



**LEGISLATION IN THE MEMBER STATES
OF THE COUNCIL OF EUROPE
IN THE FIELD OF VIOLENCE AGAINST WOMEN**

VOLUME I: ALBANIA to IRELAND

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FOREWORD

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

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

The present document contains a country-by-country compendium which was updated for the last time in 2006. As of January 2007, updated information has been received from 40 of the 46 member states about the situation in their countries. In order to make the document easier to read, a similar presentation is used for all countries. This presentation is based on the questionnaire, slightly revised in 2006 (see in appendix), which does not include any longer questions on trafficking in human beings.

This publication is intended for all those who work towards combating violence against women.

ALBANIA

Information provided by the Ministry of Labour, Social Affairs and Equal Opportunities, Legal Department, in **November 2006**.

1.0 LEGISLATION AND SANCTIONS RELATING TO VIOLENCE AGAINST WOMEN

1.1 LETTER OF LAW – DEFINITIONS

In Albania, there is not yet a Law on violence against women and there is no legal definition of violence against women.

In the Republic of Albania Constitution sanctioned that "The rights and fundamental freedom of men and women are indivisible, inalienable and inviolate". As no. 1 paragraphs of Article No. 54 of Constitution " Children, youth, pregnant women young mothers have the right to a specific protection from the state"

The violent behaviors are punished by the Penal Code.

Albanian Penal Code (Law No. 7895 date 27.1.1995) is amended in 2001, 2003 and 2004. Trafficking on human being, trafficking of women for purpose of prostitution are provided in these changes.

1.2 DOMESTIC VIOLENCE

The Albanian Penal Code does not distinguish in wording from acts committed by a stranger and acts committed by a family member. These are covered by more general crimes such as murder, wounding, battery etc.

Penal Code provided in its provisions criminal offenses against individual freedom; criminal offences against morals and dignity; criminal offenses against children, marriage and family; and sexual crimes. Sanctions are more severe when the victims are minors and pregnant women. In such cases the specific qualities of the victim constitute aggravating circumstances raising so the punishment measure.

For the first time, Article No. 62 of Family Code provides the possibility for the spouse to ask the Court to remove the violent spouse from the marital residence for up to three years. This provision uses a gender neutral language but studies and surveys conducted in Albania reveal that women are the most in danger of this form of violence, which leads to the conclusion that this provision is intended to protect women.

Different studies and surveys indicated that gender-based domestic violence is more spread than others forms of violence. For these purpose different NGOs and the State (Ministry of Labour , Social Affaires and Equal Opportunities) are engaged in drafting of The National Strategy Against Domestic Violence and a new draft-law "On Measures Against Violence In Family Relations". These draft-law is presented in the Parliament as a initiative of 20.000 citizens. The purpose of this law is: to prevent and reduce domestic violence in all its forms by appropriate legal means, To guarantee legal protection to members of the family who are subjects of domestic violence, paying particular attention to needs of children, the elderly and the disabled; To set up a coordinated network of responsible authorities for protection, support and rehabilitation of victims, mitigation of consequences and prevention of domestic violence.

1.3 RAPE/SEXUAL ASSAULT

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

Sanctions between three and ten years imprisonment, rising to between 5 and 15 years if serious harm was caused, and rising again to between 10 and 20 years if death is caused or the woman commits suicide.

Article 102/a – Unlawful homosexual intercourse by using violence with adults

Sanctions is between 2 and 7 years; rising to between 5 and 10 years imprisonment if the crime is done in cooperation more than one time, or if harm is inflicted to the victim's health. The sanction rises to between 10 and 20 years imprisonment if it resulted in death has been caused or victim commits suicide.

Article 103 – Unlawful sexual/homosexual intercourse with vulnerable persons

Persons with physical or mental incapacities or someone unconscious. The requirement of violence is removed in this provision. Sanctions is between 5 and 10 years; rising to between 7 and 15 years imprisonment if the crime is done in cooperation more than one time, or if harm is

inflicted to the victim's health. The sanction rises to between 10 and 20 years imprisonment if it resulted in death has been caused or victim commits suicide.

Unlawful sexual intercourse by threat to instantly use a gun: sanctions is between 5 and 10 years imprisonment.

Unlawful sexual intercourse through abuses of authority (defined as relations of subordination or authority): sanction up to three years imprisonment.

Note: Violence is not specified in these provision.

Unlawful sexual intercourse in public is criminalized. Sanction: fine or up to 1 years imprisonment.

Note: does not specify whether this is for one both parties.

