galicia (Spain) and Northern Portugal, the CIDM and the Galician Department for Equal Opportunities will submit a joint application to Interreg III. This project, entitled ISADORA, will, if approved, be carried out between 2000 and 2006 and concern the drafting of a study on prostitution

between the two borders, the training of staff concerned with this problem and of the prostitutes themselves and the setting up of support services.

### Legislation

In 1981, Portugal ratified the United Nations Convention on the Elimination of All Forms of Discrimination Against Women and, in 1991, the United Nations Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others. These two instruments oblige states to take measures to fight trafficking in human beings, which is also punished by the Criminal code.

The legal structure in Portugal leaves no room for the existence of places where prostitution can be exercised, nor does it foresee the obligatory registration of prostitutes.

The fight against trafficking is one of the objectives of the Global Plan for Equal Opportunities, approved by the Cabinet Resolution No. 49/97 of 24 March 1997 (see section on combating violence).

Law No. 65/98 of 2 September 1998 makes it easier to punish crimes concerning trafficking in human beings and the exploitation of prostitution by no longer requiring that, in order to be recognised as a crime, these must be based on the exploitation of situations of abandonment or of the financial needs of the victim.

The programme of the 14<sup>th</sup> Constitutional Government contains a transversal approach to equal opportunities and makes reference – in the fields of prostitution and trafficking in women – to several measures relating to social integration, support, awareness-raising and application of national and international legislation.

### Support services

The non-governmental organisation “Ninho” (“The Nest”) provides assistance to prostitutes.

### Law enforcement

The police are paying more attention to this problem and to the links it may have with drug trafficking.

### Reforms required

General information and awareness-raising; education and employment policies; prevention programmes; co-operation between the police forces and with other countries.

### **1.10 Female genital mutilation**

Female genital mutilation may be punished under the existing provisions relating to physical assault. There are no prevention programmes or support services in this field.

### **1.11 International conventions**

Portugal has ratified the United Nations Convention on the Elimination of All Forms of Discrimination Against Women.

The Portuguese courts take account of international conventions, ie. the United Nations Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others.

## **ROMANIA**

---

The information set out below is based on the national report on the status of women in Romania drawn up on the occasion of the 4th World Conference on Women (1995) and amended in September 1997 on the basis of the replies to the Council of Europe questionnaire. Additional information was supplied in 1998 by the Romanian Ministry of Labour and Social Welfare, Department for the Co-ordination of Strategies on Women's Rights and Development of Family Policies.

### **1.1 Legislation relating to Violence against Women**

It is true that violence against women (both inside and outside the home), domestic violence, incest, murders of members of the same family, sexual harassment, sexual abuse and rape are phenomena observed worldwide, affecting all social classes and cultures.

Romania has no separate legislation penalising violence against women: all sanctions against such violence are set out in the Penal Code.

#### Part XI

- Offences against the person;
- offences against life, the person and physical integrity (Chapter 1);
- assault causing bodily harm (Section 11, Articles 180-184);
- sexual offences (Chapter 11, Articles 194-204).

#### Part IX

- Offences against specific relations in community life;
- offences against the family (Chapter 1, Articles 300-304);
- other offences against specific relations in community life (Chapter 4, Articles 317-330).

### **1.2 Domestic violence**

Domestic violence is the most difficult type of violence against women to demonstrate and admit, including by the women themselves, such are the social and psychological barriers. Criminologists consider that official figures do not reflect the realities.

Romania has few statistics on domestic violence. Yet we do know that such violence is mentioned in 70% of divorces (1980-1993) and that they mostly affect the underprivileged sections of the population, those with a low standard of education and alcoholics. The divorce rate has increased sharply (up from 45 000 in 1992 to 60 000 in 1993). A total of 11 700 medical reports mentioning assault and bodily harm against women are submitted every year in Bucharest, which means that this phenomenon affects 0.2% of the female population.

Under Romanian legislation women who have suffered domestic violence can bring judicial proceedings and claim damages. Assault and battery, bodily harm, grievous bodily harm and injuries causing death are punishable under criminal law.

Penalties for domestic violence are partly governed by Law No. 61/1991 on the infringement of the rules on marital life, public order and public security. Apart from this law, which deals specifically with violence between spouses, Romanian criminal law draws no distinction between the private and public spheres. The legislation on assault therefore also applies to domestic violence:

Article 180 - Assault and other types of violence: Assault and other acts of violence causing physical suffering shall be subject to between one and three months' imprisonment or a fine; in cases of injuries necessitating up to ten days' medical treatment, the penalty shall be increased to one year's imprisonment or a fine.

The victim must file a complaint if he/she wishes to bring criminal proceedings under this provision, whereby reconciliation between the parties shall annul all criminal liability.

Article 181 - Assault causing bodily harm: Acts causing bodily harm necessitating up to sixty days' medical treatment shall be subject to between six months' and three years' imprisonment.

The victim must file a complaint if he/she wishes to bring criminal proceedings under this provision, whereby reconciliation between the parties shall annul all criminal liability.

Article 182 - Assault causing grievous bodily harm: Acts causing bodily harm necessitating over sixty days' medical treatment, or causing the loss of a sense or an organ or impairment of its functions, a mental or physical disability, a mutilation, a miscarriage or endangerment of another person's life, shall be subject to between two and seven years' imprisonment. If the offence was committed deliberately, ie with intent to cause the above-mentioned types of bodily harm, the penalty will be increased; the perpetrator will be subject to between three and eight years' imprisonment. These provisions also apply to attempts to commit such offences.

Article 184 - Unintentional injuries: Where the offence set out in Article 181 is committed unintentionally, it shall be subject to three months' imprisonment or a fine; the victim must file a complaint if he/she wishes to bring criminal proceedings under this provision, whereby reconciliation between the parties shall annul all criminal liability. Where the offence causes one of the types of bodily harm mentioned in Article 182, the perpetrator shall be subject to between three months' and two years' imprisonment.

Where such an offence leads to infringement of legal provisions or security measures in the exercise of a given profession or duties, the perpetrator shall be subject to between three months' and two years' imprisonment (Art. 181) or between six months' and three years' imprisonment (Art. 182).

We have received no information on the effectiveness of these provisions in protecting female victims of domestic violence and in enabling them to secure just satisfaction.

Romanian law does not take account of rape or sexual assault within marriage.

### **1.3 Rape/sexual assault**

Under criminal law, rape is subject to the penalties stipulated in Article 197 of the Penal Code.

Rape is defined as “sexual intercourse with a person of female gender by using force or taking advantage of the inability of the person in question to defend herself or explain her wishes”. Rape is subject to between two and seven years’ imprisonment.

The penalty is increased to a prison sentence of between three and ten years in the following aggravating circumstances:

- the victim was under the age of fourteen;
- the offence was committed by several persons;
- the victim was under the authority, protection, supervision or custody of, or was being treated by, the perpetrator of the offence;
- the offence caused the victim grievous bodily harm.

If the victim dies or commits suicide as a result of the offence, the perpetrator is subject to a prison sentence of between seven and fifteen years.

The victim must file a complaint if he/she wishes to bring criminal proceedings under these provisions.

If the perpetrator of the offence, or one of the perpetrators in the case of collective rape, marries the victim before the court decision becomes *res judicata*, the offence is subject to no penalty. This rule applies all persons having been involved in the offence.

We have received no information on the implementation or effectiveness of these provisions on rape and sexual assault.

### **1.4 Child sexual abuse/incest**

Under criminal law, sexual intercourse with an under-age girl is subject to the penalties set out in Articles 198 to 203 of the Romanian Penal Code.

Under the terms of Article 198, sexual intercourse with a girl under the age of fourteen is subject to between one and five years’ imprisonment. The same penalty is applied to sexual intercourse with a girl between the ages of fourteen and eighteen where the

offence is committed by a guardian, a person having custody of the girl, a hierarchical superior, a family doctor or a teacher, if they have taken advantage of their position to commit the offence. If the offence causes grievous bodily harm, the perpetrator is subject to between three and ten years' imprisonment. If it causes the death of the victim he is subject to between seven and fifteen years' imprisonment.

Enticement of under-age girls (Article 199): Any person inciting a girl under the age of eighteen to have sexual intercourse with him in return for a promise of marriage shall be subject to a prison sentence of between one and five years. Reconciliation between the parties shall annul all criminal liability.

Sexual corruption (Article 202): Obscene acts committed with an under-age child or in his or her presence shall be subject to between three months' and two years' imprisonment.

Attempts to commit the aforementioned offences shall also be punishable under these provisions.

We have received no information on the effectiveness of these provisions in protecting children.

The legislative framework was complemented with Law No. 108/2.06.1998 (approving Emergency Order No. 26/1997), which lays down measures to protect children in difficulty and defines the situations and conditions in which such measures should be implemented.

## 1.5 Sexual harassment

The Department responsible for promoting and guaranteeing respect for women's rights has drafted a bill on equal opportunities between women and men. The draft text defines the term "sexual harassment" and specifies the penalty incurred:

### *Article 8*

- (1) *Within the meaning of the present law, the following shall constitute acts of sexual harassment: undesirable, unwelcome or shocking types of behaviour violating personal dignity, such as undesirable physical contact, indecent remarks, offensive visual material, compromising invitations and requests for sexual favours, which:*
  - a) *create an atmosphere in the workplace of intimidation and hostility or discouragement on the part of the person subjected to such abuse;*
  - b) *negatively influence access to occupational qualifications, remuneration and professional advancement of a person rejecting any type of behaviour relating to the sexual sphere on the part of the employer, superiors or colleagues.*
- (2) *Employers may impose disciplinary sanctions on any persons having committed acts of sexual harassment.*

## Sanctions

### Article 16

- (1) *Any employee who has suffered discrimination following an instance of sexual harassment at work shall be entitled to compensation from the perpetrator of the harassment.*
- (2) *A compensation claim can be submitted for sexual harassment within one month following the commission of the offence.*

### Article 17

*Display of visual material whose content infringes the dignity of the person, whether male or female, is an infringement of these provisions and shall be subject to a fine of 1 to 2 million Lei.*

### Article 18

*Where acts of sexual harassment take place in environments other than the workplace, the victim may claim civil damages.*

## **1.7 Pornography**

The dissemination of obscene material is punishable under Article 325 of the Romanian Penal Code, which prohibits:

*“The sale or distribution of obscene objects, drawings, writings or other obscene material, and the production or possession of such material with a view to its distribution”.*

Persons infringing this provision are subject to between three months’ and two years’ imprisonment or a fine.

We have received no information on the implementation of this law, any problems relating to the definition of obscenity or other difficulties in imposing penalties or conducting prosecutions under this provision.

## **1.8 Prostitution**

Prostitution, trafficking in women and procuring are punishable under criminal law.

Prostitution is a specific offence in Romania. Article 328 of the Romanian Penal Code defines persons exercising this activity as follows:

*“Any person deriving all or most of his/her means of subsistence from sexual intercourse performed for this purpose with a variety of persons”.*

The sanction incurred is a prison sentence of between three months and three years.

Procuring is also an offence. Article 329 of the Penal Code defines this activity as follows:

*“The fact of encouraging or forcing another person to engage in prostitution, facilitating the exercise of prostitution or deriving profit from it, as well as recruiting other persons for the purposes of prostitution or engaging in the traffic in persons to this end”.*

Procuring is subject to a prison sentence of between one and five years, and disqualification from exercising certain rights. Attempts to commit this offence are also subject to the same penalties.

### **1.10 Female genital mutilation**

This concept does not exist in Romanian legislation. However, it could fall within the ambit of the legislation on assault and battery (articles 180-184 of the Penal Code).

### **1.11 International conventions**

Romania is a signatory to the following conventions:

- The International Convention for the Suppression of the Traffic in Women and Children of 30.9.1921, ratified by Romania in 1923;
- The International Convention for the Suppression of the Traffic in Women of Full Age of 11.10.1933, ratified in 1935 (Law No. 2/1935);
- The United Nations Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, ratified in 1950 (on 21.5.1950);
- The 1979 United Nations Convention on the Elimination of All Forms of Discrimination against Women, ratified in 1981 (Decree No. 342/1981);
- The International Convention on the Rights of the Child, ratified in 1990 (Law No. 18/27.09.1990).

## **2.0 Legislative and procedural problems**

Official statistics underestimate the number of offences linked to sexual assault because of reluctance on the part of women to report them. The Bucharest Institute of Forensic Medicine has recorded 4 460 cases of battered women - 47% reported their cases spontaneously and 53% were encouraged to do so by the police. The Romanian authorities and women’s associations have never conducted research into this matter, concentrating instead on women’s economic, social and social welfare rights.

### **3.10 Necessary reforms**

Romania must adopt measures to protect women who suffer acts of violence inside and outside the home. Such protection presupposes co-operation by the police, assistance by NGOs, legal support, financial aid and provision of new reception centres.

The first step must be to change attitudes in the police service, which usually refuses to become involved in what are still widely seen as “family quarrels”. Regulations must be issued to organise police intervention and prevent domestic violence leading to grievous bodily harm or even death.

## **SLOVAK REPUBLIC**

---

The information provided by the Coordinating Committee on Women's Issues, Social Affairs and Family of the Slovak Republic in November 2000.

### **Introduction**

It is considered essential to examine problems of violence in society. The importance of doing so is underlined by the fact that over the last few years, a rise has been registered in the number of violent crimes. A study on violence against women in the Slovak Republic during the years 1995-1997 shows that a majority of offenses take place in the private sphere.

### **1.2 Domestic Violence**

#### Criminal Law

The Penal Code does not differentiate between violence committed in public and domestic violence. Domestic violence is not a specific crime, but the Penal Code covers offences concerning: assault, sexual violence, rape, genital mutilation, violence related to exploitation, limitation of personal liberty, and blackmailing. Violence is prohibited between spouses, cohabiting couples, former partners, lodgers, children and relatives.

#### Domestic and Public Violence Against Women 1995-1997

A significant number of offences against women, registered by the police, are domestic violence.

<b>Type of offence</b>	1995 D	1995 P	1996 D	1996 P	1997 D	1997 P
Murder	26	13	26	7	25	12
Injury	646	404	647	389	653	346
Violence against person	1040	163	1407	216	1807	220
Rape	87	107	81	79	87	59
Sexual Misuse of Dependency	45	1	31	3	33	4
Other Sexual Misuse	153	63	169	108	147	88
<b>Total</b>	<b>1997</b>	<b>751</b>	<b>2361</b>	<b>802</b>	<b>2752</b>	<b>729</b>

D= Domestic Violence

P= Public Violence

Selected criminal acts against women have the character of violence or the character of interference in the personal freedom and violation of human dignity:

Type of offence	1985	1989	1990	1991	1992	1993	1994	1995	1996	1997	1999
<b>Murder</b>	41	30	38	49	44	39	33	41	36	39	43
<b>Robbery</b>	79	79	253	250	262	265	235	248	282	287	381
<b>Damage of health</b>	1027	958	1077	1071	1245	1126	1189	1207	1143	1113	1100
<b>Violence against person</b>	361	465	384	438	701	808	1203	1430	1908	2374	3491
<b>Blackmailing</b>	45	59	58	73	86	83	86	118	141	126	258
<b>Abuse of committed person</b>	10	10	6	15	6	5	6	10	10	4	3
<b>Other violent criminal acts</b>	122	126	161	147	122	111	115	126	125	129	149
<b>Rape</b>	255	257	318	258	234	210	211	207	207	173	171
<b>Sexual misuse of dependency</b>	71	38	36	40	47	47	42	71	41	42	59
<b>Other sexual misuse</b>	441	345	265	212	248	244	340	339	444	426	363
<b>Procuring</b>	3	0	0	0	0	0	0	0	0	0	0
<b>Trafficking in women</b>	0	0	0	0	0	0	4	9	4	5	11

Source: Analytical and organising Department of Police Headquarter, Bratislava.

Structure of Public and Domestic Violence 1997 – 1999:

Type of offence	Number of public offences			Number of domestic offences			Damaged children under 15 of age			Damaged children between 16 to 18		
	1997	1998	1999	1997	1998	1999	1997	1998	1999	1997	1998	1999
<b>Murder</b>	85	81	82	55	47	59	23	15	16	0	1	3
<b>Robbery</b>	101	987	115	110	124	136	127	272	247	95	76	92
<b>Damage of health</b>	287	285	291	108	121	102	293	322	298	232	249	258
<b>Rape</b>	86	80	90	87	73	81	16	24	25	35	26	27
<b>Sexual misuse of dependancy</b>	13	16	27	38	26	37	47	40	51	4	1	1
<b>Other sexual misuse</b>	342	293	286	170	140	144	510	430	424	2	0	1
<b>Violence against person</b>	106	115	153	238	299	354	198	264	285	65	87	95
<b>Blackmailing</b>	534	629	808	104	125	190	224	252	352	56	68	95
<b>Abuse of committed person</b>	0	0	2	0	0	7	0	0	9	0	0	0
<b>Procuring</b>	2	3	8	2	1	1	0	0	0	0	0	0
<b>Trafficking in women</b>	6	3	11	0	0	0	1	1	2	1	1	6
<b>Together</b>	<b>601</b>	<b>609</b>	<b>691</b>	<b>403</b>	<b>473</b>	<b>522</b>	<b>143</b>	<b>162</b>	<b>170</b>	<b>490</b>	<b>509</b>	<b>578</b>

Source: Ministry of Interior of the Slovak Republic.

Criminal Proceeding

The victim, witness or family members of the victim may make complaints of domestic violence. Complaints are made to the police, the courts, or the prosecutor. Physical examinations, conducted by state medical officials or private doctors, are required as proof of the injury. The decision to prosecute lies with the police; witnesses are required for a prosecution.

In accordance with 11 § of the Penal Code, criminal proceedings cannot start and, in the case that it has already started, cannot continue, if the victim did not give his/her consent or withdrew consent to the criminal proceedings. This right to withdraw the consent to criminal

proceedings pertains to specific crimes, such as violence against the person, damage of health, limitation of personal freedom and rape.

The police estimate that:

- 11% - 30% of assaulted women file a complaint, of which;
- 2% - 10% of the complaints result in a prosecution, of which;
- 11% - 30% of the complaints result in a conviction;
- 2% - 10% of the convicted are imprisoned;
- 2% - 10% are ordered to institutionalised care against alcoholism.<sup>3</sup>

### Civil Law

- The perpetrators may be required to pay assistance to the victim;
- Divorce/legal separation is not available as a remedy for domestic violence;
- Protection orders are not available;
- Counselling may be required for the perpetrator and is available to the victim;
- No financial support is available from the state.

### Measures Against Domestic Violence

- **Act on Social Assistance**

The new Act on Social Assistance contains preventive measures against domestic violence. Social prevention and solving material or social hardships are part of social assistance. Counselling, legal protection and social services address material and social hardship.

Social prevention: Education programmes aiming to change violent behaviour, are important within the framework of social prevention.

Counselling: The scope, the nature and the reason for an individual's negative behaviour are first identified. Potential solutions or further counselling provided by specialised institutions are then recommended.

Legal protection: Educational programmes aiming to improve the family relations are an important way to protect the individual's legal rights.

Social services: There are 23 shelters with 247 places that can provide housing and counselling to women and their children subjected to domestic violence.

- **National Action Plan for Elimination of Violence Against Women**

The "Coordination Committee for the Problems of Women" prepared a National Action Plan for Elimination of Violence Against.

---

<sup>3</sup> These statistics are based on police reports.

Part VI. To Create Conditions to Eliminate Violence Against Women:

**Provisions**

- Create legislative and educational measures for the elimination of violence against women;
- Support new shelters for women subjected to violence, and centres with counselling for people in difficult life situations;
- Promote for changes of the legislation so that offences committed against family members will be outlawed, so that in this way the victim's approval for criminal proceedings will not be necessary in cases of domestic violence;
- Prepare educational programmes to change the behaviour of aggressive individuals, and when it is possible, their reintegration and return to the family;
- Create conditions for the establishment of more SOS line specialized for victims of domestic violence and the training of SOS line staff.
- Enter national and international programmes to eliminate forced prostitution and trafficking in human beings.

**1.3 Rape/Sexual Assault**

Definition of Rape

Paragraph 241 of the Penal Code:

- (1) *Any person who by violence, threat of violence or by use of the victim's defenceless, compels a woman to intercourse shall be sentenced to 2 to 8 years of imprisonment.*
- (2) *Any person shall be sentenced to 5 to 12 years of imprisonment;*
  - a) *If he by an act described in section 1 causes substantial damage to the health, or*
  - b) *If he commits such an act with a woman younger than 15 years.*
- (3) *Any person shall be sentenced to 10 to 15 years of imprisonment, if he, by the crime committed according to section 1, causes death.*

In the framework of the preparation of the new Penal Code and with the aim to ensure better protection for women, a new qualification has been elaborated.

The new crime "*Sexual abuse by other means than sexual intercourse*" is defined as "any person who by violence, threat of violence, by use of the victim's defenceless or by any other means than by intercourse, sexually misuses a woman."

This crime is not identical to rape; it is defined as the abuse of a woman in a defenceless situation. The need to complement the Penal Code with such a qualification is necessary since a number of women might be sexually abused, in particular under the influence of drugs.

## 1.4 Child Sexual abuse/Incest

### Definition of Child Sexual Abuse

242 § of the Penal Code

- (1) *Anyone who engages in sexual intercourse, or by other means sexually abuses a person under the age of 15 years, shall be sentenced to 1 to 8 years of imprisonment.*
- (2) *Anyone who commits an act described in section. 1 on a person under his/her supervision, abusing his/her dependency, shall be sentenced to a prison term of two to ten years.*
- (3) *Anyone who by an act described in section 1, causes substantial damage to the health, shall be sentenced to 5 to 12 years of imprisonment.*
- (4) *Any person shall be sentenced to 10 to 15 years of imprisonment, if he, by the crime committed according to section 1, causes death.*

243 § of the Penal Code

*Anyone who uses the dependency of a person under the age of 18 years, or a person under his/her supervision, to engage in sexual intercourse or sexually abuse by other means, shall be sentenced to up to 2 years of imprisonment.*

## 1.8 Pornography

In March 1997, the government adopted “Measures to Fight Against Child Pornography and Sexual Abuse of Women and Children”, which is currently being put into practice. Within the framework of implementation, the police cooperate with the authorities on a local level, and the National Centre of Interpol with the police from other countries.

In accordance with 205§ of the Penal Code the following acts are criminal:

- Offer and exhibition of pornography to persons under the age of 18 years (205§);
- Production and spreading of pornography (205 a§);
- Production of children pornography (205 b§);
- Spreading of children pornography (205 c§);
- Receiving (concealing) of children pornography (205 d§).

## 1.9 Prostitution

Suppression of all forms of trade with women and exploitation of women for prostitution is regulated by the Penal Code (Act No. 140/1961 Coll.)

## Prostitution

### 204 § of the Penal Code: Procuring

- 1) *Any person who contracts, entices or induces other persons to prostitution, or who benefits from prostitution of others, shall be sentenced to up to 3 years of imprisonment.*
- 2) *Any person, who commits an act according to section 1 by violence, threat of violence or other damage, or by misuse of hardship or dependency, shall be sentenced to 1 to 5 years of imprisonment.*
- 3) *The offender of a crime according to section 1 is sentenced to 2 to 8 years of imprisonment if:*
  - a) *The perpetrator makes a substantial profit;*
  - b) *The perpetrator is a member of an organised criminal group*
  - c) *The person subjected to procuring is under the age of 18;*
  - d) *The perpetrator commits the offence abroad.*
- 4) *The offender of a crime according to section 1 or section 2 is sentenced to 5 to 12 years of imprisonment if:*
  - a) *The victim is under the age of 15 years;*
  - b) *The perpetrator is linked with an organised group active in several states.*

## Trafficking in Human Beings

### 246 § of the Penal Code: Trafficking in Women

- 1) *Any person who entices, hires or transports a woman into a foreign country with the purpose to use her for sexual intercourse with another person will be sentenced to 1 and 5 years of imprisonment.*
- 2) *The offender of a crime according to section 1 is sentenced to 3 to 8 years of imprisonment if:*
  - a) *The perpetrator is a member of an organised criminal group;*
  - b) *The woman subjected to trafficking is under the age of 18;*
  - c) *The perpetrator's intention is to use the woman for prostitution.*

The objects of this provision are the principles of women's free choice in sexual relations and her right to personal freedom, as well as a moral statement. Trafficking in women and prostitution do not have to take place against the woman's will, since she may be enticed by attractive promises of an easy life abroad, money, etc.

This provision fulfilled the obligation deriving from the "Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others" (1949), which Czechoslovakia ratified in March 1958.

## Reparations

Women subjected to crimes of trafficking in women and procuring may invoke a claim for compensation in the preparatory stage of the court's proceedings against the suspected. The Court makes a decision based on the merits of the claim and includes the relevant compensation for the victim into the judgment against the perpetrators.

### **3.3 Main Problems**

#### Domestic Violence

There is a certain unwillingness of witnesses to talk about ongoing problems in the households of their neighbours. Withdrawal of a notice by the victim is also a frequent problem. Such a reaction from the victim is mainly due to the fact that there is often no opportunity to provide separate accommodation for the victim, and that the perpetrator is usually prosecuted with a release from custody. This overburdens the police, but at the same time, there are not sufficient grounds for the police to take decisive action. Investigation into such a closed unit as a family is, without the help of witnesses, almost impenetrable for the police. Evidence could also be quite dubious, since, without any witnesses, there are two conflicting testimonies.

### **3.10 Proposed Reforms**

#### Prostitution

A proposed draft for the new Penal Code creates two principal qualifications - procuring and pandering in order to extend the punishment to other forms of procuring.

- Procuring: A person who, in connection with his/her own business, or under the pretext of another business activity, even partially, acts as an intermediary or enables the repeated exercise of prostitution, and makes a profit from the participation of procuring, commits the criminal offence procuring. This is, in fact, the misuse of an otherwise legal business for the exercise of prostitution.
- Pandering: A person who induces another person to exercise prostitution, or who profits from prostitution exercised by another person, commits the criminal offence of pandering.

Procuring and pandering are often connected with the limitation of personal freedom and other violations of human rights.

#### Trafficking in Human Beings

The proposition for the new Penal Code extends the criminal liability for trafficking in women. The spectrum of circumstances, which will be the condition for higher punishment of imprisonment for this crime, is broad, and specifically expresses all important aspects scaling the seriousness of the offender's act.

The Slovak Republic believes that the problems of trafficking in women require concerted action from the states. Within the framework to combat organised crimes, the Slovak Republic cooperates with other countries, e.g. Austria, Cyprus, Czech Republic, Croatia, France, Germany, Hungary, Romania, Russia and Ukraine.

## **SLOVENIA**

---

Information provided by the Women's Policy Office in November 2000.

### **Introduction**

Article 141 of Criminal Offences Against Human Rights and Liberties: Violation of the Right to Equality:

Whoever, due to differences in respect of nationality, race, skin colour, religion, ethnic roots, gender, political or other personal beliefs, birth status, education, social position or any other circumstance deprives or restrains another person of any human right or liberty recognised by the international community or laid down by the Constitution or statute, or grants another person a special privilege or advantage on the basis of such discrimination shall be punished by a fine or sentenced to imprisonment for not more than one year (the punishment rises to 3 years if a civil servant commits official misconduct).

### **1.2 Domestic Violence**

Prior to the late 1980s, the phenomenon of violence against women was not recognised as a social issue. The state, social institutions, police and judiciary dealt with instances of violence against women as private matters. No data on violence against women was recorded. There were no special legislative measures and no shelters.

Practice has shown that many women do not report acts of violence, but rather attempt to conceal them because of shame, guilt or the perpetrator's threats. A woman will rarely speak out to an expert (doctor, social worker, police officer) who suspects that she has been subjected to domestic violence.

Since 1990, feminists have been campaigning for legislative reform.

#### Legislative Framework

##### Criminal Law

There is no specific legislation relating to domestic violence. Serious cases may be prosecuted under provisions in the general criminal code: negligent manslaughter, infanticide, soliciting and assisting suicide, illegal abortion (including abortion without the woman's consent), aggravated bodily harm, grievous bodily harm, participation in a brawl, exposure of another person to danger, criminal coercion, kidnapping, threats to kill or cause serious injury, false imprisonment, maltreatment, unlawful search of another person, unlawful eavesdropping.

The article defining “violent conduct” was changed in 1999. The wider definition of “violent conduct” applies also in cases of domestic violence.

*Whoever insults another, or treats him badly or violently or endangers his security, thereby provoking public or family indignation or fright, shall be sentenced to imprisonment for not more than two years.*

*If the offence was committed by at least two persons, or has entailed the serious humiliation of several persons or actual badly harm, the perpetrator(s) shall be sentenced to imprisonment for not more than three years.*

The provision concerning homicide contains a clause on self-defence:

*Any person, who kills another person through no fault of his own and in the heat of the moment under provocation of assault or serious personal insult from that person, shall be sentenced to imprisonment for not less than 1 year but not more than 10 years.*

This provision could be used as a defence for women who kill their violent partners, although there is no information regarding such usage.

### Civil Law

Any person who violates a family obligation and persistently neglects to support a person he/she is obliged to support by law, an enforceable judgement, a judicial settlement or any other enforceable agreement is sentenced to up to 1 year of imprisonment.

## **1.3 Rape/Sexual Assault**

### Offences against Sexual Integrity

- Rape

*Any person who compels a person of the same or opposite sex to engage in sexual intercourse, by force or threat of an imminent attack on life or limb, shall be sentenced to imprisonment for not less than 1 year but not more than 10 years.*

The penalty rises to a minimum of 3 years of imprisonment if:

- The offence was committed in a cruel or extremely humiliating manner;
- The offence was accomplished by at least 2 persons;
- The offence was committed against an offender-serving sentence in a prison.

The penalty is 6 months to 5 years if the threat is "large loss of property for the victim or his/her relatives or with the disclosure of any matter concerning the victim or his/her relatives which is capable of damaging the victim's or his/her relative's honour or reputation".

A woman who has been raped must prove that she put up physical resistance. Physical injuries are often the only evidence of rape. Women are formally entitled to choose to report the offence either to a male or female police officer.

- Rape in marriage and in extra-marital unions is criminalised under the provision above, but a prosecution is only initiated after a complaint.
- Sexual Violence

*Any person who compels a person of the same or opposite sex to engage in any lewd act not covered (in the rape provisions) or to perform such an act, by force or threat of an imminent attack on life or limb, shall be sentenced to imprisonment for not less than 6 months but not more than 5 years.*

The same provisions as for rape are applicable regarding the increased penalty. Similarly, there is a requirement of a complaint before prosecution of sexual violence committed by a spouse or extra marital partner.

- Sexual Abuse of a Defenceless Person

*Any person who has sexual intercourse or performs any lewd act with a person of the same or opposite sex, by abusing the victim's mental disease, temporary or graver mental disorder or sickness, or any other condition that makes the victim incapable to resist the offence, shall be sentenced to not less than 6 months or not more than 5 years of imprisonment.*

Any person convicted for any other violation of a person's sexual integrity is sentenced to not more than 3 years of imprisonment.

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

Any person who has sexual intercourse or performs any lewd act with a person of the same or opposite sex, under the age of 15 years and there is obvious disproportion between maturity of the offender and the victim, shall be sentenced to not less than 6 months and not more than 5 years of imprisonment.

The minimum sentence is increased to 3 years of imprisonment if:

- The victim is defenceless;
- Threats to life or limb are used.

The sentence is increased to between 1 and 8 years if the perpetrator is a teacher, educator, guardian, adoptive parent, parent or anyone else abusing a position of trust.

### Violation of sexual Integrity by Abuse of Position

*Whoever, by abusing his position, induces his subordinate or a person of the same or opposite sex who depends on him, to engage in sexual intercourse or any lewd act shall be sentenced to imprisonment for not more than 3 years.*

If the perpetrator is in a position of trust, e.g. teacher, educator, guardian, parent, adoptive parent, and the victim is over the age of 15 years and entrusted to the perpetrator's care, the maximum sentence rises to 5 years of imprisonment.

## **1.7 Pornography**

### Distribution of Pornography

*Any person who provides access to writing, pictures, audio-visual or other objects of pornographic content or whoever presents a pornographic performance to a person under the age of 14, shall be punished by a fine or sentenced to not more than one year of imprisonment.*

### Production of Pornography

*Whoever abuses a minor for the production of pornographic pictures, audio-visual or other objects of pornographic content, or whoever who employs a minor to act in a pornographic performance shall be sentenced to not more than 3 years of imprisonment.*

## **1.8 Prostitution**

In Slovenian legislation, prostitution is treated as a minor offence, and the activity as such is not a criminal offence. The "Law on Breaches of Public Order and Peace" prescribes punishment by up to two months of imprisonment for those who submit themselves to, participate in, allow or support prostitution.

### Procuring

*Any person, who engages in procuring of sexual intercourse or other lewd acts against compensation, shall be sentenced to not less than 3 months and not more than 5 years of imprisonment.*

*Any person who acts as a pimp for a minor shall be sentenced to not less than one year and not more than 10 years of imprisonment.*

### Introduction to Prostitution

*Any person who incites, solicits, lures or entices other persons to prostitution or otherwise allows presenting these persons to a third person for prostitution or is in any other way*

*engaged in organization or is organizing it alone, shall be sentenced to imprisonment for not more than 5 years.*

If the offence is committed by force, threat or deception the maximum sentence rises to 10 years of imprisonment.

### Enslavement and Trafficking in Human Beings

*Whoever, in violation of international law, brings or keeps another person into slavery or a similar condition, or buys, sells or delivers another person to a third party, or acts as intermediary for the buying, selling or delivery of another person, or urges another person to sell his freedom or the freedom of a person he supports or looks after, shall be sentenced to not less than one year but not more than 10 years of imprisonment.*

*Any person, who transports persons held in slavery or a similar condition from one country to another shall be sentenced to not less than 6 months and not more than 5 years of imprisonment.*

The minimum sentence rises to 3 years of imprisonment if the offence is committed against a minor.

## **2.0 Sentencing**

### Criminal procedure

The presence of the perpetrator is prohibited at a hearing where the victim of a sexual and violent criminal offence is under the age of 15 years. If the victim of a criminal offence against sexual integrity is minor, he/she must have an attorney from the beginning of the court proceeding. If he/she does not have an attorney, the court is obliged to appoint one.

A restriction to approach to a certain place or person can be ordered by the court as an alternative measure to custody. The court orders appropriate distance from certain place or person that has to be respected by the offender the court can otherwise order custody. According to information provided by the courts this measure is only used in a few cases of domestic violence.

## **3.1 Support/Protection**

### Domestic Violence

From 1984, feminist campaigns have been organised to raise awareness of domestic violence. The first help line was established in Ljubljana in 1989 by the first non-governmental organisation providing support and information concerning domestic violence. Slovenia has now 5 shelters and one crisis centre for women, victims of domestic violence.

### Child Sexual Abuse/Incest

More cases of sexual abuse are discovered as a consequence of awareness raising campaigns. Training courses have been organised for social workers, counsellors and therapists providing assistance to children and adults who have suffered sexual abuse.

### Prostitution

Based on information available from the media, prosecutors and criminal investigation officers, the characteristic of prostitution in Slovenia are as follows:

- Most prostitutes are women and girls of 18 to 45 years of age. According to the criminal investigation officers, they are predominantly women from Ukraine, Russia, Bulgaria, Romania and the republics of the former Yugoslavia. Slovenia is particularly interesting for them, since the relatively high level of prostitution means that pimps do not force them «onto the streets».
- Prostitution has grown particularly noticeably since 1991. There has been a sharp increase during this period in the number of massage parlours, night bars and the demand for certain vocational profiles (platform dancers, masseuses, hostesses, strippers, etc.)
- It is characteristic for Slovenia that there is almost no street prostitution. The most widespread forms of prostitution are hotel and bar prostitution, while prostitutes from Slovenia mostly operate at a very high level (advertising and mobile telephones) and are very independent (no pimps).
- Pimps are mostly owners of private companies, renters of night bars and individuals.
- Clients come from different social classes, including many traders and businessmen.

Prostitutes in Slovenia have no protection, since there is no service, office or specially established non-governmental organisation they could turn to for help. The only solution for them is to report to the police, and they only do so if they are at serious risk.

## SPAIN

---

Information provided by the Spanish Ministry for Employment and Social Affairs, Department for International Relations in November 2000.

### **Introduction**

The current Spanish Constitution came into force in December 1978. The content of articles 14, 23, 32 and 35, among others, sets out one of the basic principles that inspires the whole legal order: the equality of all people before the law, thus the prohibition of discrimination based on sex, race, religion or ideas.

During the decade 1975-1985, important reforms took place, which ensured that the basic right of non-discrimination on the grounds of sex was present in all legislation.

In 1984, the Ministry of the Interior began to publish the figures from reports of ill-treatment brought before the national police, and the first shelter for battered women was created. Two years later, in 1986, the Senate Human Rights Commission created the “Investigative Group on the Ill-treatment of Women”, which drew up a report on the subject in 1989.

Furthermore, an autonomous body, the “Women’s Institute” was created in 1983 with the prime purpose to promote and encourage the advancement of equality between the sexes and the participation of women in the political, cultural, economic and social life.

The Women’s Institute is responsible for the promotion of equality policies and initiatives by different bodies of the Government that favour equality of opportunity, to follow current legislation and promote the rulings necessary to achieve equality between the sexes.

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

#### Civil Law

The Spanish Civil Code, which dates from 1889, forms the basis for private law. The Civil Code remained almost unchanged until the current Constitution came into force in 1978, and the reforms were made in 1981 to adapt its contents to the constitutional principles of equality for all persons.

The most important modifications are based on the following laws:

- Law 11/1981 of 13 May, which modified certain articles on filiation, *patria potestas* and the economic regime within a marriage.

- Law 30/1981 of 7 July, which modified the regulation of matrimony and determined the procedure for cases of annulment, separation and divorce.

In 1982, the regulations in the Civil Code concerning nationality were modified. This change was followed by other amendments; the reform of the Civil Code regarding the application of the principle of non-discrimination based on sex (Law 11/90 of 15 October) and the reform of the Civil Code with regard to nationality (Law 18/1990 of 17 December).

Similar legislative changes occurred in the rest of the legislation, with regard to the right to work, social security, etc.

### Criminal Law

A new Penal Code, approved by the Organic Law 10/95 of 23 November, came into force 24 May 1996.

Previously, the Penal Code had introduced important reforms related to crimes against women, minors and family members (Organic Law 35/1989 of 21 June).

The Penal Code introduced changes relating to the legal good to be protected, which became “sexual freedom”. The definition of “rape” was expanded and was also considered as a crime of domestic ill-treatment and the non-payment of economic obligatory payments in favour of the spouse or children as established in a legal agreement or decision, in cases of legal separation, divorce or declaration of annulment, and in a word granted greater protection to the weakest members of the family group.

In 1995, the *Law on Aid and Assistance to Victims of Crimes of Violence and Victims of Crimes Against Sexual Freedom* was approved (Law 35/1995 of 11 December, Royal Decree 738/1997 of 23 May).

In 1999, there were two new reforms in the Penal Code. The Organic Act 11/1999 ( 30 April), reforming the VII title of the II book of the Penal Code and the organic Act 14/1999 (9 June), reforming the Penal Code of 1998, in relation to the protection of victims of crimes of ill-treatment.

## **1.2 Domestic Violence**

Organic Act 14/1999 of 9 June amending the 1995 Penal Code’s provisions on protection for the victims of abuse and the Civil Proceeding Act changes several articles.

Art. 153

*Any person who customarily wields physical or mental violence against his or her present or former spouse or a person with whom he or she has or has had a stable link in a similar emotional relationship, or against his/her own children or the children of the spouse or resident partner, ward, ascendant relatives or disabled persons living with*

*him/her or subject to his/her authority, guardianship, protection or fosterage or de facto or other custody shall be punished with six months' to three years' imprisonment, without prejudice of other penalties for the crimes or offences in which the acts of physical or mental violence were manifested.*

*To evaluate the customary nature of the violence, the court shall examine the number of proven acts of violence and their proximity in time to one another, regardless of whether such violence was exerted against the same victim or different victims included in this article, and regardless of whether the person has been prosecuted for the violent acts in earlier proceedings.*

#### Art. 617 Offences against persons

*Any person who by any means or procedure causes to another person an injury not defined as a crime in this Code shall be punished with three to six weekends' arrest or one to two months' fine.*

*Any person who strikes or mistreats by action another person without causing injury shall be punished with one to three weekends' arrest or 10 to 30 days' fine.*

*When the offended person is one of the persons to which article 153 refers, the penalty shall be three to six weekends' arrest or one to two months' fine, bearing in mind the penalty's possible economic repercussion on the victim himself/herself or the family unit as a whole.*

#### Art. 620

*The following persons shall be punished with 10 to 20 days' fine:*

1. *Any person who in a minor fashion threatens another person with arms or other dangerous instruments or displays such arms or other dangerous instruments in an altercation unless in rightful defence and save should the act constitute a crime.*
2. *Any person who subjects another person to minor threat, coercion, slander or unjust humiliation.*

*Offenders can only be prosecuted for the acts described in the last two numbered subparagraphs above if the aggrieved person or his/her legal representative files charges.*

*When the offended person is one of the persons to which article 153 refers, the penalty shall be two to four weekends' arrest or 10 to 20 days' fine, bearing in mind the penalty's possible economic repercussion on the victim himself/herself or the family unit as a whole. In these cases charges do not have to be filed as required in the paragraph above, except for the prosecution of slander.*

*similar relationship of affection, or his or her own children or those of the spouse or cohabitant, foster children, or ascendant, provided that they cohabit with him or her, the sentence will be arrest of 3 to 6 weekends or a fine for 1 or 2 months.*

### **1.3 Rape/Sexual abuse**

Organic Act 11/1999 of 30 April amending Book II, Title VIII of the Penal Code, passed by Organic Act 10/1995 of 23 November, changes several articles.

#### Art. 178 Sexual Aggression

*Any person who constrains the sexual freedom of another person with violence or intimidation shall be punished with one to four years' imprisonment for sexual aggression.*

#### Art. 179 Rape

*When the sexual aggression consists in carnal knowledge by vaginal, anal or oral means or the insertion of objects by either of the first two means, the person responsible shall be punished with six to 12 years' imprisonment for rape.*

#### Art. 180

*The above types of conduct shall be punished with four to 10 years' imprisonment for aggression under article 178 and 12 to 15 years' imprisonment for aggression under article 179 under any of the following circumstances:*

1. *When the violence or intimidation is particularly degrading or insulting.*
2. *When the acts are committed jointly by two or more persons.*
3. *When the victim is especially vulnerable due to age, illness or situation, and without fail when the victim is under 13 years of age.*
4. *When the person responsible avails himself/herself of a relationship of superiority or kinship to commit the crime, being an ascendant relative, descendant relative or sibling of the victim by nature or adoption.*
5. *When the perpetrator uses arms or other equally dangerous means liable to cause death or any of the injuries provided for in articles 149 and 150 of this Code, without prejudice of any penalty for the death or injuries caused.*

*If two or more of the above circumstances are present, the punishment shall be in the upper half of the penalties provided for in this article.*

## Sexual Abuse

### Art. 181

*Any person who performs acts constraining the sexual freedom or sexual safety of another person without violence or intimidation and without consent shall be punished with one to three years' imprisonment or 18 to 24 months' fine for sexual abuse.*

*For the purposes of the paragraph above, "sexual abuse without consent" shall be considered to be sexual abuse of persons under 13 years of age, persons who are unconscious or persons whose mental disturbance is abused.*

*The same penalty shall be given when consent is obtained by taking advantage of a situation of manifest superiority that constrains the freedom of the victim.*

*If two or more of the above circumstances are present, the punishment shall be in the upper half of the penalties provided for in this article.*

### Art. 182

*In all the cases in the article above, when the sexual abuse consists in carnal knowledge by vaginal, anal or oral means or the insertion of objects by either of the first two means, the person responsible shall be punished with four to 10 years' imprisonment.*

*The upper half of the penalty in the subparagraph above shall be applied if circumstance 3 or 4 listed in article 180 is present.*

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

### Art. 181

*Any person who performs acts constraining the sexual freedom or sexual safety of another person without violence or intimidation and without consent shall be punished with one to three years' imprisonment or 18 to 24 months' fine for sexual abuse.*

*For the purposes of the paragraph above, "sexual abuse without consent" shall be considered to be sexual abuse of persons under 13 years of age, persons who are unconscious or persons whose mental disturbance is abused.*

*The same penalty shall be given when consent is obtained by taking advantage of a situation of manifest superiority that constrains the freedom of the victim.*

*If two or more of the above circumstances are present, the punishment shall be in the upper half of the penalties provided for in this article.*

Art. 182

*In all the cases in the article above, when the sexual abuse consists in carnal knowledge by vaginal, anal or oral means or the insertion of objects by either of the first two means, the person responsible shall be punished with four to 10 years' imprisonment.*

The upper half of the penalty in the subparagraph above shall be applied if circumstance 3 or 4 listed in article 180 is present.

## **1.5 Sexual Harassment**

Art. 184

*Any person who solicits sexual favours for himself/herself or a third party within an ongoing or customary employer/employee relationship, teacher/pupil relationship or service rendering relationship and by such behaviour places the victim in an objectively and seriously intimidating, hostile or humiliating position shall be punished, as the perpetrator of sexual harassment, with six to 12 weekends' arrest or three to six months' fine. When the victim is especially vulnerable due to age, illness or situation, the penalty shall be 12 to 24 weekends' arrest or six to 12 months' fine.*

*If the person guilty of sexual harassment commits the act availing himself/herself of an employer/employee relationship, teacher/pupil relationship or hierarchical relationship or with the express or tacit intention of causing the victim some detriment related with the victim's legitimate expectations within the realm of the aforesaid relationship, the penalty shall be 12 to 24 weekends' arrest or six to 12 months' fine. When the victim is especially vulnerable due to age, illness or situation, the penalty shall be six months' to one year's imprisonment.*

### Exhibitionism and Sexual Provocation.

Art. 185

*Any person performing or having another person perform acts of obscene exhibition before minors or the incompetent shall be punished with six months' to one year's imprisonment or six to 12 months' fine.*

Art. 186

*Any person who by any direct means sells, disseminates or displays pornographic material among minors or the incompetent shall be punished with six months' to one year's imprisonment or six to 12 months' fine.*

## 1.7 Pornography

Art. 189

*The following persons shall be punished with one to three years' imprisonment:*

- a) *Any person who uses minors or the disabled with the purpose of or in exhibitionist or pornographic shows, be they public or private, or to prepare any type of pornographic material or finance any of these activities.*
- b) *Any person who by any means produces, sells, distributes, displays or facilitates the production, sale, dissemination or exhibition of pornographic material in whose preparation minors or the incompetent have been used, even should the material be from another country or of unknown origin.*

*Any person possessing such material for the performance of any of these types of conduct shall be punished with the upper half of the penalty.*

*The penalty of the next highest degree shall be given when the guilty party belongs to an organisation or association, albeit temporary, that indulges in the performance of such activities.*

## 1.8 Prostitution

Art. 187

*Any person inducing, promoting, favouring or facilitating the prostitution of a minor or incompetent person shall be punished with one to four year's imprisonment and 12 to 24 months' fine.*

*Any persons performing such acts whilst availing themselves of their position of authority, agent of the authority or public functionary shall incur the upper half of the prison sentence and likewise absolute disqualification from public office for six to 12 years.*

*The penalties of the next highest degree above the penalties provided in the subparagraphs above shall be given in their respective cases when the guilty party belongs to an organisation or association, albeit temporary, that indulges in the performance of such activities.*

Art. 188.

*Any person who uses violence, intimidation or deceit or abuses a situation of superiority or the victim's need or vulnerability to induce a person of full legal age to prostitute himself/herself or to remain a prostitute shall be punished with two to four years' imprisonment and 12 to 24 months' fine.*

*Any person who directly or indirectly encourages other persons to enter, stay in or leave Spanish territory with the intention of sexually exploiting such persons with violence, intimidation or deceit or abusing a situation of superiority or the victim's need or vulnerability shall be punished with the same penalties.*

*Any persons performing such acts whilst availing themselves of their position of authority, agent of the authority or public functionary shall receive the upper half of the corresponding penalties and likewise absolute disqualification from public office for six to 12 years.*

*If the aforementioned conduct is directed toward a minor or an incompetent person and intended to initiate or maintain that person in a situation of prostitution, the person responsible shall receive the penalty of the next highest degree above the penalty under the subparagraphs above.*

*The aforesaid penalties shall be given in their respective cases without prejudice of any penalties for aggression or sexual abuse committed against the prostituted person.*

#### Art. 189.3

*Any person forcing a minor or an incompetent person to participate in behaviour of a sexual nature harmful to the evolution or development of the victim's personality shall be punished with six months to one year's imprisonment or six to 12 months' fine.*

#### Art. 189.4

*Any person having a minor or incompetent person under his/her authority, guardianship, protection or fosterage and having knowledge that the said minor or incompetent person has been prostituted or corrupted and who fails to exert himself/herself to the utmost to prevent the said minor or incompetent person from remaining in that state or, lacking the means to care for the said minor or incompetent person, fails to notify the proper authorities shall be punished with six to 12 months' fine.*

#### Art. 189.5

*The Public Prosecutor shall further the pertinent action to deprive any person incurring in any of the types of conduct described in the subparagraph above of his/her patria potestas, guardianship, protectorship or family fosterage, as applicable.*

### **1.10 Female Genital Mutilation**

The Penal Code includes a regulation of a general nature on mutilation. A person who causes another person, by any means or procedure, the loss of ability to use an organ, a principal member, a sense, or causes impotence, sterility, grave somatic or psychic deformity, is sentenced to 3 to 6 years of imprisonment.

### 1.11 International Conventions

Spain has ratified the 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.

Spain has among other international conventions for the protection of women's human rights adopted:

- Convention on the Elimination of all Forms of Discrimination Against Women (ratified 1983);
- Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (ratified 1962);
- Convention Against Torture and Other Cruel or Degrading Treatment or Punishment (ratified 1987);
- Optional Protocol for the Convention on the Elimination of all Forms of Discrimination Against Women (ratified 14 March 2000).

### 3.1 Support/Protection

#### Plans for National Action

In Spain, policies of equal opportunity and non-discrimination have mainly been expressed in Plans of Action approved by the government.

#### 1. Plan for Equal Opportunity between Women and Men 1997 – 2000

A part of this plan is focused on violence against women. It covers concrete measures for the elimination of violence against women, the majority were put into practice during 1997 and 1998. The objective is to eliminate violence against women, eradicate sexual harassment at work, trafficking in girls and women, and the exploitation of women for the purpose of prostitution.

#### 2. Plan of Action Against Domestic Violence 1998 – 2000

On 30 April 1998, the Council of Ministers of the Spanish Government approved the *Plan of Action Against Domestic Violence*, which will remain in effect until year 2000.

The plan is drawn up around six major considerations:

#### a. Awareness and Prevention

The proposed measures are intended to make society aware of the gravity of the problem of domestic violence, and to transmit, in both schools and the mass media, the value of non-violence as a mean to prevent violence.

b. Education and Training

The actions are directed to educational centres to influence the contents of the curricula in order to offer education that stress the values of tolerance, respect, peace and equality. The actions are also directed at different professional groups to improve the training of those who handle problems arising from ill-treatment.

c. Social Measures

The actions included in this section of the plan are directed at the creation of sufficient infrastructures to cover the needs that victims may have. The following measures are planned:

- To increase the special units that attend to women who have suffered from acts of violence in police stations and services of the security forces and bodies;
- To create assistance offices for victims at the legal fiscal bodies;
- To draw up a guide to resources;
- To develop services for aid, rehabilitation and follow-up for victims,
- To help victims in their social reinsertion and employment;
- To reinforce victims legal defence;
- To give priority to programmes directed towards female victims in public, call for tenders aimed to grant these actions;
- To develop programmes for psychological treatment for women subjected to domestic violence.

d. Health

Under this section, the adoption of and information on a health protocol is suggested as an integral response to problems of domestic violence. The health protocol includes actions in the primary health care for prevention of violence, within the Programme of Preventive and Health Promotion. Another measure included is to raise the level of awareness among health providers.

The National Health System, through the Patient Services, should inform women who are victims of violence of the available social measures.

e. Legislation and Legal Practice

Under this section a distinction is made between legislative measures and legal measures.

### Legislative measures:

The modification of some articles in the Penal Code and the Process Code are proposed, e.g. as an action to protect the victim, the banning of the aggressor.

### Legal measures:

The following measures are intended to be undertaken in order to simplify and improve legal procedures:

- To develop continuous training programmes concerning domestic violence for public prosecutors;
- To request the Attorney General's Office for a more decisive position in the search for proof and the follow-up of the execution of sentences;
- The establishment of a data base so that information about previous complaints may be obtained by courts and tribunals;
- To establish a protocol of collaboration between the different groups involved;
- To request the General State Prosecutor to include in his annual report a specific section on violence against women;
- To increase the number of doctors and experts in forensic medicine;
- To improve the legal aid for the victims of ill-treatment.

### f. Research

The Plan of Action intends to improve the knowledge gathered on acts of violence against women perpetrated in Spain. To this end are the following measures are foreseen:

- A statistical protocol on domestic violence is intended to be elaborated;
- To carry out studies and research on the subject;
- To carry out research on victims;
- To dedicate a specific area of the Women's Observatory to domestic violence.

A section on evaluation, follow-up and an economic report for 1997-2000 is included in the Plan of Action. The project has a budget of approximately 9,000 million pesetas.

The Plan of Action has been elaborated in collaboration with several Ministries, the Autonomous Communities and representatives from NGOs.

## SWEDEN

---

Information taken from the National Report by the Government of Sweden for the Fourth World Conference on women, Beijing 1995, prepared by the Ministry of Health and Social Affairs. The Division for Gender Equality at the Ministry of Industry, Employment and Communications updated the information in January 2001.

### Introduction

Since the 1980s, intense action has been taken in Sweden to combat violence against women. Despite the many measures that have been implemented, the number of reports of violent crimes against women has increased, and research continues to indicate that unreported violence remains extensive. It is recognised in Sweden that crime involving violence against women is complex, as its causes and mechanisms are closely related to the lack of equality for women in society, as well as between individual women and men. Gender specific violence is also an expression of the uneven distribution of power between women and men and men's view of women.

#### 1.1 Legislation Relating to Violence Against Women

The Government submitted a Bill on Violence against Women (Government Bill 1997/98:55) in 1998. The “Riksdag” (parliament) adopted the Bill the same year. The Bill is a direct result of the work of the Commission of Inquiry into Prostitution and the Commission on Violence against Women. The Bill deals with a number of issues and has three essential points of departure: improving existing legislation, launching additional preventive measures and offering women subjected to violence better treatment than hitherto. In total, the Government has allocated SEK 41 million in 1998 to implement and to carry out the measures and law amendments.

The legislative changes proposed in the Bill came into force on 1 July 1998. The prohibition of the purchase of sexual services came into force on 1 January 1999. Below is a summary of the Bill on legislative and other measures to counteract violence against women.

#### Gross Violation of a Woman's Integrity

A new offence, *gross violation of a woman's integrity*, has been introduced into the Penal Code. It deals with repeated punishable acts directed by men against women who have or have had a close relationship with the perpetrator. “Gross violation of a woman's integrity” means that if a man commits certain criminal acts (assault, unlawful threat or coercion, sexual or other molestation, sexual exploitation, et cetera) against a woman to whom he is or has been married or with whom he is or has been cohabiting, he shall be sentenced for gross violation of the woman's integrity, instead of for each single offence he has committed. A necessary condition for sentencing for the new offence is that the

acts were part of a repeated violation of the woman's integrity and were intended to damage seriously her self-confidence. The new crime makes it possible for the courts to increase the penal value of these offences in situations where they are part of a process that constitutes a violation of integrity, which is often the case in domestic violence. It will thus also be possible to take the entire situation of the abused woman into account. The penalty is imprisonment for at least six months and at most six years. The new crime does not exclude the possibility of the perpetrator simultaneously being indicted for, for instance, aggravated assault or rape. Since the entry into force of the new provision, a number of judgments have been pronounced on the basis of the provision.

In 1988, the *Restraining Orders Act* came into force, to provide protection for women who are threatened, persecuted or harassed. Orders prohibit men from contacting or visiting women when there is a risk of persecution, harassment or other criminal action. The penalty for violation of the order is a fine or 1 year of imprisonment.

## **1.2 Domestic Violence**

Over the last decade, the number of reported assaults and various forms of sexual offences has increased considerably. According to statistics on reported crimes, about 20.000 women were subjected to assault in 1999, in 60 per cent of cases by a person with whom they have or have had a close relationship. The number of assaults never reported to the authorities is believed to be high.

During the period of 1 July 1998 and 31 December 1999, 120 were indicted for gross violation of a woman's integrity. 70 of these men were convicted for gross violations of a woman's integrity and the rest were convicted for other crimes, e.g. assault and unlawful threat.

## **1.3 Rape/Sexual Assault**

There has been a particular increase in the number of reported sexual crimes in recent years. They increased by 80% in the period 1986-1996. With respect to rape, it is the number of rapes committed indoors that has increased. In all likelihood it is primarily cases of rape by a person known to the victim that have increased most. In 1996, 1,608 cases of rape or attempted rape were reported in the country as a whole. 1,355 of the reported rapes were committed against people aged 15 (the age of consent) or over, and 860 of them were rapes committed indoors. The National Council for Crime Prevention estimates that at least 90% of the victims in the latter category were women.

The definition of rape has been widened so that the definition of sexual intercourse is applied to other sexual acts, if having regard to the nature of the violation and other circumstances, the act in question is comparable with forced sexual intercourse. This means that certain acts, which under previous legislation were defined as sexual coercion, i.e. so-called fist fucking, will now be considered as rape.

Rape in marriage is included in the legal definition of rape.

Neglecting to report or otherwise reveal gross sexual offences (rape, aggravated rape, and aggravated sexual exploitation of a minor or grave procuring) has been made a punishable offence.

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

Chapter 6 in the Swedish Penal Code deals with sex crimes perpetrated against both children and adults. The age of consent is 15 years.

##### Sexual exploitation of minor

A person committing *sexual exploitation of a minor* (sexual act with someone less than 18 years old who is the offender's offspring or is under his responsibility or sexual act with someone under 15 years) can be sentenced to imprisonment for at most four years. If the crime is considered as *aggravated sexual exploitation with a minor* the offender can be sentenced to imprisonment for at least two and at most eight years.

##### Sexual intercourse with an offspring

A person, committing *sexual intercourse with an offspring* can be sentenced to imprisonment for at most two years. A person committing *sexual intercourse with a sibling* can be sentenced to imprisonment for at most one year.

##### Sexual molestation

A person committing *sexual molestation*, i.e. to sexually touch a child under 15 years or induce the child to undertake or take part in an act with sexual implications, inter alia to participate in producing pornographic material, or with improper influence induce a person 15–17 years old to take part in pornographic posing or in producing pornographic material, can be sentenced to pay a fine or to imprisonment for at most two years.

##### Seduction of youth

A person committing *seduction of youth*, i.e. to obtain or try to obtain casual sexual intercourse with someone under 18 years, by promising or giving compensation, can be sentenced to pay a fine or to imprisonment for at most six months.

Attempt, preparation and conspiracy to commit a sex crime are criminalised in some cases. Complicity is also criminalised. The limitation period is in general counted from when the crime is committed, but for sex crimes committed against minors the limitation period counts from the day the minor attains 15 years (Penal Code, Chapter 35, Section 4).

## Child pornography

On January 1, 1999 new legislation on extended criminal liability for association with child pornography entered into force. Only ordinary statute law (mainly the Penal Code, Chapter 16, Section 10a) is now applicable to child pornography. Virtually all association with child pornography images, including possession, constitutes a criminal offence. The legislation applies to all kinds of media and therefore also to the electronic environment. In addition, import and export of child pornography are prohibited.

### **1.5 Sexual Harassment**

In Sweden, the Equal Opportunity Act contains provisions concerning equality between women and men in working life. This Act is made up of two parts. The first part consists of provisions that make it incumbent upon an employer to take certain active measures in order to promote equality at the work place. The employer who does not comply, runs the risk of being ordered to do so under the penalty of a fine. The other part of the Act consists of several provisions prohibiting discrimination based on sex. The Equal Opportunities Ombudsman has the task of overseeing the compliance with the Act and can also bring cases of discrimination to the Labour Court.

By means of Bill 1997/98:55, present rules concerning sexual harassment have been strengthened. A new definition was inserted in the Act:

*Sexual harassment means such unwanted conduct based on sex or unwanted conduct of a sexual nature, that violates the integrity of the employee in work.*

The Act was also improved so that it becomes fully evident that every employer is obliged to take active measures to prevent and hinder an employee from being exposed to sexual harassment. The employer must make clear in a general staff policy statement that sexual harassment involving employees cannot in any way be tolerated. This policy must be made known to the employees. It is equally important that routines are devised for dealing with alleged or factual sexual harassment. The employer who receives information that an employee has been exposed to sexual harassment by another employee must investigate the circumstances surrounding the alleged harassment. The employer who does not fulfil his or her obligations runs the risk of having to do so under the penalty of a fine.

In cases where the employer is the one sexually harassing an employee, the rules in the Penal Code concerning molestation or sexual molestation are applicable.

### **1.7 Pornography**

Chapter 16, section 10 a of the draft version of the Penal Code: *Child pornography offence*

*A person who portrays a child in a pornographic picture with the intent that the picture be distributed, or who distributes such a picture of a child, shall, unless in view of the*

*circumstances the act is defensible, be sentenced for child pornography offence to pay a fine or to imprisonment for at most two years.*

## **1.8 Prostitution**

A new law prohibits obtaining sexual services for payment. This has aroused considerable interest abroad as it outlaws the act of buying sex and penalises the buyer but not the seller. The punishment for this offence is a fine or imprisonment for up to six months. Attempted offences are also punishable. The offence comprises all forms of sexual services, whether they are purchased on the street, in brothels, in so-called massage-institutes, et cetera. The Government considers that it is not reasonable to punish the person who sells sexual services. In the majority of cases this person is the weaker party who is exploited by those who want only to satisfy their sexual drives. It is also important to motivate prostitutes to seek help to leave their way of life. They should not run the risk of punishment because they have been active as prostitutes. By prohibiting the purchase of sexual services, the Swedish Government believes that prostitution and its damaging effects can be counteracted more effectively than hitherto. The Government is, however, of the view that prohibition can never be more than a supplementary element in the efforts to reduce prostitution and cannot be a substitute for broader social endeavours. The Prohibition on the Purchase of Sexual Services came into force on 1 January 1999. A survey made by the National Board of Health and Welfare shows that street-prostitution has decreased since the new prohibition came into force, but it also shows that the hidden prostitution have increased. The National Police Board has received extra funding for this matter.

### Trafficking in Human Beings

A Parliamentary law Committee on Sexual Offences was established in June 1998 (See 2.0 Sentencing). Among other tasks the committee will consider the need for introducing a specific offence of trafficking in human beings for the purpose of sexual exploitation despite the fact that such trafficking may already be penalised under penal provisions. Depending on the individual case, provisions on e.g. kidnapping, unlawful deprivation of liberty, placing a person in a distressful situation, unlawful coercion, unlawful threat and/or procuring may be applicable.

The National Police Board has been appointed the national reporter for Sweden in accordance with a EU declaration signed jointly by the Ministers for Justice and the Ministers for Equality Affairs. The National Police Board will *inter alia* collect information on the extent of trafficking in women in Sweden, as well as between Sweden and other countries, including outside the EU, and will consider how such trafficking can be prevented and counteracted. It is to report regularly to the Government; so far two reports have been given.

Furthermore, a working group has been set up within the Government Offices consisting of representatives of the Ministry of Justice, the Ministry of Health and Social Welfare, the Foreign Ministry and the Ministry of Industry, Labour and Communication. The

working group will co-ordinate the efforts in the area of trafficking in human beings during the Swedish presidency of the European Union.

### **1.10 Female Genital Mutilation**

The term “genital mutilation” replaces that of “circumcision” in the law on Violence against Women (Government Bill 1997/98:55), this is to express the severe nature of the offence. For the same reason, fines have been removed from the scale of punishment. The scale has been made more rigorous by making imprisonment for at most four years the punishment for the normal form of the crime instead of the former two years. For the gross form of the crime, the minimum punishment is now two years instead of one year as before. Preparation and conspiracy to commit the offence together with neglecting to report or reveal female genital mutilation have also been made punishable offences. Furthermore, the scope of criminal responsibility has been extended to comprise also a person performing genital mutilation abroad, even if the country concerned does not prohibit such practices.

### **1.11 International Conventions**

Sweden has participated actively in the elaboration of the UN Declaration on Violence against Women and attaches great importance to its implementation.

## **2.0 Sentencing**

A Parliamentary Law Committee on Sexual Offences, which was established in June 1998 with the aim to review the provisions on sexual offences in the Penal Code and to consider whether the legislation needs to be made more stringent in some respects. The Committee will examine to what extent the offence of rape should focus on consent rather than force. It is furthermore required to undertake a study of the courts’ practice in the determination of punishment and of the legal reasoning employed to determine the penal value of a sexual offence.

### Crimes Committed Abroad

The Committee will also consider whether or not Sweden should give up the current dual criminality requirement for jurisdiction as far as sex crimes committed abroad against women and children are concerned. The Committee is to submit its final report to the Government by February 2001.

## **3.1 Support/Protection**

### Cooperation between Authorities

In December 1997, the Government charged certain authorities and administrations to undertake common tasks concerning violence against women. The aim is to give concrete expression to the authority's responsibility to take appropriate measures on issues

concerning violence against women. The authorities and administrations concerned are the Office of the Prosecutor-General and all prosecution administrations, the National Police Board and all police administrations, the National Council for Crime Prevention, the National Prison and Probation Administration, the Crime Victims Compensation and Support Authority, the National Board of Health and Welfare, the county councils and, in certain respects, the National Courts Administration. Each of these administrations is required to increase its efforts to prevent violence against women, draw up an action plan or policy document for its work on this question, engage in mutual collaboration with other administrations and with relevant voluntary organisations, follow international developments concerning violence against women, and report regularly to the Government on the steps taken.

In the spring of 2000 the National Board of Health and Welfare took the initiative of a firmer co-operation between authorities. The aim is to draw up an action programme for the authorities' measures and to work for an efficient usage of resources. The various authorities meet regularly.

#### Preventive measures

Effective crime prevention calls for a combination of measures at national, regional and local levels. Cooperation between authorities means more effective use of resources. The government charged certain public authorities to undertake common tasks. The authorities concerned were the Office of the Prosecutor-General and all the regional public prosecution offices; the National Police Board and all the police authorities; the National Council for Crime Prevention; the National Board of Health and Welfare; the county councils; and some sections of the National Courts Administration. The instructions were summarised under five headings:

- to increase efforts to prevent against women
- to draw up an action plan and policy document
- to cooperate with other authorities and relevant organisations
- to monitor international developments
- to report regularly to the government on measures taken

#### The Police Effort to Combat Violence Against Women

The National Police Board was charged with making an inventory of efforts made by the police concerning violence against women and reporting the results of the inventory to the Government. The inventory also includes an investigation of the extent to which correct and adequate information is provided for victims of crime. A sub-report was submitted in June 1999. The survey shows that in many parts of the country efforts are underway to change attitudes and improve the reception and treatment of women exposed to violence. These efforts aim to: shorten processing times for these matters, speed up decision-making, improve assessment of risk and degree of threat, coordinate local and

regional policies in matters concerning rehabilitation for all parties. It is also stated in the report that more time is needed for these efforts.

The National Police Board has also compiled a crime victim-handbook, which is to be used in police training.

The Committee on Child Abuse and Related Issues states in a preliminary report that many reports to the police of violence against women fail to mention that there were - children present. The Committee recommends, therefore, that national guidelines be laid down to ensure that a correct report reaches the social services from the police.

### Violence Against Women and Prostitution

The National Board of Health and Welfare has been charged with undertaking development work on questions concerning violence against women and prostitution. This work will seek to facilitate the expansion of competence and improvement of methods within the social and health care services. This task includes the initiation and support of collaborative projects, the dissemination of information and closely following international developments. For the above-mentioned tasks, the Board has been allocated extra funds for the period 1998-2000. After 2000, the tasks are to become part of the Board's routine work.

### Female Genital Mutilation

In 1998, the Swedish Government assigned to the Swedish National Board of Health and Welfare the task of launching a project aimed at combating female genital mutilation. The three-year project has been launched with the collection and evaluation of already existing professional knowledge and experience in the field. A reference group consisting of the police, prosecutors, schools, et cetera has been created and the next step will be to disseminate information.

### Violence Against Migrant Women

In early 1997, a hearing was organised with respect to violence against migrant women. It seems that these women face a higher risk of being subjected to violence than other women. Foreign women who come to Sweden on account of a link with a person domiciled in the country are, according to regulations on deferred examination of immigrant cases, generally granted a time-limited residence permit that becomes permanent when the relationship has lasted for two years. This is referred to as the two-year rule. Women who have come to Sweden due to a relationship with a man residing in this country and who have been assaulted by that same man often feel forced to remain in the relationship for at least two years for fear of expulsion. In February 1999, a Parliamentary Committee presented a report proposing measures directed at this phenomenon and in January 2000, the Government presented a Bill (1999/2000:43), which was adopted by the "Riksdag" in March 2000. The amendments came into force on 1 July 2000. In the Bill, the Government makes clear that inquiries as to the

seriousness of the relationship between an applicant for a residence permit and her partner who already lives in Sweden must be extended. If necessary, information about the person already residing in Sweden should be collected from the police records. If there is reason to believe that the applicant will be subjected to violence, the application for a residence permit should be rejected, whether or not the relationship appears serious. Furthermore, it should be possible to deviate from the two-year rule in cases where the relationship lasted for less than two years and grant extended residence permits if the applicant or the child of the applicant has been subjected to violence.

#### Improvement of the Official Crime Statistics

The National Council for Crime Prevention has been working on improving the official crime statistics. Previously, statistics contained, for example, no information on the sex of victims, only on the perpetrator of various crimes. Since the beginning of 2000 it is possible to discern the sex of perpetrator and victim, their age and relationship.

The Government has also charged the Office of the Prosecutor-General to present regular reports on the number of restraining orders issued and to make suggestions as to how such statistics can be co-ordinated with statistics on breaches of restraining orders.

Official crime statistics on reported offences can never give a complete picture of the scope of violence against women. Therefore, the Crime Victims Compensation and Support Authority has received the financial means for conducting a special research study, directed specifically at investigating the occurrence of non-reported violence against women, for an assessment of the true nature of this form of criminality and the resources necessary to halt it. The study will be completed at the beginning of 2001.

#### Improved Ways and Means of Supporting Women Victims

In the future, women victims of violence must receive greater empathy and better support from the professional groups with which they come into contact. This can be achieved if personnel receive training in matters concerning violence against women, such as the mechanisms behind gender-specific violence, how to prevent it and how to support women victims of violence. The National Police Board has therefore been assigned, in consultation with the National Courts Administration, the Prosecutor-General and the National Board of Health and Social Welfare, to carry out nation-wide training at central, regional and local levels for personnel within the criminal justice system and the social welfare and health care services. SEK 6.5 million was allocated in the fiscal budget to the training, 1.5 million of which has been used for training of judges and information to lay assessors.

The National Board of Forensic Medicine is at present making an effort, in co-operation with the Office of the Prosecutor-General and the National Police Board, to raise the quality of legal certificates. In the cities of Karlstad and Kalmar, doctors have received special training in issuing such certificates. The National Board of Forensic Medicine is

to investigate whether issue of legal certificates can be concentrated to a selected number of clinics in the country.

### National Centre for Battered Women

The National Centre for Battered Women was set up in 1994. The Government has contributed financially to setting up of the Centre, which was supposed to be a model for similar activities in other parts of the country. The aim of the Centre, which is available on a 24-hours-a-day basis, is to receive women who are victims of abuse, rape, et cetera and to contribute to better treatment of such patients within the health care system. In 1998, the Centre received funding of 3 million SEK, after which the Centre was supposed to find other sources of financing its activities. In addition, The Centre received 1 million SEK in 1999.

### Women's Emergency Shelters

There are presently 140 local women's emergency shelters and approximately 25 shelters for young women have been set up during the past years. They constitute a significant form of protection and help for women subjected to violence and their children. The shelters are organised in two national umbrella organisations. The national umbrella organisations receive annual organisational support via the state budget. The local shelters receive funding from the municipality in which they are located, but this support varies from municipality to municipality. They can also apply for state support for development work.

### Crime Victims Compensation and Support

The Government has decided that projects focusing on violence against women should be given priority when deciding on the distribution of funds from the Crime Victims' Compensation and Support Authority. In 1998, 32 projects highlighting violence against women were granted funds from the authority adding up to a total of SEK 3.2 million.

The fee to the Crime Victims' Compensation and Support Authority was raised in July 1999 from SEK 300 to 500 in order to increase the funding to non-governmental organisations, mainly to victim support schemes.

### Methods of Treatment for Men Sentenced for Violent Offences Against Women

The National Prison and Probation Administration was asked, in consultation with the National Board for Health and Social Welfare, to survey existing methods of treatment for men sentenced for violent offences against women. The survey was ready in spring 1999. In order to ascertain what methods are suitable and effective, the Government will initiate and fund evaluation of existing methods of treatment for men who commit violent offences against women. Consequently, the Government is arranging an international conference in December 2000 to find out if there are any international methods that can be used in Sweden.

The National Council for Crime Prevention was asked to make a study of the practical and technical conditions necessary for electronic monitoring of men who breach a restraining order. The Council submitted its report to the Government in March 1999. The increased risk of detection which such a form of monitoring implies can have a deterrent effect as well as providing greater security for the woman concerned. Electronic monitoring would also mean a limitation of the freedom of movement of the perpetrator, instead of, as is often the case today, the woman bearing the responsibility for reporting the breach to the police. However, the initiation of such a project is contingent on access to reliable technology and the possibility of carrying out the surveillance in a practical way. In its report, the Council concluded that the use of electronic monitoring in connection with restraining orders is feasible with the technology available today but that the monitoring does not offer fully reliable protection. The legal and organisational preconditions have to be judged carefully before testing such a monitoring system in practice. The issue is being processed within the Government Offices.

A Governmental Commission on Victims of Crime, which was charged with evaluating all measures taken regarding crime victims in the past ten years, presented its official report in 1998. The Government is to present a Bill to the "Riksdag" at the beginning of 2001 in which measures aimed at improving the situation for crime victims are proposed.

The Government has charged the Office of the Prosecutor-General, in co-operation with the National Police Board, with reviewing and improving the routines as regards cases on restraining orders. A working group has been set up. The group has submitted proposals concerning information- and quality assurance routines. The proposals are being further developed within the authorities.

In recent years, several men's organisations have been created in Sweden for the purpose of helping and supporting men in danger of committing or having committed violent crimes against women. Of these, emergency centres run by men for men, and a Male Network against Male Violence, may be mentioned. As a result of the Bill on Violence against women, the Government has allocated financial support (SEK 1.5 million) to these organisations for projects aiming at counteracting men's violence against women.

### Education and Debate

In order to stimulate increased knowledge and a broader debate on men and violence, the Government convened several conferences on the subject in 1997 and 1998. The aim has been to focus particularly on the role of men and men's responsibility with regard to violence against women.

It is especially important to reach out to young people on issues concerning violence against women. Funding (SEK 2 million) has therefore been granted to projects that relate to, and are initiated by, young people and their organisations on issues related to violence against women. In February 1999, five projects, which had been granted in total SEK 1 million to work in a preventive way against violence against women, presented

their work at a conference for adolescents and adults. The conference, which was arranged by the Minister for Gender Equality, aimed at highlighting the vulnerability of young people and the responsibility of adults to create positive role models for adolescents as regards sex.

Organisations working on behalf of immigrant women have received financial support for projects and other efforts in this field.

Organisations working on behalf of disabled women have also received financial support for projects and other efforts in this field.

#### National Council on Violence Against Women

The Government has, in year 2000, established a National Council on Violence Against Women. The Council is to have an advisory role concerning matters on violence against women. It is to be a forum where the Government could exchange experiences and ideas with representatives of organisations and researchers that are committed to these matters. The Minister for Gender Equality Affairs chairs the Council which consists of representatives of NGOs, popular movements, research-disciplines, social partners and representatives of the public sector concerned. The Council is established for a period of two years, and thereafter its activities are to be evaluated.

#### Website

The Government has set up a website on issues related to violence against women ([www.naring.regeringen.se/fragor/jamstalldhet](http://www.naring.regeringen.se/fragor/jamstalldhet)). The website is administered by the Division for Gender Equality at the Ministry of Industry, Employment and Communications.

## SWITZERLAND

---

The information concerning legislation on violence is drawn from the report “Des acquis – mais peu de changements? La situation des femmes en Suisse” (Great achievements – small changes. The situation of women in Switzerland) published by the Federal Commission for Women’s Issues. The information was supplemented by the Federal Office for Equality between Women and Men in November 2000.

### **Introduction**

The subject of violence against women was generally taboo until the feminist movement put a name to it in the 1970s. The first studies concerned ill-treatment by spouses. Subsequent work by the feminist movement gradually shed light on other forms of violence: rape, sexual abuse of children, sexual harassment at work and sexual assault during medical treatment; pornography, prostitution and sexist advertising were also defined as violence against women.

As demonstrated by one of the first studies in the field (“*Partir ne suffit plus*” (Leaving is not enough), published by Mr Pletscher in 1977), men frequently resort to violence and women feel guilty; violence against women takes place in all social classes and for men it is a way of exercising power and control in a patriarchal society.

In the mid-1970s, the feminist movement set up organisations to help battered women and their children, such as refuges and crisis centres for rape victims, and launched education campaigns. To begin with, women’s organisations were alone in their fight against male violence. It was not until 1987 that the trade unions acknowledged the problem of sexual harassment at work.

In 1982 a report by the Federal Commission for Women’s Issues, entitled “Violence against Women in Switzerland”, stated that there were no reliable statistics concerning the frequency of violence against women. It called for a national enquiry but there was no response until the early 1990s when a number of research projects were commissioned. In the 1990s there was a slight increase in the number of grants allocated to the running and setting up of women’s refuges. Rape crisis centres began to offer more specialist services and self-defence courses mushroomed. The fact that these services are publicly funded means that the authorities and the general public are obliged to acknowledge the problem; all requests for assistance now give rise to debates in the cantons on the issue of violence against women. Nevertheless, there is a great risk that, by providing such services, the wider aim of creating a society in which there is no violence against women will be forgotten. The need for prevention must be recognised.

Despite twenty years’ work by the feminist movement to make people aware of violence against women, prejudices and myths are being dispelled only very slowly; there is still a widespread belief that women are, by nature, masochists and enjoy violence. Violent

men are always considered to be sadists, who react impulsively to their sexual urges, rather than ordinary men. Men are still reluctant to accept responsibility for the violence they perpetrate and there are very few services offering help to violent men. The reaction to the misleading assertion that “there are also battered men” has been far more positive.

## 1. Legislation on violence against women

### The law on assistance for victims

A law providing for assistance for victims came into force in 1993. Although providing assistance to women who are victims of violence was not its main purpose, it has made it easier for them to assert their rights. This law forms the basis of a comprehensive policy for providing care, improving legal procedures and ensuring that victims receive compensation.

### Advisory services

The cantons are obliged to set up advisory services, which provide medical, social, material and legal assistance on a 24-hour basis; these services may be delegated to existing centres. The women concerned are entitled to immediate assistance in an advisory centre of their choice (help with finding temporary accommodation, assistance in paying the down-payment on hospital charges, etc). Women may also ask for therapy, legal advice and support in legal proceedings; if the victim can afford to cover the costs herself, then she must do so.

### Improvements in police enquiries and legal procedures

- victims are entitled to apply for compensation; compensation is, however, not granted unless formally requested;
- a person of their choice may accompany them to all hearings;
- they may ask to be heard by a woman;
- they may refuse to answer personal questions (for example, concerning their past sex life);
- they are only confronted with the perpetrator of the violence during the hearing if the latter’s right to an *inter partes* hearing so requires (some cantons, for example Zurich, have extended this provision to include the possibility that the woman may refuse to confront her assailant);
- they may submit civil claims in criminal proceedings (for example for damages and compensation for non-pecuniary damage);
- they may be represented by a lawyer whose fees may, in some cantons, be paid by the court, irrespective of the victim’s income;
- they may ask for the proceedings to be held *in camera*.

### Damages and compensation for non-pecuniary damage

The law on the financial assistance that the cantons must give to victims stipulates that women with a very low income must receive full compensation for the injury suffered. Irrespective of the victim's income, the cantonal victim aid centre must grant her financial compensation for the injury suffered, if it is serious and the circumstances justify such compensation. This system makes up, to a certain extent, for the inflexibility of the system of compensation depending on income. Once the compensation has been paid, the victim aid centre endeavours to get it back from the offender.

Women who are victims of violence must, however, show great perseverance in asserting their rights. These innovatory measures have been neither uniformly applied nor uniformly integrated into the courts' daily practice. The cantons are responsible for the application of this law and there is every reason to believe that the way in which it is applied varies considerably from one canton to the next. It may well take several years before these protective measures are effectively applied throughout Switzerland, particularly in view of budgetary restrictions.

#### **1.2 Ill-treatment by spouses**

In 1997 the Swiss Conference of Gender Equality Delegates launched a wide-ranging national information campaign to draw attention to the problem of violence in the home, entitled "Putting an end to violence against women in the home". The focus of this campaign was on the very widespread violence perpetrated by men against women, in both married and unmarried couples. A large number of regional and local events took place during the campaign and a telephone hotline provided information and advice to the public, 7 days a week, in three languages.

Projects have been set up in several cantons to counter domestic violence, protect victims and bring their assailants to court. The project groups are generally made up of male and female representatives of the police, the courts, the social welfare authorities, migrants' organisations, services providing advice and assistance to women and equality offices.

#### **1.3 Rape/Sexual abuse**

Rape and compulsory sex violate women's sexual integrity. Since 1991 and the amendments to the Criminal Code provisions on sex offences, marital rape has been considered a criminal offence. This provision came into force in 1992. Unlike complaints concerning rape in other circumstances, proceedings on grounds of marital rape are only instituted at the victim's request. This situation is the result of a compromise agreed on by Parliament, which perpetuates inequality in the treatment of married and unmarried women, but is nevertheless a first step towards the full protection of all women against any violation of their sexual integrity.

The penalties for certain offences have been substantially reduced. Feminists are opposed to this as they consider it incompatible with the improvement of the legal protection of sexual self-determination.

#### **1.4 Sexual exploitation of children/Incest**

In Switzerland, children come of age sexually at 16.

Since 1997 the prescription period for sexual abuse of children has been 10 years (Swiss Criminal Code, Article 187). The previous period of 5 years was severely criticised. There have been several demands that this period should be prolonged until the victim comes of age.

The new provisions of the Criminal Code concerning sex offences no longer consider “juvenile sex” to be an offence, stating that to have sexual relations with a minor of under sixteen years of age is not a punishable offence provided that the difference in age between the two parties is no more than three years.

Under the new legislation on sex offences, homosexual relations are dealt with in the same way as heterosexual relations.

Self-help groups of victims of abuse and women working in women’s welfare services have raised the problem of sexual exploitation and this has led to the setting up of counselling services and of LIMITA, the Swiss association for the prevention of sexual exploitation. This organisation, like other specialist groups, objects to the term “sexual abuse” because it implies that there is a concept of “sexual use”. It uses the following definition of sexual exploitation:

*“Sexual exploitation means that an adult abuses his/her authority and takes advantage of a child’s inexperience, trust and dependence to satisfy his/her own sexual needs. It is mainly characterised by the obligation on the child to keep it secret, which condemns the child to silence and renders him/her powerless and completely helpless.”*

A refuge for young girls and women between fourteen and twenty-one years of age who are victims of sexual exploitation was opened in Zurich in 1994. The refuge is a place where they can rest and find protection, medical care and advice. A travelling exhibition entitled “False security: the sexual exploitation of girls” passed through various towns in the French and German-speaking parts of Switzerland. It has provided valuable information and encouraged the setting up of support networks.

#### **1.5 Sexual harassment**

According to the surveys commissioned in 1993 by the Federal Office for Equality between Women and Men and the Geneva Office for Equal Rights for Men and Women, 59% of the women interviewed said they had been sexually harassed in their workplace.

Article 4 of the law on equality between women and men, which came into force on 1 July 1996, explicitly stipulates that sexual harassment in the workplace is a form of discrimination and, as such, is illegal. Employers who tolerate this type of harassment are adopting a discriminatory attitude. They are obliged by law to prevent such behaviour and to ensure that there is no sexual harassment on their premises. If not, they may be sentenced to pay compensation to the employee concerned, unless they can prove that they have taken the steps that experience has proven to be appropriate to the circumstances and that can be reasonably expected, with a view to preventing or putting a stop to such practices.

## **1.7 Pornography**

Advertising continues to be sexist; there is an increasing amount of violence against women in television serials and detective films; and the growth of the pornography business and the increasingly frequent use of children in pornographic productions are alarming.

The new legislation on sex offences makes a distinction between hard and soft pornography. Obscene publications are no longer forbidden. Hard pornography, ie publications concerning sexual activities involving children, animals, human excrement or entailing violence are strictly illegal. Other pornographic representations are only considered a punishable offence if shown to children or to non-consenting adults.

However, the distinction between hard and soft pornography ignores the fact that both of these forms of pornography are equally degrading for women. By reducing women to the status of goods or objects, sexist representations, which can be found in both forms of pornography, are degrading and humiliating.

## **1.8 Prostitution**

A study by the Federal Office of Public Health in 1988 showed that between 200,000 and 280,000 men, ie 10 to 15% of the male population aged between 20 and 64, had had recourse to the services of a prostitute at least once.

Prostitution is legal in Switzerland but can only be practised under certain conditions and is forbidden in some cantons. In big cities, soliciting is authorised in certain districts far from the city centre and residential areas. There are no laws prohibiting men from seeking the services of prostitutes. Women who solicit in authorised areas must register with the police vice squad. The police claim that this measure is designed to protect the prostitutes but Xenia (one of the advisory services for women working in connection with prostitution) believes that it creates an obstacle for women who wish to give up prostitution.

Prostitutes are stigmatised and unfairly treated: the tax authorities consider them to be self-employed workers and therefore surcharge them, with the result that many prostitutes have debts with the tax authorities; nor can they obtain sickness, unemployment or old-

age insurance. Many of them depend on procurers, who oblige them to hand over their earnings. They consume fairly large amounts of alcohol and medicine and are often compulsive buyers. Prostitutes do not, however, take any risks where STDs are concerned.

A distinction is made between conventional prostitution and prostitution for the purpose of obtaining drugs, in that the latter arises from a dependency on drugs. Drug-addicted prostitutes usually work outside authorised areas; they get into clients' cars and are therefore completely at their mercy, thus running the risk of being raped, beaten or robbed. As they are heavily dependent on drugs, they are often exploited by men who insist on having sexual relations without condoms. As drug-related and soliciting activities are illegal, they rarely report violent clients to the police. In Zurich there is a mobile refuge, the "Flora Dora" bus that tours the city from Tuesday to Sunday, from 9 pm to 1 am. It seeks out drug-addicted prostitutes, outside the authorised areas, and provides them with condoms, advice, etc. As two-thirds of them regularly use these services, they gradually come to trust the staff working on the bus, who gather information, among other things, on violent customers, sometimes making it possible for the police to identify and arrest them.

#### Trafficking in women

Since the development of tourism, in particular sex tourism, in the third world, trafficking in women from third world and eastern European countries has become a prosperous activity in Switzerland. Swiss immigration laws are very restrictive as regards the possibility of obtaining a work permit. There are, however, exceptions to this rule:

- it is possible to obtain a residence permit by marrying a Swiss national;
- "permits for cabaret dancers" enable women to work for a maximum of eight months a year as strip-teasers;
- it is possible to enter Switzerland with a tourist visa and to work there illegally.

All of these situations lead to widespread physical, psychological and sexual exploitation.

The FIZ (*Fraueninformationszentrum*, an information centre for women from the third world) was set up in 1985. This is a round-the-clock advisory service that conducts information campaigns and takes political action in this field. The growing trend over the past few years of bringing in women from eastern European countries to "feed" the prostitution market in Switzerland has given rise to intense debate on the trafficking of women.

## “THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA”

---

The information was provided by the Ministry of Foreign Affairs of the Republic of Macedonia in November 2000.

### 1.1. Domestic Violence

In the Penal Code of the Republic of Macedonia there is no a separate criminal offence Domestic Violence.

In the period from 1996 until the end of September 2000, the following cases in which women victims of the criminal offence *murder* were registered:

1996 - 7 women were victims of murder, in 4 of these cases the victim and the offender were in a partnership relation

1997 -

14 women were victims of murder, in 5 of these cases the victim and the offender were in a partnership relation

1998 -

3 women were victims of murder, all 3 victims were in a partnership relation with the offender

1999 -

11 women were victims of murder, in 2 of these cases the victim and the offender were in a partnership relation

2000 (first 9 months) - 7 women were victims of murder, in 4 of these cases the victim and the offender were in a partnership relation.

### 1.2. Rape/Sexual assault

The criminal offence Rape is provided for in Art. 186 of the Penal Code of the Republic of Macedonia:

*(1) “A person who by the use of force or threat to directly attack upon the life or body of another or upon the life or body of someone close to that person, forces him to intercourse, shall be punished with imprisonment of one to ten years.”“*

In accordance with Article 314 of the Law on Criminal Procedure, the presentation of evidence encompasses all facts which the court considers to be relevant for lawful adjudication. Evidence are presented in an order which is determined by the Chairman of the Chamber. The evidence are heard upon a proposal of the parties and

other participants in the proceedings that are allowed to propose evidence, as well as on the initiative of the court. The court Chamber may without a proposal by the parties, and sometimes even contrary to their proposal, to broaden the scope of evidence on certain circumstances considered as relevant in a particular case. During the trial, the chamber may change its previous decision for hearing of evidence. In such cases the court is obliged to give the reasons for such change of the decision.

In procedure for determining evidence, only those facts relevant for passing a judgment are established. Therefore, it is a duty of the court out of the variety of facts raised by the parties, to select those which are decisive for the case and to determine which means of evidence will be used for the establishment of those facts. By giving this authorization to the court, the Law has not limited the initiative of the parties and the victim, who may, until the completion of the trial, raise new facts and propose new evidence. The principle of free assessment of evidence, as one of the basis principles of the criminal procedure is provided for in Article 15 of the Law on Criminal Procedure, which says: "The right of the court and state bodies which participate in the criminal procedure to evaluate existence or not existence of facts is not bound nor limited by any special formal rules of evidence. Evidence illegally obtained or obtained by violation of freedoms and rights established by the Constitution, the Code and ratified international treaties, as well as evidence derived from them cannot be used and a court decision cannot be based on them". Contrary to the theory of formal rules of evidence, the principle of free assessment of evidence recognized by the Law on Criminal Procedure, although releases the court and other state bodies from any formal rules in assessment of the value of the evidence, does not excludes the duty of the court and other bodies that participate in the procedure to state the reasons for acceptance or for refusal of certain evidence.

In the Republic of Macedonia, the courts of first instance are competent to deal with cases of rape. The appellate courts as second instance courts decide on appeals in the cases of rape. In accordance with the Law on Criminal Procedure, the Supreme Court of the Republic of Macedonia decides on extraordinary legal remedies. The procedure is conducted on the basis of the provisions of the Constitution of the Republic of Macedonia, the Law on Criminal Procedure, the Penal Code of the Republic of Macedonia, as well as with ratified international conventions in this field.

In accordance with the Penal Code and the Law on Criminal procedure, in cases of rape, the offender is punished with the penalty of imprisonment. In addition, under the conditions determined with the Penal Code, against the offender, the following security measures may be pronounced: 1. Compulsory psychiatric treatment in medical institution; 2. Compulsory psychiatric treatment on freedom; 3. Compulsory treatment of alcohol and drug addicts; 4. Prohibition on the conduct of a profession, activity or a duty; 5. Prohibition on driving a motor vehicle; 6. Confiscation of objects; and 7. Expulsion of a foreigner from the country. These security measures are aimed at elimination of conditions that may influence the offender to commit criminal offences in future.

### Rape and Sexual Assault in marriage

Art. 186 on rape of the Criminal Code, Crimes against sexual freedom and sexual morality states:

(5) “If the crime from items 1, 3 and 4 is committed against a person with whom the offender lives in marital or permanent extra-marital community, the prosecution is undertaken upon private suit.”

The rape presupposes an absence of consent on the side of the victim and resistance to the sexual assault. The resistance of the victim must be serious and lasting, therefore this criminal offence does not exist if the victim does not oppose seriously to the offender's intentions, if he/she does not give all his/hers efforts to prevent the offender from committing the offence. Victim's resistance is assessed in relation with the manner of coercion; if the force or threat are of such intensity that they prevent any kind of resistance by the victim, the victim may not be expected to use all physical potential against the offender (the cases where the victim is paralysed with fear, in dizziness). As to the threat as a form of coercion, it is of decisive importance that the victim, depending on the circumstances of the case, could reasonable consider that the threat is serious and that the offender is ready to carry out the threat. The resistance of the victim must be lasting, this meaning that the additional, subsequent consent of the victim to the sexual intercourse, excludes the existence of rape.

### Sexual harassment

The definition of the criminal offence Rape does not contain all the aspects of sexual violence. The criminal offence *Sexual Assault by Abuse of a Position* is provided for in Art. 189 of the Penal Code of the Republic of Macedonia:

(1) *“A person who by misusing his position induces another, who is subordinated or dependent in relation to him, to intercourse or to some other sexual, act shall be punished with imprisonment of three months to three years.”*

(2) *“A teacher, educator, adoptive parent, guardian, stepfather, doctor or some other person who by misusing his position commits statutory rape or some other sexual act upon a juvenile older than fourteen years of age, who was entrusted to him for study, education, custody or care, shall be punished with imprisonment of one to five years.”*

### **1.3. Child Sexual Abuse/Incest**

A person is considered as adult when he/she reaches 18 years of age. The Penal Code of the Republic of Macedonia provides for the following incriminations:

#### Sexual attack upon a child

Art. 188

*“A person who commits statutory rape or some other sexual act upon a child shall be punished with imprisonment of six months to five years.”*

#### Statutory rape with misuse of position

Art. 189

*(1) “A person who by misusing his position induces another, who is subordinated or dependent in relation to him, to intercourse or to some other sexual, act shall be punished with imprisonment of three months to three years.”*

*(2) “A teacher, educator, adoptive parent, guardian, stepfather, doctor or some other person who by misusing his position commits statutory rape or some other sexual act upon a juvenile older than fourteen years of age, who was entrusted to him for study, education, custody or care, shall be punished with imprisonment of one to five years.”*

#### Satisfying sexual passions in front of another

Art. 190

*“A person who performs a sexual act in front of a child, or who induces a child to perform such an act in front of him or in front of another, shall be punished with a fine, or with imprisonment of up to three years.”*

#### Procuring and enabling sexual acts

Art. 192

*(1) “A person who procures a juvenile to sexual acts shall be punished with imprisonment of three months to five years.”*

*(2) “A person who enables the performing of sexual acts with a juvenile shall be punished with imprisonment of three months to three years.”*

#### Showing pornographic materials to a child

Art. 193

*(1) “A person who sells, shows or by public presentation in some other way makes available pictures, audio-visual or other objects with a pornographic*

*content to a child, or shows him a pornographic performance, shall be punished with a fine, or with imprisonment of up to one year.”*

### Incest

Art. 194

*(1) “A person who commits statutory rape upon a blood relation of the first line or with a brother, respectively sister, shall be punished with a fine, or with imprisonment of up to one year.”*

*(2) “A blood relation in the first line or a brother, respectively sister, who commits statutory rape or some other sexual act upon a child, shall be punished with imprisonment of at least three years.”*

In the procedure of minor victims protection, the provisions of the UN Convention for the Rights of the Child ratified by the Republic of Macedonia are applied.

### **1.4. Prostitution**

The criminal offence *Mediation in Prostitution* is provided for in Art. 191 of the Penal Code of the Republic of Macedonia:

*(1) “A person who recruits, instigates, stimulates or entices another to prostitution, or a person who in any kind of way participates in handing over another to someone for performing prostitution, shall be punished with imprisonment of six months to five years.”*

*(2) “A person who because of profit enables another to use sexual services shall be punished with a fine, or with imprisonment of up to one year.”*

*(3) “A person who because of profit, by using force or by serious threat to use force, forces or by deceit induces another to give sexual services, shall be punished with imprisonment of six months to five years.”*

*(4) “If the crime from items 1, 2 and 3 is committed with a juvenile, the offender shall be punished with imprisonment of six months to five years.”*

*(5) “If the crime from items 1, 2 and 3 is committed with a child, the offender shall be punished with imprisonment of one to five years.”*

*(6) “A person who organizes the crimes from items 1 to 5 shall be punished with imprisonment of one to ten years.”*

For the purpose of combating prostitution, the Ministry of Internal Affairs of the Republic of Macedonia regularly conducts police controls and actions in bars and other places for entertainment in which according to the information of the police, the prostitution takes place. In these actions, many women and young girls from foreign countries working illegally in these objects are found. In collecting evidence for prosecution of the offence *Mediation in prostitution*, the police encounter many difficulties. After the actions, foreign citizens are deported and they are pronounced a

measure “Prohibition for entry in the Republic of Macedonia”. However, the owners of places for entertainment very soon manage to find new girls and women for prostitution.

### 1.5. Pornography

The criminal offence *Showing Pornographic Materials to a Child* is provided for in Art. 193 of the Criminal Code of the Republic of Macedonia, Criminal Offences against Sexual Liberty and Sexual Morality:

#### Art. 193

(1) *“A person who sells, shows or by public presentation in some other way makes available pictures, audio-visual or other objects with a pornographic content to a child, or shows him a pornographic performance, shall be punished with a fine, or with imprisonment of up to one year.”*

(2) *“If the crime was performed through the public media, the offender shall be punished with a fine, or with imprisonment of up to three years.”*

(3) *“The punishment from item 2 shall be applied to a person who abuses a juvenile in the production of audio-visual pictures or other objects with a pornographic content or for pornographic presentations.”*

### 1.6. International Conventions

On the basis of the Decision of the government of the Republic of Macedonia in 1993, the Republic of Macedonia as a Member State of the United Nation, acceded, inter alia, to the following international human rights documents:

- Convention on the Elimination of All Forms of Discrimination against Women, adopted on 18 December 1979;
- Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, adopted on 21 March 1956;
- Convention on the Elimination of Traffic in Women and Children, adopted on 30 September 1921 and the Protocol thereto, adopted on 12 November 1947;
- International Covenant on Civil and Political Rights, adopted on 19 December 1966.
- International Covenant on Economic, Social and Cultural Rights, adopted on 19 December 1966.

In accordance with article 118 of the Constitution of the Republic of Macedonia, the international agreements ratified in accordance with the Constitution are part of the domestic legal order and cannot be changed by law.

### **1.7. Protection of pregnancy/ pregnant women**

The criminal offence *Unlawful Interruption of Pregnancy* is provided for in Art. 129 of the Penal Code of the Republic of Macedonia, Chapter XIV – Criminal Offences against Life and Body:

(1) *“A person who in contrary to regulations about the interruption of a pregnancy, with the consent from a pregnant woman performs, starts to perform or helps in performing an interruption of a pregnancy, shall be punished with imprisonment of three months to three years.”*

(2) *“A person who is engaged in performing the crime from item 1 shall be punished with imprisonment of one to five years.”*

(3) *“A person who, without the consent from a pregnant woman, performs or starts to perform an interruption of a pregnancy shall be punished with imprisonment of one to five years.”*

(4) *“If because of the crime from items 1, 2 and 3, a major deterioration of the health or the death of the pregnant woman sets in, the offender shall be punished for the crime from item 1 with imprisonment of six months to five years, and for the crime from items 2 and 3, with imprisonment of at least one year.”*

### **Support/Protection**

There are no specific protection measures for women in the Right for Maintenance between Spouses of the Family Law of the Republic of Macedonia.

## TURKEY

---

Information provided by "MOR ÇATI" (The Foundation for Women's Solidarity) and the General Directorate on the Status and Problems of Women.

### 1.2 Domestic Violence

The family is built on mutual consent between the spouses and is the smallest unit of individuals that forms the society. As such, the formation of the family and its continued existence have a direct impact on the creation of a society composed of healthy and successful individuals who will lead their society into the years to come.

Domestic violence scars individuals physically and psychologically. This, in turn, limits the opportunities for individuals to attain social, political, economic and legal equity. The damage caused by domestic violence destroys the self-esteem of its victims, and their spirit for human enterprise and values.

In Turkey, as in the rest of the world, it is primarily women and children who are most affected by domestic violence. A large number of women face domestic violence, which damage the family institution and consequently the social fabric.

The family has therefore been placed under constitutional protection in order to forestall such negative social developments. Article 41 of the Constitution makes special provisions for the protection of the family:

*" The family is the foundation of society. The State shall take the necessary measures and establish the necessary organisation for the peace and well-being of the family and in particular for the protection of the mother and the children."*

The Council's meeting which convened representatives of the judiciary branch, women's organisations and the Ministries of State and Justice ascertained that women's rights in Turkey are aggrieved. Consequently, a unanimous decision was taken for urgent legislative action in this field.

The General Directorate on the Status and Problems of Women (affiliated to the State Ministry responsible for Women and the Family), prepared in co-operation with the Ministry of Justice the draft bill "*Protection of the Family*", for submission to the Council of Ministers.

The Council of Ministers approved the draft bill, which thereafter was discussed in the relevant parliamentary commissions of the Grand National Assembly and then conveyed

to the General Council of the Grand Assembly. The bill was promulgated as law by the General Council and published in the Official Gazette of 17 January 1998.

The *Law for the Protection of the Family* has introduced important measures for the protection of women and children against domestic violence. New measures have been taken for the prevention of the disintegration of the family as a social unit and for the protection of family members against violence and ill-treatment. Thus, it has become possible to apply intermediary measures or punitive action, instead of filing for divorce to resolve problems that arise within the family. This law is expected to contribute significantly to the reduction of domestic violence in Turkey.

### Research on Domestic Violence in Turkey

In 1987, PAIR reported that 25% of women in Turkey were subjected to violence. In 1994, ZED NEILSON reported that 34% of married men admitted that they assaulted their spouses.

### Reported cases of Domestic Violence<sup>4</sup>

Year	Offences
1991	469
1992	481
1993	513

### Legislation

There is no specific domestic violence legislation. However, in January 1998, the *Law of the Protection of the Family* was enacted:

#### Article 1

*In case where either of the spouses, or any of the children, or any of the family members who reside in the shared home, notify that they have been subjected to domestic violence, or when the Chief Public Prosecutor notifies thereof, the Civil Court of Peace, considering the content of the matter, can of its own motion rule for one or several of the following measures, or similar measures as it deems appropriate.*

#### *The Spouse at fault:*

- a) *Shall not engage in any behaviour that may intimidate or that may be inclined towards violence against the spouse, or the children, or the family members that reside in the shared home.*
- b) *Shall be dismissed from the shared home. The shared home shall be appropriated for the other spouse and the children, and the spouse at fault shall be banned from*

---

<sup>4</sup> Source : Ministry of Justice

*approaching the shared home where the spouse and the children reside, and the workplace of the spouse.*

- c) Shall not damage the belongings of the other spouse, or the children, or the family members that reside in the shared home.*
- d) Shall not harass the other spouse, the children or the family members who reside in the shared home, through the use of communication devices.*
- e) Shall hand over any weapon or any device of like nature to the law enforcement authorities.*
- f) Shall not come into or near the shared home under the influence of alcohol or narcotics and shall not use any such substances within the confines of the shared home.*

*The period provided for the application of the above ruling shall not exceed six months. The spouse at fault shall be warned that non-compliance with the measures ruled in the decision shall result in arrest or punishment restricting personal liberty.*

*The judge shall rule for the alimony in consideration of the life standards of the aggrieved.*

Domestic violence is classified as “violence against the person”. In addition, there are two more articles:

#### Article 477

*A person who abuses the right of correction or who disciplines a person in his care, and causes harm or endangers the health of the person, is sentenced to up to 18 months of imprisonment.*

#### Article 478

*A person who maltreats a child under the age of 12 years living with the family, or any other member of the family; is sentenced to up to 30 months of imprisonment.*

*A person who maltreats a person related by blood or by marriage in ascending or descending line, is sentenced to 3 months to 3 years of imprisonment.*

Where the maltreatment is against the husband or wife of the offender, legal proceedings shall be initiated upon the victim's complaint. If the victim is a minor and unmarried, the parents or the guardians may also file a complaint.

Rape in marriage is not a crime.

It is thought that women in Turkey who have experienced domestic violence do not obtain justice or redress from the law. Many women do not file complaints since most women are not familiar with any authority apart from the police to complain to. Women do not receive proper attention from the police, who have not made any changes in policy and practice over the last 10 years. The police do not immediately record domestic violence complaints

against husbands as “assault”, but try to persuade women to abandon such complaints out of respect for traditional values. It is easier and less time-consuming to make a complaint to the Public Prosecutor, but many women are not familiar with this provision. However, in either case, the legal procedures are lengthy, which has negative effects on the numbers of complaints. During the process the victim can be subjected to threats and recurrence.

Turkish culture considers domestic violence as a private matter and is very forgiving of violent husbands. However, the concept of "women's rights as human rights" is gaining in importance and public awareness is increasing.

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

Rape and sexual assault are categorised as crimes against decency and rules of the family: "Crimes committed against social harmony and general morals". In 1990 the article which provided that the sentence was reduced by one third if the victim was a prostitute, was annulled.

#### Legal Definition of Rape

*A person who rapes a person over the age of 15 years by using force, violence or threats, or who rapes a person who, because of a physical or mental handicap or other, was not in a position to resist the offence, is sentenced to not less than 7 years of imprisonment.*

#### Other Sexual Offences

Other forms of penetration are sanctioned with 3 to 5 years of imprisonment.

A person who abducts or detains a woman who has reached the age of majority is sentenced to 3 to 10 years of imprisonment. The minimum sentence is 7 years if the woman is married.

Although the legal system is an important institution to compensate losses for victims, few victims report offences because of social values and difficulties in the official procedure.

#### Law Enforcement

The increased level of education for the police is expected to have a positive impact on how the police receive women facing violence. The Ministry of State responsible for women has agreed on the necessity to establish units where specially trained civil policewomen, lawyers, psychologists and doctors work together. This is an important part of the Ministry's programme on violence against women.

As a result of activity by the “Women's Movement”, the rate of reported cases has recently increased.

## 1.4 Child Sexual Abuse/Incest

### Legal Definition

A person who rapes a child under the age of 15 years is sentenced to not less than 5 years of imprisonment.

Aggravating circumstances which increase the sanction to a minimum of 10 years of imprisonment:

- Use of force, violence or threats against a child;
- Assault of a mentally retarded child incapable of resistance;
- Use of fraud.

Penetration of a child under the age of 15 years is sanctioned with 2 to 4 years of imprisonment. The penalty is increased to 3 to 5 years of imprisonment if any of the aggravating circumstances described above exist.

Abduction or detention of a minor is sanctioned with 5 to 10 years of imprisonment. The sanction is 6 months to 3 years of imprisonment if no force, violence, threat or fraud was used, or if the minor consented to the offence.

Incest is not defined in the Penal Code, but it is an offence (rape/sexual assault) by tradition taken very seriously. NGOs seek to create a public opinion against the lack of legislation on the issue.

## 1.5 Sexual Harassment

### Legal Definitions

Sexual harassment may fall within the provisions of the criminal laws, but there is no specific legal framework. There is a general lack of awareness on the issue and women do not get redress or justice from the law.

## 1.8 Prostitution

### Legal Definitions

*Whoever entices and incites a minor under the age of 15 to prostitution and facilitates the ways thereof, is sentenced to not less than 2 years of imprisonment and is ordered to pay a fine.*

*If the act of enticement is perpetrated by an ascendant, a sister or brother, an adopter, a natural or appointed guardian, a teacher or tutor or a servant of the minor, or by another person authorised to supervise the minor, the perpetrator shall be imprisoned for not less than 3 years.*

*If the person enticed is between 15 and 21 years old, the punishment for the perpetrator is 6 months to 2 years. If the perpetrator is a trusted person as above, the sentence is not less than 2 years of imprisonment.*

*If the victim is over the age of 21 years and has been enticed by her husband, ascendant, brother or sister, the perpetrator is sentenced to 6 month to 2 years of imprisonment.*

### Trafficking in Human Beings

Figures for trafficking in women and girls<sup>5</sup>:

Year	Offences
1991	916
1992	870
1993	706

## 3.1 Support/Protection

### Domestic Violence

“MOR ÇATI”, based in Istanbul, is an autonomous NGO which provides support to women experiencing domestic violence. Some women have been empowered to say "no" to violence. “MOR ÇATI” strengthens solidarity amongst women against domestic violence through the "say no" campaign which challenges the cultural acceptance of violence against women.

Free legal consultations and psychological guidance services have been started for women, some by government services and some by NGOs. In addition, individual professional women from local administrations and women's organisations support these services and volunteer their time to work with women experiencing violence. Shelters for women are opening, but at present there are very few.

Seminars and conferences have been organised on the theme “women's rights are human rights”, but governmental funding for prevention work is needed. Ensuring equality within the family is a basic task of governments in democratic societies.

### Rape/Sexual Assault

Because of lack of awareness of the problem of violence against women, there are very few support services. However, the municipal council in Ankara is planning to open a “Women's Centre” to provide women psychological and legal help.

---

<sup>5</sup> Research studies: Forced Prostitution in Turkey (1993) Anti-Slavery International, England.

Free legal help and psychological counselling, recently started for victims, are provided by governmental institutions, NGOs and individual professional women volunteers.

Comprehensive research on women, violence and the media is being conducted at Ankara University. Seminars and conferences have been organised, and an empirical prevalence study on violence against women is to be carried out.

#### Child Sexual Abuse/Incest

Although there is not a specific organisation, the State Ministry responsible for women, local administrations, NGOs give support to women and girls. A limited number of shelters and guest houses have been provided. These organisations also offer legal advice, psychological counselling and self confidence training.

“MOR ÇATI” reported success with a publicity action aiming to threaten fathers. The action resulted in saving of 3 out of 4 girls.

### **3.10 Proposed Reforms**

#### Necessary Reforms to Combat Domestic Violence

- A comprehensive and extensive education programmes;
- A comprehensive database;
- More NGO support for women experiencing domestic violence;
- Launch an awareness programme in the mass media with responsible and sensitive coverage of domestic violence;
- More and better research studies;
- Legal reforms;
- General improvement of education;
- Perpetrators often have a low level of education; education must challenge, not perpetuate, discrimination against women and girls;
- Create an increased number of shelters so that women do not remain trapped in their homes;
- Economic dependency of women is linked with domestic violence; the government needs therefore to take measures to increase the employment of women and integrate women into the economic life of Turkey;
- Establish preventive educational programmes, including family education programmes.

#### Necessary Reforms to Combat Sexual Assault/Rape

- A governmental prevention programme;
- Launch awareness raising campaigns to put an end to women’s feelings of guilt;
- Start rape crisis help lines;
- Training for professionals;
- Health care programmes;

- Sex education in schools;
- Law reform regarding rape and sexual assault;
- Sentence sexual harassment as a sex crime.

#### Necessary Reforms to Combat Sexual Harassment

- Preventive programmes, e.g. panels, conferences and seminars financed by the government;
- A new legal framework;
- Awareness raising programmes.

#### Necessary Reforms to Combat Trafficking in Human Beings

- Coordination between NGOs and other related institutions for the elimination of trafficking in human beings;
- Encouragement of, and support to women working in brothels to obtain their social and economic rights;
- Law reforms and strict penalties as preventive policies;
- Economic and social arrangements for economic sufficiency; the presence of trafficking is an indication of the inequality between women and men;
- Training programmes to raise public and institutional awareness.

## UKRAINE

---

The information is taken from “Gender Analysis of Ukrainian Society” presented by the “Gender in Development Programme”. The information was provided by the Department for Cultural and Humanitarian Co-operation, in December 2000.

### **Introduction**

In Ukraine, the problem of violence against women is extremely pressing. Statistics in recent years have been unfavourable; in only one year (1997) 1,510 violations were registered in Ukraine. At the same time, lawyers claim that law-enforcement bodies register only a small percentage of all cases of assault. In general, violations against women and girls, especially domestic violence, sexual and psychological abuse, remains “clandestine”.

### **1.2 Domestic violence**

Because of the feeling of shame that follows any kind of domestic violence and due to certain traditions, women tend not to report incidents of violence against them. Therefore, the number of recorded offences is understated. This complicates the procedure of protecting women from domestic violence.

In September 1997, the Ukrainian Institute of Social Research on behalf of the Gender in Development Programme conducted a sociological survey, which aimed to investigate the problem of violence against women and girls in Ukraine. One of the survey’s goals was to confirm or disclaim that domestic violence has become solidly implanted in society, in the system of public rules and regulations, which supports the stereotypes of “masculine” and “feminine” behaviour and mentality. Therefore, the majority of women do not yet consider violence against women a public problem, but rather a private problem and a result of either their own behaviour or an unsuccessful choice in partner.

The results of the poll estimate that domestic violence is fairly widespread in Ukraine. It occurs even in young families where relations tend to be based on more democratic principles than in the older age category.

Formally, Ukrainian women who experience violence are protected by the Ukrainian legislation, article 107 of the Criminal Code. However, law enforcement authorities in Ukraine, and throughout the world, tend to refrain from interference in domestic disputes and the settlement of domestic disputes. In the Criminal Code of Ukraine there is no specific article that suitably provides for domestic violence. Wife abuse does not fit into any category of criminal actions within the Ukrainian Criminal Code. Furthermore, a common and widespread opinion, especially among men, is still that wife abuse is part and parcel of domestic life.

In order to create a real and effective mechanism of legal protection for women and children against domestic violence, it is necessary to approve as soon as possible a law regarding prevention of domestic violence.

### **1.5 Sexual harassment**

Sexual harassment and coercion are widespread forms of violence against women, especially young women.

The Criminal Code provides criminal responsibility for “compelling a woman into a sexual affair with a person on whom the woman is materially dependent or is subordinate to” (Article 119). For this crime, the punishment is up to 1 year of imprisonment or up to 1 year of reformatory work.

### **1.8 Prostitution**

Based on international law and analysis of the actual condition in the country, Article 210 of the Criminal Code stipulates criminal responsibility for a person who is involved in the maintenance of brothels and procures for lechery. The punishment is up to 5 years of imprisonment.

According to the contemporary laws of Ukraine, engagement in prostitution is not considered as a crime, but rather as an administrative violation that disrupts social order and social safety.

The Code on administrative offences (Article 181) exhibits the gender prejudice of the Ukrainian legal system since it foresees punishment for women who engage in prostitution. Men who use the services of female prostitutes are not mentioned in the Code.

At the same time, the Criminal Code contains no notions such as “compelling a woman to be engaged in prostitution” or “involvement of a woman in the engagement in prostitution”.

The project of the new Criminal Code comprises the article “Compulsion to engage in prostitution”, which concerns not only the involvement of minors in prostitution (this is the case in the present Criminal Code of Ukraine, Art. 208), but of women of any age:

- “(1) To compel a woman to engage in prostitution and gain her involvement in prostitution through deception – is punishable with a fine of 12 to 40 before the tax minimum wages or by restriction of freedom for a period of up to 3 years, or by imprisonment for the same period.*
- (2) Involvement of a minor girl in prostitution is punishable with imprisonment for a period of up to 5 years” (Art. 149).*

## Trafficking in Human Beings

On 24 March 1998, a new article 124 to the Criminal Code “Trafficking in human beings” was adopted:

*Open or secret seizure of a person connected with his or her legal or illegal movement across the border of Ukraine with or without his or her consent or, without such a movement, for further sale or other transaction with the purpose of sexual exploitation, misuse in pornographic business, involvement in criminal activity, getting a person into debt bondage, adoption of children with the purpose of commerce, use in armed conflicts, exploitation of his or her labour – is punished with 3 to 8 years of imprisonment, with or without confiscation of property.*

*The same action committed to a small number of persons, repeatedly, and previously planned by a group of people, with the misuse of his or her official position, or the same actions performed by a person who holds a victim in financial dependence or other sorts of dependence, is punished with 5 to 10 years of imprisonment, with or without confiscation of property.*

*Actions stipulated by Paragraphs 1 or 2 of this article are:*

- *Committed by an organised group;*
- *Connected with the illegal movement of children abroad or failure to return them to Ukraine;*
- *Performed with the purpose of acquiring a victim’s organs or tissues for transplantation or forcible donorship or;*
- *The act leads to severe consequences;*

*Are punished with 8 to 15 years of imprisonment and confiscation of property.*

### 1.11 International conventions

Ukraine has ratified the following international instruments:

- *Convention for the suppression of the traffic in persons and of the exploitation of the prostitution of others;*
- *Convention on elimination of all forms of discrimination against women” and a number of Conventions concerning the trade in slaves;*
- *Convention For the Protection of Human Rights and Fundamental Freedoms;*
- *Convention on the Rights of the Child;*

And others international human rights instruments.

## UNITED KINGDOM

---

Information provided by the Women's Unit of the Cabinet Office in November 2000.

### 1.2 Domestic Violence

There is no specific offence of domestic violence in criminal law. The following statutes are relevant:

- Offences against the Person Act 1861
- Public Order Act 1986
- Protection from Harassment Act 1997

Crimes of physical violence can include common assault (a common law offence) and statutory offences under the Offences Against the Person Act 1861. The maximum penalties for these offences range from 6 months (for common assault) to life (grievous bodily harm with intent).

The Protection from Harassment Act 1997 provides a criminal offence in England and Wales to cover courses of conduct which a person knows, or ought to have known, causes another to fear violence. The offence carries a penalty of a maximum of five years imprisonment and/or an unlimited fine.

For less extreme but still distressing behaviour, there is a second criminal offence in England and Wales of pursuing a course of conduct which a person knows, or ought to have known, causes another harassment. It will carry a penalty of a maximum of six months' imprisonment and/or a fine. There is also a restraining order, available from the criminal court, which prohibits further harassment or conduct, which causes fear of violence. A breach of a restraining order is a criminal offence, punishable by up to five years in prison. An injunction can also be sought in the civil court.

The Family Law Act 1996 provides protection to those experiencing domestic violence in a family relationship, by allowing them to apply for an injunction to protect them from violence. The Act runs parallel to divorce proceedings in the civil courts, enabling domestic violence proceedings to be issued alone, or together with divorce proceedings. County Courts and Magistrates Courts with family jurisdiction are able to hear cases.

The court will grant a non-molestation order if it considers that it should (on the balance of probabilities) be made for the benefit of the applicant or any relevant child, considering all the circumstances. The Act does not define molestation, to give the court the maximum discretion to decide when an order is appropriate. The Act also provides for the court to make an occupation order. This deal with the occupation of the home and can, for example, define occupation rights in the home, including exclusion of the respondent from the home or an area around it.

Where the court makes an occupation order or non-molestation order and it appears to the court that the respondent has used or threatened violence against the applicant or a relevant child, and then the court must attach a power of arrest unless it is satisfied that the applicant or child will be adequately protected without such a power. These powers allow the police to immediately arrest the respondent if the provisions of the order have been breached, and bring them before the court. The court then has powers under the Contempt of Court Act 1981 to fine or imprison the respondent.

The Protection from Harassment Act 1997 provides protection to anyone suffering harassment, which may or may not amount to violence. Since the majority of the Act came into force on 16 June 1997, those suffering harassment can precede either by:

- Police involvement, because one of the wholly criminal offences in the Act established by Sections 2 and 4 - is alleged to have been committed;
- Way of a civil claim (with or without an injunction) under section 3.

Sub-sections 3(3)-(9) introduce the provision that the breach of a civil injunction granted under section 3(1) and (2) may be treated either as a civil contempt (with a maximum of 2 years imprisonment), or as a criminal offence (with a maximum, on indictment, or five years imprisonment). These provisions came into force on 1 September 1998.

### **Scotland**

The Scottish provisions in the Protection from Harassment Act 1997 provide that every individual has a right to be free from harassment and prohibit a person from pursuing a course of conduct which amounts to harassment of another. They also:

- Establish what is meant by ‘harassment’;
- Provide for an action of harassment in civil proceedings;
- Set out the defences to any action of harassment;
- Provide remedies available to the victim;
- Allow civil or criminal courts to make a ‘non-harassment order’;
- Provide that breach of a ‘non-harassment order’ is a criminal offence;
- Set out the penalties that can result from such a breach.

In an action of harassment a court may:

- Award damages, including for any anxiety caused by the harassment or financial loss resulting from it;
- Grant interdict or interim interdict;
- Protect the victim from further harassment, make a ‘non-harassment order’ to require the defender to refrain from any conduct specified in the order.

A criminal court, in addition to any sentence that it imposes, when considering the disposal of a person convicted of behaviour that amounts to harassment, may also make a ‘non-harassment order’.

Breach of a 'non-harassment order' made either by a civil or criminal court in Scotland would be a criminal offence punishable on indictment by imprisonment for up to 5 years and/or an unlimited fine, or summarily by up to 6 months' imprisonment and/or up to a £5,000 fine.

The common law offence of breach of the peace covers behaviour causing, or likely to cause, annoyance, alarm or upset. It is a flexible and wide-ranging provision and maximum sentences for breach of the peace are limited only by the court in which a case is heard (life imprisonment is in theory available in the High Court and though we know of no example of its imposition, sentences as long as 8 years have been imposed).

The Matrimonial Homes (Family Protection) (Scotland) Act 1981 gives the court power to grant an exclusion order to either of the spouses from the matrimonial home. The Act also gives the police powers to arrest, in certain circumstances, perpetrators of domestic violence. This Act has generally worked well but the *1992 Report on Family Law* by the Scottish Law Commission recommended widening its provisions to cover, for example cohabitants and former cohabitants. The Scottish Office consultation paper *Improving Scottish Family Law* (launched on 24 March 1999) seeks views and will consult in autumn 1999 on implementing the remaining provisions in the Scottish Law Commission report. Any legislation arising from the consultation will be a matter for the Scottish Parliament.

### **Northern Ireland**

Although domestic violence is a crime and prosecution through the criminal courts is one of the sanctions available, many women, at least initially, require and seek the protection of the civil courts. In 1996, 2293 interim and 994 full personal protection orders were made, with almost identical numbers of interim and full exclusion orders (2290 and 993 respectively).

The Family Homes and Domestic Violence (Northern Ireland) Order 1998 came into effect in March 1999. The legislation was informed by recent research in England that highlighted the effects of domestic violence on children and the safety of child contact arrangements, where there has been a history of domestic violence to the mother. The Order puts Northern Ireland at the forefront in the UK and Europe in relation to anti-domestic violence legislation.

### Civil Law Remedies - including economic situations for wife/cohabite after separation and divorce

#### England and Wales

When considering financial provision on divorce in England and Wales, the court is required to take into account all the circumstances of the case. These include the welfare of minors and the income, capital resources, age of both parties, length of the marriage and the

financial and other contributions made by each of the parties. The court also looks at the needs and obligations of the parties in the foreseeable future. Conduct will be taken into account in cases where it would be inequitable to disregard it. This would allow the court to take account of violence by a party to the marriage. These principles apply equally to men and women. Each family is unique and, therefore, each case is different and thus the wide discretionary powers invested in the courts by the Matrimonial Causes Act 1973 are designed to permit the court to reach an equitable solution in individual cases.

### Scotland

In Scotland, the court is also required to take into account all the circumstances of the case in deciding a fair sharing of the net value of the "matrimonial property" a concept not found in England and Wales). A fair share usually means an equal share. The fair share of the matrimonial property is usually accomplished by order of payment of a capital sum or the transfer of property from one party to the other. However, the court may take into account a number of principles and factors set out in the Family Law (Scotland) Act 1985 when considering making financial provision orders and may award a greater share to one of the parties. The principles and factors include the financial care of children by both parties, the age health and earning capacity of the party claiming financial provision, and whether one of the parties would be likely to suffer serious financial hardship as a result of the divorce.

Unlike in England and Wales, a court in Scotland would not take into account the conduct of either party unless it adversely affected the financial resources under consideration or it would be manifestly inequitable to leave conduct out of account when considering if one party has been substantially dependent on the financial support of the other or one party is likely to suffer serious financial hardship as a result of the divorce. This reflects recommendations by the Scottish Law Commission in its 1981 Report on Aliment and Financial Provision (Scot Law Com No. 67) to separate issues of "fault" leading to divorce from the consideration of the post-divorce financial situation.

## **1.3 Rape/Sexual Assault**

### Definition

Sexual crime is defined as a crime against the person. In England and Wales rape is defined, under the Sexual Offences Amendment Act 1976 (as amended by the Criminal Justice and Public Order Act 1994) as sexual intercourse with a person who at the time of the intercourse does not consent to it, committed by a person who at the time either knows the other person does not consent, or is reckless regarding consent. No further definition of consent is given in statute law.

Sexual intercourse is defined as penile penetration of the vagina or anus. Penetration of other parts of the body and penetration using other objects are prosecuted as indecent assault. The maximum penalty for indecent assault is 10 years in England and Wales.

Rape is defined in Scots law as sexual intercourse with a woman achieved by the overcoming of her will. A man may not be raped as the sexual intercourse in rape is taken to be vaginal and for rape to take place penetration by the penis must take place. The length of sentence may be affected by the degree of force used and the age of the victim. The rule that a husband cannot be guilty of the rape of his wife no longer holds since 1989 when it was judged that social conditions had changed and that a husband could be guilty of raping his wife even if they were living together at the time of the offence.

### Sodomy

In England and Wales "sodomy" without consent would be counted as rape under the definition. In Scotland sodomy and rape are both gender-specific, but sexual assault provides a wide ranging common law charge.

### Rape in Marriage

Rape in marriage is in England and Wales specifically outlawed under the Sexual Offences Amendment Act 1976 as amended by the Criminal Justice and Public Order Act 1994. Rape in marriage was acknowledged in case law in 1991. The maximum penalty for rape is life imprisonment.

### Rape Trial

Technical evidence: No technical evidence is required by statute, but the level of evidence will depend on the circumstances of the individual case.

Cross examination of the victim's sexual history: At present such evidence may only be admitted with the permission of the court which must be satisfied that the evidence is both relevant and of such importance to the case for the defence that to exclude it would be unfair. However, there is a provision in the Youth Justice and Criminal Evidence Bill, currently being considered by Parliament, to further restrict the circumstances in which the court may allow previous sexual history evidence to be admitted.

Section 274 of the Criminal Procedure (Scotland) Act 1995 limits the extent to which a victim of certain sexual offences can be cross-examined about previous sexual history. In particular, the section does not allow questioning on sexual behaviour that is not part of the subject matter of the charge. Under section 275 of the same Act, questioning can be allowed by the court on application by the defence in rebuttal of prosecution evidence, if the sexual acts took place on the same occasion as the charge, or if it would be contrary to the interests of justice to exclude the questioning.

Court ruling on cases of rape: The Crown Court (England and Wales). In Scotland rape cases are dealt with in the High Court.

In England and Wales rape cases are always heard in the Crown Court, before a Judge selected to hear such cases. Membership reflects the principle of equal opportunities.

Appointment is strictly on merit and assessments of suitability are made against the specific criteria for appointment. When appointing judges to sit in the Crown Court, the Lord Chancellor appoints those who appear to him to be the best qualified, regardless of gender, ethnic origin, marital status, sexual orientation, political affiliation, religion or disability, except where the disability prevents the fulfilment of the physical requirements of the office.

Without prejudice to the overriding principle that all judicial appointments are made on merit, the Lord Chancellor encourages greater numbers of women and ethnic minority practitioners to apply. The team of officials he has established to concentrate on equal opportunities issues in judicial appointments are working with members of the Bar and solicitors to develop procedures. They regularly attend relevant meetings and conferences organised by both branches of the profession to provide information and encourage applicants.

Wherever possible, the requirements and procedures for appointment are applied flexibly. For example, it is now possible for those who have had a career break for family reasons to apply to undertake their sittings as Assistant Recorders, or in certain tribunals, in concentrated blocks, rather than their sittings being spread over a number of years as is usual. As a result, those who have taken a career break are now able to catch up with those who have not.

Upper age limits are also applied flexibly to provide opportunities for those who become lawyers later than usual or who have taken a career break. The Lord Chancellor personally investigates any claims of discrimination and he is looking to see whether there may be ways to improve the system of examining fully complaints from anyone who feels unfairly treated by the appointments process.

### Sanctions

The maximum penalty is life imprisonment. Within the broad statutory limits set by Parliament sentences in individual cases are a matter for the courts alone, taking into account all the circumstances of the offence and the offender. In England and Wales in 1997, 91% of males convicted of rape of a female were sentenced to immediate custody. The average sentence was 77 months.

The English Court of Appeal has issued guidelines for sentencing in rape cases in the case of *R v. Billam* (1986). Under new powers in the Crime and Disorder Act 1998, the Court of Appeal will be required, whenever it is seised of an appeal against sentence, to decide whether it needs to frame a guideline or revise an existing guideline for the category of offence in question. The Home Secretary will also have power to direct a new Sentencing Advisory Panel to provide views to the Court of Appeal on a particular category of offence (or the Panel itself may choose to do so). The Court would then be required to consider whether it should frame or revise a guideline when a suitable case arises.

## 1.4 Child Sexual Abuse/Incest

The age of consent is 16. Unlawful sexual intercourse with a girl under 13 carries a maximum penalty of life imprisonment. Unlawful sexual intercourse with a girl under 16 carries a maximum penalty of 2 years imprisonment. Indecent assault carries a maximum penalty of 10 years in England and Wales.

Incest with a girl under 13 carries a maximum penalty of life imprisonment. Incest with a girl under 16 carries a maximum penalty of 2 years imprisonment. Buggery with a child under 16 carries a maximum penalty of life imprisonment, and gross indecency with a child carries a maximum penalty of 10 years.

The age of consent for heterosexual intercourse is 16. Unlawful sexual intercourse with a girl under 13 carries a maximum penalty of life imprisonment under the Criminal Law (Consolidation) (Scotland) Act 1995. Intercourse or attempted intercourse with a girl under 16 carries a maximum penalty of 10 years imprisonment (increased under the Crime and Punishment (Scotland) Act 1997).

Incest offences are also set out in the Criminal Law (Consolidation) (Scotland) Act 1995. Certain relationships by adoption are also covered by the legislation as is intercourse with a step-child if the step-child is under 21 or has at any time prior to reaching the age of 18 lived in the same household and been treated as a child of the family. Any person over the age of 16 who is a member of the same household and in a position of trust with a child under 16 and has sexual intercourse with that child shall also be liable to an offence. A person found guilty of any of the above offences under this Act is liable for a sentence of up to life imprisonment if convicted on indictment and on summary conviction of up to 3 months.

### Specific measures against child prostitution

Those who coerce a child into prostitution are committing a number of offences; those who have sex with a child under 16 are also usually breaking the law. The Government has recently issued draft guidance to ensure that children found in prostitution in England and Wales are treated as victims - it emphasises that children in prostitution are primarily the victims of coercion and abuse and that therefore the emphasis should be on the care and protection of young people. Those adults who exploit them, whether by pimping them or as clients, are child abusers. The draft guidance encourages the use of the full range of criminal offences against those who corrupt and abuse children. It is intended to be a practical guide, the purpose of which is to enable all agencies to develop effective local arrangements to work together to:

- Recognise the problem;
- Treat the child primarily as a victim of abuse;
- Safeguard children and promote their welfare;
- Work together to provide children with strategies to exit prostitution.

There is no guidance in Scotland where children who commit offences are dealt with by the welfare-oriented children's panel.

### Children as Witnesses

The Criminal Justice Act 1988 (which applies in England and Wales) provides that a child's evidence shall be given unsworn in criminal proceedings, and that this evidence may corroborate evidence given by any other person. This puts the evidence given by child witnesses in exactly the same position as adult witnesses.

In cases of violence, cruelty or neglect, child witnesses under the age of 14 years may, with the permission of the court, give their evidence-in-chief in the form of a video-recorded interview and also be questioned during the trial by live TV link from a room outside the court room. The same provisions apply in sexual offence cases to child witnesses under 17 years of age. In addition, where a child is giving live evidence in a court room, the court has discretion to permit screens to be placed round the witness box to prevent the witness from viewing the defendant.

The law also prohibits defendants from personally cross-examining child witnesses. In addition, child witnesses can give evidence unsworn and uncorroborated. The media are not allowed to report the name, address or school of the child witness or any other information which would lead to the identification of the child involved in the proceedings.

The report "*Speaking Up for Justice*" has recommended additional measures to assist child witnesses give their best evidence. These include proposals to make the measures available to all witnesses under 17 years, make it a presumption that child witnesses giving live evidence to the court should do so via live TV links, video-recorded pre-trial cross-examination and, where necessary, assistance with communication through an intermediary. These recommendations are all included in the Youth Justice and Criminal Evidence Bill, currently being considered by Parliament.

Under the Criminal Procedure (Scotland) Act 1995, children may, if the court agrees, give evidence on video to a commissioner, by live television link or from behind screens. Evidence is now routinely given by television link. Following guidance from the Lord Justice General in 1990, measures are also routinely taken to make the courtroom less intimidating, for example by the removal of wigs and gowns. Detailed guidance is given to procurators fiscal on interviewing children before the trial.

### Therapeutic Support Between the Time of Reporting and the court Case

There is currently no legal bar to children receiving therapeutic support before the court case, however it can lead to criticism by the defence of possible "coaching" of witnesses. The view of the Crown Prosecution Service (CPS) is that decisions about the provision of therapy are not appropriate to be taken by prosecutors but can only be taken by those responsible for the welfare of the witness.

Because some forms of therapy, but not automatically all, may impact on the criminal case the CPS suggest that when pre-trial therapy is considered advice is sought from them about the likely effect of the proposed therapy on the evidence of the witness in the circumstances of that particular case. If the conclusion is that the proposed therapy may prejudice the criminal case, those responsible for the welfare of the witness, in consultation with the witness, should take this into account when deciding whether the therapy should be undertaken. It may still be in the best interests of the witness to proceed with the therapy.

The CPS have been co-ordinating the development of good practice guidance relating to pre-trial therapy for witnesses. This seeks to:

- Improve understanding of the difficulties;
- Clarify the roles of those involved of those involved in making decisions about pre-trial therapy;
- Provide guidance on the appropriateness of different therapeutic techniques;
- Set out a framework of good practice.

This guidance is currently the subject of a wide-ranging consultation exercise which will end on 30 April 1999.

## **1.5 Sexual Harassment**

In the workplace, this is outlawed by the Sex Discrimination Act 1975. In other cases, the Protection from Harassment Act 1997 may apply - see section 1.2 above.

In Northern Ireland the Protection from Harassment (NI) Order 1997, in addition to creating a criminal offence of harassment, will also protect victims through the civil law when Article 5(3) to (9) comes into operation. The courts will be able to make an injunction preventing harassment, breach of which will be a criminal offence. The Order also empowers the civil courts to award damages to the victim for, among other things, any anxiety caused by the harassment and any financial loss resulting from it. These new remedies will be useful to women who are the victims of stalking, nuisance telephone calls etc. and will complement the domestic violence remedies available under the Family Homes and Domestic Violence (NI) Order 1998.

## **1.7 Pornography**

The principal legal control in England and Wales is the Obscene Publications Act 1959 under which it is a criminal offence to publish any article whose effect, taken as a whole, is such, in the view of the court, to "deprave and corrupt" those who read, see or hear it. The maximum penalty for this offence is three years in prison. However, the Act also provides a "public good" defence under its provisions, if the publisher of the material concerned can show that the publication is in the interests of science, literature, art or

learning, or other subjects of general concern. Child pornography is illegal under the Protection of Children Act 1978.

The Indecent Displays (Control) Act 1981 which applies across the UK makes it an offence to display any indecent matter which is exposed to view in a public place or where it can be seen from a public place. The Act does not define "indecent" and it is left to the courts to decide in each case whether the material in question is indecent or not. It does not include the inside contents of a publication as they are not considered in the public view.

In Scotland under common law a person who sells or exposes for sale indecent and obscene material may commit the offence of shameless indecency. In statute law, section 51 of the Civic Government (Scotland) Act 1982 makes it an offence to publish, sell or distribute obscene material. Offenders can be sentenced up to 2 years' imprisonment and an unlimited fine. The same Act also contains offences relating to the taking, possession and publication of indecent photographs or other graphic images of children.

## **1.8 Prostitution**

There is no specific offence of prostitution in the United Kingdom. However, the following activities are outlawed: brothel keeping, soliciting, loitering, living off immoral earnings, and kerb crawling (in Scotland the latter would be dealt with as a Breach of the Peace). In England and Wales, after 2 cautions for soliciting or loitering a woman can be charged as a "common prostitute". The introduction of prostitutes' cautions and the need to prove persistence in the offence of soliciting or loitering was a protection to women. It meant they could not be brought to court immediately but that they had to be given at least 2 cautions by the police. It is possible for a woman to appeal to the Chief of Police and the courts and to have such a caution expunged.

### Legislation on Forced Prostitution/Trafficking in Women

The criminal law provides a range of offences and sanctions that can be used against those who traffick women. Section 22 of the Sexual Offences Act 1956 makes it an offence in England to procure a woman to become a prostitute in any part of the world, and the courts have held that the English courts have jurisdiction to try if any part of the offence occurs in England and Wales. Under section 23 of the same Act, "it is an offence for a person to procure a girl under the age of 21 to have unlawful sexual intercourse in any part of the world with a third person." It is also an offence to detain a woman in a brothel under section 24. The maximum penalty for these offences is 2 years imprisonment. Living on immoral earnings is an offence that carries a maximum penalty of 7 years. In Scotland such offences are covered by the Criminal Law (Consolidation) (Scotland) Act 1995.

Kidnapping is a common law offence defined in England and Wales as "the taking away of one person by another by force or fraud without the consent of the person so taken or carried away and without lawful excuse".

Under the Proceeds of Crime Act 1985, it is possible for the courts to confiscate the assets of those found guilty of trafficking. A Brazilian, Carlos Pires, who for several years had been responsible for trafficking over 100 Brazilian women into the UK was estimated to have profited by about £1.7 million and a criminal asset seizure order of £725 000 was made against him by the Court.

### Police Practice

It is very difficult to obtain clear information about the extent of the problem of trafficking of women in the UK and generally the information we receive is anecdotal.

In order to get a better picture on the extent of trafficking, the Policing and Reducing Crime Unit of the Home Office's Research Development and Statistics Directorate will shortly be conducting research into the problem of trafficking of women in England and Wales.

The research will involve conducting a national survey of police forces to establish, amongst other things, numbers of cases of trafficking in women, the number of women arrested for prostitution offences who are not UK citizens, and the adequacy of the current legal and investigative framework. Interviews with key personnel in other organisations, such as migrant workers organisations and bodies working with women in the sex industry, will also be undertaken. The project is due to commence in spring 1999.

### Procuring

Section 22 of the Sexual Offences Act 1956 makes it an offence to procure a woman to become a prostitute in any part of the world, and the courts have held that the English courts have jurisdiction to try if any part of the offence occurs in England and Wales. Under section 23 of the same Act, "it is an offence for a person to procure a girl under the age of 21 to have unlawful sexual intercourse in any part of the world with a third person."

In Scotland, procuring is an offence under the Criminal Law (Consolidation) (Scotland) Act 1995.

### Provisions to Help those Exploited

Foreign women found working as prostitutes in the UK are not normally charged with any criminal offences.

Foreign women found working as prostitutes in the UK are removed under administrative powers as illegal entrants.

### **1.10 Female Genital Mutilation**

Outlawed under the Prohibition of Female Circumcision Act 1985. This act creates a criminal offence for a person to carry out female genital mutilation, or to aid, abet, counsel or procure such an act. The maximum penalty for this offence is five years' imprisonment, an unlimited fine, or both.

### **1.11 International Conventions**

The UK has ratified the six core UN Human Rights instruments that are relevant to the issue of violence against women. They are the International Covenants on Civil and Political Rights, International Covenants on Economic, Social and Cultural Rights, and the Conventions on the Elimination of all forms of Discrimination Against Women, on the Conventions on the Elimination of all forms of Racial Discrimination, the Convention on the Rights of the Child, and the Convention against Torture and other Cruel, Inhumane and Degrading Treatment.

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

There are no special legal controls regarding pregnant women.

## **2.1 Sentencing Domestic Violence**

Sentencing is the responsibility of the judiciary rather than the Government. The maximum sentences for crimes of domestic violence depend on the substantive offences with which the assailant is charged and are no different from those which would apply had the incident taken place outside the domestic context. Within the broad statutory limits set by Parliament sentences in individual cases are a matter for the courts alone, taking into account all the circumstances of the offence and the offender.

In England and Wales, under the Crime (Sentences) Act 1997 those convicted for a second time of a serious violent or sexual offence are subject to an automatic life sentence.

## **3.2 Special Provisions for Support for Women and Girls in Giving Evidence**

There are currently no special provisions for the support of women and girls, when they are giving their evidence. Witness support personnel are available for all witnesses, and there are special provisions for children giving evidence. Also see 3.3 below.

In Scotland, a start is to be made on the rollout of court based witness support programmes beyond current pilot areas. A consultation paper on vulnerable and intimidated witnesses, "*Towards a Just Conclusion*", was also published last year. Responses to the paper are now being considered with a view to producing detailed proposals in due course. The paper recommended that alternative ways of giving

evidence already available for children, for example, Closed Circuit Television, should be extended to intimidated adults.

### 3.3 Main Problems and New Solutions

#### Legislation Relating to Violence

Existing violence legislation in England and Wales defines the seriousness of offences by the level of injuries sustained. This raises problems of evidence, and also fails to take account of the seriousness of some violent acts - such as attempted strangling - which may leave no visible marks on the victim. A consultation paper "*Violence: Reforming the Offences Against the Person Act 1861*" was therefore published in February 1998. The paper is based on the proposals in the Law Commission's Report No. 218 "*Offences Against the Person and General Principles*", and is considered by the Home Secretary to be a vitally important contribution to law reform.

The proposed new offences would be based on a combination of motivation and outcome. Hence the most serious offence is intentionally causing serious injury; the same injury caused recklessly, without the same intent, would be a less serious offence carrying a lower sentence. The existing offence of making threats to kill would also be extended to threats to cause serious injury and also to threats made to a second person to harm a third person.

A review of sexual offences in England and Wales is now underway. Its terms of reference are to recommend clear and coherent sex offences which protect individuals, especially children and the more vulnerable, from abuse and exploitation, to enable abusers to be appropriately punished and to be fair and non-discriminatory in accordance with the ECHR and Human Rights Act. The review is expected to report at the end of the year.

#### Low Reporting Rates

Other problems relate to low reporting rates and high attrition. On rape in particular, the Home Office have been studying the process of reported rapes to identify where and why cases are dropping out of the system. Work on this began in 1996. The study is divided into two stages - the first is a quantitative study examining cases initially recorded as rape since February 1996; the second part is a qualitative study of interviews with key criminal justice agents and court observation. An interim report, published in December 1997 set out the emerging findings near to the end of the quantitative stage. It provides information on where reported rape cases drop out before they reach court but the final report, which will be available in the summer of 1999 will identify why so many cases fail to result in a conviction. The findings of this report will be taken into account when the offence of rape is considered as part of the review of sexual offences and penalties.

It is clear that many cases (not just rape) are unsuccessful because witnesses are afraid to testify. On 10 June 1998 the Government therefore published "*Speaking up for Justice*",

the report of the interdepartmental working group on vulnerable or intimidated witnesses. The report contains 78 recommendations which aim to improve the way in which vulnerable or intimidated witnesses (including women and girls) are treated, with the aim of improving their access to justice. A steering group has been set up to co-ordinate implementation of all the proposals. Those requiring primary legislation are currently before Parliament in the Youth Justice and Criminal Evidence Bill.

In particular, the report outlines a scheme which would identify a vulnerable or intimidated witness at an early stage in the police investigation and pick up on the individual needs of the witness. This would enable decisions to be taken on the appropriate methods of interview and investigation. The prosecution and defence would be able to apply to the court for one or more of a wide range of special measures to be made available to assist the witness give their best evidence during the trial. These include the use of live TV links so the witness does not have to give evidence in open court, screens round the witness box in the court room to protect the witness from viewing the defendant and clearing the public gallery while the witness gives evidence.

*“Speaking up for Justice”* stresses the likelihood of victims of rape as vulnerable witnesses due to the nature of the crime. Victims of domestic violence are also recognised as being a risk group likely to be intimidated witnesses due to their relationship to the defendant.

## **Northern Ireland**

The Northern Ireland Strategy on Violence Against Women, which is currently being drafted, will complement the national document *“Living Without Fear - an Integrated Approach to Tackling Violence against Women”* being developed by the Women’s Unit, and will address problems which are specific to Northern Ireland. It will also include current objectives and initiatives on tackling domestic violence.

### Domestic Violence

A Domestic Violence Regional Forum was established in September 1995. The Forum brings together the main statutory and voluntary interests, and provides the focal point for co-ordinating action to take forward the objectives set out in the policy framework. To date, the work of the Forum has included:

- Establishing local inter agency groups in each Health and Social Services Community Trust;
- Developing training and information programmes for professionals dealing with domestic violence;
- A pilot scheme for cautioning first time offenders;
- A treatment programme for perpetrators;
- A public awareness campaign, including television advertising;
- Action to improve the research and information base; and

- overseeing responses by the relevant agencies to the recommendations in a recent research report - "Taking Domestic Violence Seriously - Issues for the Civil and the Criminal Justice System" ( McWilliams and Spence 1996).

Under the aegis of the Northern Ireland Regional Forum on Domestic Violence work continues to improve mechanisms for inter-agency co-ordination and enhance links with the voluntary sector. The Forum brings together all the major stakeholders. An inter-denominational sub-group is preparing a strategy information pack and guidelines on domestic violence, for use by clergy and parish workers.

The Northern Ireland Office (NIO) produced a publication called *Stopping Crime Starts with You*. This publication includes a section which provides useful and practical advice to women to help them protect themselves. The NIO have also produced a publication called *Six Steps to Protect Your Home* which includes practical advice on domestic security, and lists a number of helplines of organisations which can provide support. It was re-issued early in 1998.

## **Scotland**

Responsibility for policies relating to violence lies with a wide range of Scottish Office Departments. There are also a number of other agencies which respond to victim's needs. Because of this and differences in Scottish law and culture, it was decided to develop a Scottish action plan on violence against women to deal with matters specifically within the control of Scottish Ministers which will become the responsibility of the Scottish Parliament in July 1999.

*Preventing Violence Against Women: A Scottish Office Action Plan* was published in November 1998 as a consultation document. It was widely circulated and set out a plan of action which will be refined into a strategic document in the light of responses received. The consultation period ended on 28 February and the responses are currently being analysed.

### Domestic Violence

In order to discover how the Scottish Office could best contribute to supporting victims, a study was commissioned to review the type of services available to abused women and their children. A report of this study was published in March 1998 under the title *Service Provision to Women Experiencing Domestic Violence in Scotland*. The report made 26 recommendations to the Scottish Office/Central Government and addressed a further 36 to service providers including local authority housing and social work departments, police forces, Health Boards, Scottish Women's Aid and the Benefits Agency.

The Scottish Office also published, in 1997, the result of a thematic inspection by HM Inspectorate of Constabulary of the police response to domestic violence. Entitled *Hitting Home* the report indicates that repeat victimisation is high and that demand from victims for police services has increased in recent years. Nevertheless, there has been great

improvement in liaison with local authority services and other agencies over the past 10 years and this report will help spread the existing good practice identified in a number of police forces.

A Scottish Partnership on Domestic Violence was set up in 1998. Its membership includes representative organisations who are actively involved in dealing with the various aspects of domestic violence. Its remit is to recommend:

- A strategy on domestic violence which takes into account the impact of domestic violence on children and young people; and the need for effective intervention strategies to prevent male violence against female partners and their children;
- Standards and levels of service for women experiencing domestic violence in order to encourage consistent service delivery throughout Scotland, having particular regard to the needs of women from rural areas, women from ethnic minorities and women with disabilities and taking into account the impact on children and young people affected;
- A framework for monitoring progress in dealing with domestic violence; and to -
- Cost all recommendations involving resources;
- Consider which recommendations should be given priority for action, taking into account of such factors as their impact, costs, the speed with which they can be implemented and local variations and needs and existing provision;
- Report to the Minister for Women's Issues by March 1999 setting out a detailed work-plan and time-scale for discharging the remit in full.

A workplan and timescale was accordingly submitted to ministers on 29 March and has been issued as a consultation document. Responses are requested by 30 June 1999.

### Legal Aid

The Scottish Office is committed to provide community legal services which will ensure that the legal aid system meets the needs and priorities of local communities. It has also undertaken to improve access to justice by making better use of the legal aid budget and ensuring value for money for the taxpayer and the customer. In its consultation paper *Access to Justice* beyond the Year 2000 it discussed various possible models of community legal services that might be piloted using legal aid funds, and various ways of administering legal aid funds so as to promote access to justice for those of limited means. The consultation period ended in August 1998.

### **3.7 Specialist Police Units**

Following guidance issued to police forces in 1990 (England, Wales and Scotland) and 1991 (Northern Ireland), all UK police forces now have policy statements on domestic violence. As an operational matter, police organisational structures are the responsibility of local chief constables rather than central Government. However, long-standing guidance to the police emphasises the importance of dealing with domestic violence

effectively; all police forces in the UK now have domestic violence policies; and most have specialist domestic violence officers, many of whom work in dedicated Domestic Violence Units.

January 1999 saw the publication of the Home Office-sponsored research study *Policing Domestic Violence: effective organisational structures* by Joyce Plotnikoff and Richard Woolfson. Issues considered in this research included whether forces have specialist Domestic Violence Officers (DVOs) and/or Domestic Violence Units (DVUs), the scope of the role of DVOs and DVUs, the position of DVOs within the force, and how performance is monitored and information passed between front-line officers and DVOs.

A range of organisational structures was found, but no single structure emerged as less problematic than others: problems related less to the structure than to the status of domestic violence work within forces and the level of commitment from headquarters and divisional commanders. Line management of DVOs was often blurred, leaving them feeling isolated within the force structure. According to the study there was little systematic performance monitoring of the role of the DVO, and forces lacked a systematic approach to the management of information relating to domestic violence incidents.

The thematic report "Hitting Home" identified weaknesses in the police response to domestic violence in Scotland. Not all forces have designated domestic violence staff and the report recommended that forces without such staff should consider the need for them in the light of the report. Further guidance on best practice for the police is being prepared.

### **3.8 Violence Against Women - an Obstacle to Equality**

Violence against women is recognised as a barrier to equality. The Government's vision is of a fair and equal society where everyone has the opportunity to participate fully. The Women's Unit, in Cabinet Office is working across Whitehall and in partnership with others, to act as a catalyst and co-ordinator in driving the Government's work on violence against women forward.

The Government is committed to putting in place adequate support systems and mechanisms to allow all women the opportunity to live their lives without fear and abuse.

In June 1999, the Home Office and the Women's Unit published a joint document "Living Without Fear" which sets out an integrated approach to tackling violence against women. It addresses all forms of violence against women, including domestic violence, sexual harassment, rape and sexual assault, violence at work and stalking. The document highlights concrete, practical examples from different organisations, agencies and local authorities, of how violence is being successfully tackled across the country. It focuses on the way different organisations and agencies work together to deliver better, quicker and more effective services for women who have experienced violence.

### **3.9 Gender Persecution as Grounds for Granting Refugee Status**

All asylum applications, whether from men or women, are considered without discrimination in accordance with the criteria set out in the 1951 United Nations Convention relating to the Status of Refugees. Gender is taken into account in the assessment of individual claims where this is relevant.

Gender related persecution which is committed by third parties and satisfies the criteria set out in the 1951 UN Convention may lead to the grant of asylum if it is knowingly tolerated by the authorities, or if the authorities refuse, or prove unable, to offer effective protection. Women (and men) who do not meet the requirements of the 1951 UN Convention may, nevertheless, be granted exceptional leave to remain in the UK if there are compelling humanitarian reasons why they should not be required to leave.

### **3.10 Proposed Reforms**

See 3.3 above for the planned reforms to the Offences Against the Person Act 1861, the current review of sexual offences and other measures.

Some women's NGOs favour a change to the law to codify self-preservation as a defence against murder. However, the Government is not persuaded that this is necessary. The law on murder can already respond with flexibility to the particular circumstances of domestic violence victims. Self defence is a complete defence to a charge of murder which if successful, results in the acquittal of the defendant. Provocation is a partial defence to murder which reduces the offence to manslaughter. The other partial defence to murder, that of diminished responsibility, is also successfully pleaded in some domestic homicide cases. The judgments given in the cases of *Ahluwalia* and *Humphries* make it clear that the response to an act of provocation need not be instantaneous for the defence of provocation to succeed, and that the cumulative effect of prolonged abuse can be taken into account when assessing the impact of the final provoking incident.

## **Appendix**

### **Combating violence against women**

#### **Examples of Good Practice from member States of the Council of Europe**

##### **Introduction**

The contributions from the various member States to the publication “Violence against women – legislation in force in the Council of Europe member States to eliminate violence against women” contain many good and concrete approaches to combating violence against women. Several countries have launched awareness-raising campaigns and introduced new legislation. This appendix contains a description of some of the good practices recently launched, which could be transferred to other countries.

##### **Domestic Violence**

###### Austria

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 protection against violence offers victims of violence better protection by virtue of the fact that it is the offender who has to leave the home, not the victim.

###### Finland

###### Restraining Order

The Act on Restraining Orders 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.

## Ireland

### Men's Programmes – Prevention

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 ensures 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.

## Latvia

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 working 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.

## Malta

The Social Welfare Development Programme, set up by the Ministry for Social Development, provides a catalogue of services:

The Domestic Violence Unit is made up of specialised social workers who support and empower victims of domestic violence. Social workers within the Domestic Violence Unit assist clients in finding shelter when it is requested and link them to other necessary services. The Unit has started providing services for perpetrators of domestic violence in the form of a group programme where abusive beliefs are challenged. The Unit is also committed to the prevention of violence through education and media and participates actively in lobbying for changes in legislation.

## Norway

### Programme of Action Against Domestic Violence

In 2000, the government launched a programme of action against domestic violence. An interdepartmental group with representation from the Ministry of Children and Family Affairs, the Ministry of Health and Social Affairs chaired by the Ministry of Justice and Police has been established. The group is responsible both for co-ordinating action on domestic violence and violence against women in general and for implementing the activities from the programme of action. The programme consists of a wide range of activities to reduce domestic violence and to improve services to victims:

- As part of the programme, a new position was established in Ministry of Justice to co-ordinate action and policies.
- Provide financial support to local projects based on a multi-agency approach, involving all key agencies to promote co-operation in order to provide assistance to women who experience domestic violence.
- Improve the expertise and competence of personnel and occupational groups who are likely to be approached by woman experiencing domestic violence including police, doctors, nurses, midwives, staff from the shelters for women, etc.
- Increased attention is to be given to men who commit acts of violence against women. In order to ascertain which methods are suitable and effective, treatment methods for men are to be surveyed. The results of the survey should be reported at latest by June 2002.
- A working group has been set up to propose a change in legislation to make it possible for women who experience severe threats to get a new identity/identification number.

## Norway

Alarms are supplied to women who have been violently treated or threatened by their ex-husbands or ex-common law husbands. The alarms give immediate access to the police in an emergency. Efforts will be undertaken to develop mobile alarms.

## Portugal

“The Women’s Association against Violence”, a women’s NGO, also has a welfare and legal support service for women who have been victims of violence. It already runs a shelter in the Lisbon area, set up with the help of a private company and the Commission for the Equality and Rights of Women. Law No. 107/99 of 3 August 1999, on the setting up of a public network of shelters for women victims of violence, establishes the general framework for the setting up of such shelters.

In 1998 the Commission for the Equality and Rights of Women set up a national emergency hotline for the victims of domestic violence, which provides legal information on this subject. This hotline has been in operation 24 hours a day since May 2000 with the help of the APAV. In addition to the hotline, the APAV and the CIDM have an office to which women who are victims of violence can appeal directly for help.

From the beginning of 2000 to September, the CIDM staff running this hotline received 4,156 calls, 1,807 of which specifically concerned cases of violence. A statistical analysis of these calls has been carried out.

## Slovak Republic

### Act on Social Assistance

The new Act on Social Assistance contains preventive measures against domestic violence. Social prevention and solving material or social hardships are part of social assistance. Counselling, legal protection and social services address material and social hardship.

Social prevention: Education programmes aiming to change violent behaviour are important within the framework of social prevention.

Counselling: The scope, the nature and the reason for an individual's negative behaviour are first identified. Potential solutions or further counselling provided by specialised institutions are then recommended.

Legal protection: Educational programmes aiming to improve family relations are an important way to protect the individual's legal rights.

Social services: At present, there are 23 shelters with 247 places that can provide housing to women and their children depending on their needs, but the shelters may also assist women subjected to domestic violence.

## Spain

### Legal measures:

The following measures have been undertaken in order to simplify and improve legal procedures:

- To develop continuous training programmes concerning domestic violence for public prosecutors;

- To request the Attorney General's Office for a more decisive position in the search for proof and the follow-up of the execution of sentences;
- The establishment of a database so that information about previous complaints may be obtained by courts and tribunals;
- To establish a protocol of collaboration between the different groups involved;
- To request the General State Prosecutor to include in his annual report a specific section on violence against women;
- To increase the number of doctors and experts in forensic medicine;
- To improve the legal aid for the victims of ill-treatment.

### Sweden

A new offence, *gross violation of a woman's integrity*, has been introduced into the Penal Code. It deals with repeated punishable acts directed by men against women who have or have had a close relationship with the perpetrator. "Gross violation of a woman's integrity" means that if a man commits certain criminal acts (assault, unlawful threat or coercion, sexual or other molestation, sexual exploitation, et cetera) against a woman to whom he is or has been married or with whom he is or has been cohabiting, he shall be sentenced for gross violation of the woman's integrity, instead of for each single offence he has committed. A necessary condition for sentencing for the new offence is that the acts were part of a repeated violation of the woman's integrity and were intended to damage seriously her self-confidence. The new crime makes it possible for the courts to increase the penal value of these offences in situations where they are part of a process that constitutes a violation of integrity, which is often the case in domestic violence. It will thus also be possible to take the entire situation of the abused woman into account. The penalty is imprisonment for a minimum of six months and a maximum of six years. The new crime does not exclude the possibility of the perpetrator simultaneously being indicted for, for instance, aggravated assault or rape. Since the entry into force of the new provision, a number of judgments have been pronounced on the basis of the provision.

### Sweden

The National Council for Crime Prevention was asked to make a study of the practical and technical conditions necessary for electronic monitoring of men who breach a restraining order. The Council submitted its report to the Government in March 1999. The increased risk of detection which such a form of monitoring implies can have a deterrent effect as well as providing greater security for the woman concerned. Electronic monitoring would also mean a limitation of the freedom of movement of the perpetrator instead of, as is often the case today, the woman bearing the responsibility for reporting the breach to the police. However, the initiation of such a project is contingent on access to reliable technology and the possibility of carrying out the surveillance in a practical way. In its report, the Council concluded that the use of electronic monitoring in connection with restraining orders is feasible with the technology available today but that the monitoring does not offer fully reliable protection. The legal and organisational preconditions have to be judged carefully before testing such a monitoring system in practice. The issue is being processed within the Government Offices.

## Turkey

“MOR ÇATI”, based in Istanbul, is an autonomous NGO that provides support to women experiencing domestic violence. Some women have been empowered to say "no" to violence. “MOR ÇATI” strengthens solidarity amongst women against domestic violence through the "say no" campaign that challenges the cultural acceptance of violence against women.

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

## Belgium

### 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 considerably 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.

## Iceland

### 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 users. The centre is financed by grants from the government as well as local authorities and its own fund-raising activities. The centre offers individual and group counselling and support to women subjected to violence. If the victims want to report, Stigamot supports them through the police hearing and the court proceedings 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 responses) in cases concerning sexual

violence; the demand of the burden of the proof is too strong and the punishment is too soft.

### Italy

The first integrated project against all forms of tolerance towards violence against women was launched in Bologna. This "Zero Tolerance" project was implemented with cooperation between institutions and NGOs. The strategy is based on prevention, the delivery of specialised services and an awareness-raising campaign addressed at the local communities. The Zero Tolerance Project is becoming a benchmark for other Italian municipalities.

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:

- 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 which are 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 being compiled.

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

### Iceland

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, 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.

## Lithuania

### National Programme Against Commercial Sexual Exploitation and Sexual Abuse of Children (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 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.

## Switzerland

A refuge for young girls and women between fourteen and twenty-one years of age who are victims of sexual exploitation was opened in Zurich in 1994. The refuge is a place where they can rest and find protection, medical care and advice. A travelling exhibition entitled "False security: the sexual exploitation of girls" passed through various towns in the French and German-speaking parts of Switzerland. It has provided valuable information and encouraged the setting up of support networks.

## United Kingdom

### Specific measures against child prostitution

Those who coerce a child into prostitution are committing a number of offences; those who have sex with a child under 16 are also usually breaking the law. The Government has recently issued draft guidance to ensure that children found in prostitution in England and Wales are treated as victims - it emphasises that children in prostitution are primarily the victims of coercion and abuse and that therefore the emphasis should be on the care and protection of young people. Those adults who exploit them, whether by pimping them or as clients, are child abusers. The draft guidance encourages the use of the full range of criminal offences against those who corrupt and abuse children. It is intended to

be a practical guide, the purpose of which is to enable all agencies to develop effective local arrangements to work together to:

- Recognise the problem;
- Treat the child primarily as a victim of abuse;
- Safeguard children and promote their welfare;
- Work together to provide children with strategies to exit prostitution.

## 1.5 Sexual Harassment

### Czech Republic

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 misdemeanour is committed by a person who

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

### Denmark

The Joint Industrial Council, which includes both sides of the labour market, provides advice and support on problems concerning sexual harassment. 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.

### Ireland

#### 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.

## The Netherlands

### Sexual harassment in sports

The national sporting umbrella organisation NOC\*NSF (Netherlands Olympic Committee and Sports Confederation) has drafted a policy plan entitled *Sporting Policy against Sexual harassment, 1996-1999*. This plan concentrates on ways of preventing and combating sexual harassment in sports. The Minister of Health, Welfare and Sports supports this plan.

In May 1997, the national sporting associations affiliated to the NOC\*NSF drew up a code of conduct for professional and voluntary workers in the sports industry. Since 1 January 1998, special telephone lines have been opened so that people can report incidents of sexual harassment in sports.

## **1.8 Prostitution**

### Georgia

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 an interview with a prostitute. The conventional opinion is that prostitution in Georgia is conditioned by the high level of poverty and social-economic hardship owing to which women often are unable to earn their living in any other way.

### Norway

A national centre ("Pro-centre") of expertise in matters relating to prostitution has been set up in Oslo. Its task is to:

- develop methods to work with prostitutes of both sexes;
- provide guidance for welfare services;
- engage in general information and education activities.

General assistance for women and men in prostitution is provided by welfare services and special outreach programmes.

### Sweden

A new law prohibits obtaining sexual services for payment. This has aroused considerable interest abroad as it outlaws the act of buying sex and penalises the buyer

but not the seller. The punishment for this offence is a fine or imprisonment for up to six months. Attempted offences are also punishable. The offence comprises all forms of sexual services, whether they are purchased on the street, in brothels, in so-called massage parlours, et cetera. The Government considers that it is not reasonable to punish the person who sells sexual services. In the majority of cases this person is the weaker party who is exploited by those who want only to satisfy their sexual drives. It is also important to motivate prostitutes to seek help to leave their way of life. They should not run the risk of punishment because they have been active as prostitutes. By prohibiting the purchase of sexual services, the Swedish Government believes that prostitution and its damaging effects can be counteracted more effectively than hitherto. The Government, however, takes the view that prohibition can never be more than a supplementary element in the efforts to reduce prostitution and cannot be a substitute for broader social endeavours. The Prohibition on the Purchase of Sexual Services came into force on 1 January 1999. A survey made by the National Board of Health and Welfare shows that street-prostitution has decreased since the new prohibition came into force, but it also shows that hidden prostitution has increased. The National Police Board has received extra funding for this matter.

### Switzerland

A distinction is made between conventional prostitution and prostitution for the purpose of obtaining drugs, in that the latter arises from a dependency on drugs. Drug-addicted prostitutes usually work outside authorised areas; they get into clients' cars and are therefore completely at their mercy, thus running the risk of being raped, beaten or robbed. As they are heavily dependent on drugs, they are often exploited by men who insist on having sexual relations without condoms. As drug-related and soliciting activities are illegal, they rarely report violent clients to the police. In Zurich there is a mobile refuge, the "Flora Dora" bus that tours the city from Tuesday to Sunday, from 9 pm to 1 am. It seeks out drug-addicted prostitutes, outside the authorised areas, and provides them with condoms, advice, etc. As two-thirds of them regularly use these services, they gradually come to trust the staff working on the bus, who gather information, among other things, on violent customers, sometimes making it possible for the police to identify and arrest them.

## **Trafficking in Human Beings**

### Austria

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.

## Belgium

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.

## Estonia

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.

## Georgia

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.

## Germany

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.

## Italy

*A 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 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.

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 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 Netherlands

#### National rapporteur on traffic in persons

The rapporteur, who took office on 1 April 2000, is assisted by a small team of researchers and a secretary. The office is funded by five ministries. The rapporteur is independent and will make recommendations to the government based on his own views. He and his staff are authorised to consult police and criminal records.

The rapporteur's mandate is based on article 250a of the Criminal Code. He is required to present an annual report to the government with facts and figures on:

- The nature, incidence and mechanisms of traffic in persons, including information on offenders, victims and potential offenders and victims;
- Investigations by the police and legal proceedings against offenders (in cases abroad, if relevant);
- Information and assistance to victims or potential victims; repatriation;
- Indications of any change in the nature of traffic in persons or the way it operates which might have implications for the implementation of national, regional or international policy.

The rapporteur is also responsible for fostering international co-operation within the existing international frameworks to curb the traffic in persons. This involves promoting international consensus on the collection and management of data.

The rapporteur's recommendations may be addressed to central or local government or other administrative authorities, or international organisations or NGOs. His annual reports will be published and submitted to parliament. His work will give the government a better understanding of the nature and scale of the problem in this country.

### Portugal

On 6 and 7 December 1999, the Commission for the Equality and Rights of Women organised an international seminar on the trafficking and sexual exploitation of women to make governments, non-governmental organisations and the public at large more aware of the problem. The seminar was co-financed by the European Commission's STOP programme and the seminar proceedings were published.

In 2000 the Commission also published a compilation of international laws and legal instruments adopted by the European Commission, the Council of Europe and the United Nations on prostitution and trafficking in women and children.

The CIDM supports projects to help groups of women prostitutes and co-ordinates an interdisciplinary group, of which NGOs and services working with prostitutes are members. The CIDM also co-ordinates an inter-ministerial group which analyses existing legislation on trafficking with a view to proposing new legislation (CIDM, Ministry of the Interior, Ministry of Labour and Solidarity, the Foreigners and Frontiers Department and the Criminal Investigation Department).

In 2000 and 2001 a new application candidature was submitted to the STOP programme concerning a study on trafficking in the northern region of Portugal and the training of staff working with the population in this region. The application was accepted.

In the context of the Working Community involving Galicia (Spain) and Northern Portugal, the CIDM and the Galician Department for Equal Opportunities will submit a joint application to Interreg III. This project, entitled ISADORA, will, if approved, be carried out between 2000 and 2006 and concern the drafting of a study on prostitution between the two borders, the training of staff concerned with this problem and of the prostitutes themselves and the setting up of support services.

## **1.9 Female Genital Mutilation**

### France

Since 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.

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.

### Italy

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 of helping 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.

Norway

In October 2000, the Norwegian Board of Health issued guidelines for health personnel in providing comprehensive medical care for girls and women who have undergone female genital mutilation and in prevention of new cases.

The Norwegian Government will present a comprehensive plan of action against female genital mutilation in December 2000.

**3.1 Support/Protection****Awareness**Liechtenstein

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.

**Implementation of legislation and programme of action**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 for women. The Council consists of 29 members and is entitled to participate in the preparation of Government decisions as a co-ordinating 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 and to provide information, assistance for victims and training, in cooperation with authorities and NGOs.

## **Website**

### **Sweden**

The Government has set up a website on issues related to violence against women ([www.naring.regeringen.se/fragor/jamstalldhet](http://www.naring.regeringen.se/fragor/jamstalldhet)). The website is administered by the Division for Gender Equality at the Ministry of Industry, Employment and Communications.

## **The Police**

### **Belgium**

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.

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.

### **Cyprus**

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”.

### Greece

Two seminars for the training of the Police Force were organised in 1997. The first one was organised by the General Secretariat for Equality. The second seminar (“ARIADNE”) concerned violence and sexual exploitation of women and minors and was organised by the Ministry of Public Order.

### Hungary

The police have established special departments for organised criminality, prostitution and crime prevention. Beside this, there is considerable development in the field of assistance and support for victims. In 1998, a Victim Protection Bureau (Áldozatvédeő 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.

### Witnesses

#### United Kingdom

It is clear that many cases (not just rape) are unsuccessful because witnesses are afraid to testify. On 10 June 1998 the Government therefore published *"Speaking up for Justice"*, the report of the interdepartmental working group on vulnerable or intimidated witnesses. The report contains 78 recommendations that aim to improve the way in which vulnerable or intimidated witnesses (including women and girls) are treated, with the aim of improving their access to justice. A steering group has been set up to co-ordinate implementation of all the proposals. Those requiring primary legislation are currently before Parliament in the Youth Justice and Criminal Evidence Bill.

In particular, the report outlines a scheme that would identify a vulnerable or intimidated witness at an early stage in the police investigation and pick up on the individual needs of the witness. This would enable decisions to be taken on the appropriate methods of interview and investigation. The prosecution and defence would be able to apply to the

court for one or more of a wide range of special measures to be made available to assist the witness give their best evidence during the trial. These include the use of live TV links so the witness does not have to give evidence in open court, screens round the witness box in the court room to protect the witness from viewing the defendant and clearing the public gallery while the witness gives evidence.

*“Speaking up for Justice”* stresses the likelihood that victims of rape will be vulnerable witnesses due to the nature of the crime. Victims of domestic violence are also recognised as being a risk group likely to be intimidated witnesses due to their relationship to the defendant.

### **An integrated approach to tackling violence against women**

#### United Kingdom

In June 1999, the Home Office and the Women’s Unit published a joint document “Living Without Fear” which sets out an integrated approach to tackling violence against women. It addresses all forms of violence against women, including domestic violence, sexual harassment, rape and sexual assault, violence at work and stalking. The document highlights concrete, practical examples from different organisations, agencies and local authorities, of how violence is being successfully tackled across the country. It focuses on the way different organisations and agencies work together to deliver better, quicker and more effective services for women who have experienced violence.