1.4 CHILD SEXUAL ABUSE/INCEST

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

Sanctions:

- against girls under 14 years of age: 5-15 years imprisonment, rising to between 10 and 20 years if violence is used or serious physical harm is inflicted; rising to not less than 20 years if death has been caused or the minor commits suicide;
- against girls between 14 to 18 years of ages: 5-10 years imprisonment; rising to 10-15 years if harm is inflicted to the minor's health (not defined, so not clear if this is limited to physical harm or whether psychological harm would be included); the sanction rises to not less than 15 years if death has been caused or the minor commits suicide.

Incest:

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

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

In general, sexual crimes are provided from the Penal Code as criminal offences and they are judged from the Common Court. But the establishment in 2004 of the Court of Serious Crimes (created by Law No.9110/2004 and seated in Tirana) show a qualitative moment against the crime. These Court has the competence to judge sexual/homosexual violence abuse on children, considering these cases as the most heavy criminal offences.

1.5 SEXUAL HARASSMENT

Albanian Legislation provides the sexual harassment in the workplace, in Labour Code and in the Law No.9198 date 1.7.2004 "For the gender equality in the society".

The paragraph no.3 of the Article No.32 of the Labour Code gives the definition of the sexual harassment in the workplace " With sexual harassment is understanding any disturbance that damage in the considerably mode the psychological situation of the employer for the cause of the sex.

The employee is prohibited to do any action that is considered as sexual disturbance in front of the employer and don't permit other employers to undertaken such actions"

The Law No.9198 date 1.7.2004 "For the gender equality in the society" gives a wider definition than Labour Code: "Sexual harassment" is an offensive behaviour of sexual nature that includes words or actions against a person at work, business or other dependence relations"

According to the sexual harassment in the public places from the unknown persons there is no legal provisions.

Article 6 – Employer's responsibilities to protect employees from discrimination

1. In order to protect employees from discrimination, especially from sexual harassment, the employer is responsible to:

- a) set out disciplinary measures against sexual harassment in the internal regulations in compliance with this law
- b) obtain information connected to sexual harassment in the work environment from employees.
- c) take appropriate organizational and disciplinary measures after examination of the claim,

2. The employer shall anchor appeal mechanisms on gender-related claims in the collective labour contract.

1.6 PORNOGRAPHY

The Article No. 117 of Penal Code provides the prohibition of the pornography in the minor environment as follows: "Producing, delivery, advertising, import, selling and publication of pornographic materials in minors premises constitutes criminal contravention and is sentenced to a fine or up to two years of imprisonment"

The Law No. 8410 date 30.09.1998 "For the public and private radio and TV in the Republic of Albania" in article No.38 "Prohibited programs by the law" is represented. "Don't permitted showing in the radio and TV the programs that encourage the violence, national hate.....", and the point 4 of this law provided that "the production and the transmission of the pornography programs are prohibited"

In the point 2) of the Article 55 of the law below in the prohibited provision for the publicities provided that "Not permitted to be transmitted in the radio and TV the publicities that encourage pornography and violence".

1.7 PROSTITUTION

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

Living on immoral earnings: "Forcing, mediating and receiving financial gain viz. prostitution is criminalized. Sanctions: Fines or up to 5 years imprisonment. If a minor is involved, or violence is used against her, the sanctions rise to between 5 and 10 years imprisonment.

Brothel keeping: Managing, using, financing or letting premises for the purpose of prostitution is criminalized. Sanction: Fines or up to 10 years in prison.

1.8 OBSCENE PHONE CALLS/TELEPHONE SEX

No legal provision.

1.9 FEMALE GENITAL MUTILATION

In Albania is not known the female genital mutilation. In practice there is no any report or denunciation.

1.10 INTERNATIONAL CONVENTIONS

According to article 122(2) of the Constitution, the international convention prevails over national laws not compatible with it. Since 14th of December 1955 Albania is member of UN and it had ratified almost all the main conventions of this organization related to human rights.

Albania Parliament ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) with Law No. 7767 of November 9, 1993. Also Albania is member of the Council of

Europe since 13 of July 1995 and ratified too the Optional Protocol to this Convention. Albania has reported near the CEDAW Committee on January 2003 and now is in the moment to implementation of the recommendations. In June 2007, Albania will report for third time.

Albania has acceded to a big number of important documents adopted by the Council of Europe, among which are the European Convention for Human Rights and the Protocols 1,2,3,4,5,6,7,8 and 11. According to the last protocol, all the Albanian citizens have the right to direct to the European Court for Human Rights.

Albania has ratified about 33 Conventions of ILO.

1.11 PROTECTION OF PREGNANCY/PREGNANT WOMEN

Article No. 54 of Constitution provide that " Children, youth, pregnant women, young mothers have the right of a specific protection from the state"

In the section V of the Penal Code provided penal offences that damage the life and health of woman from interruption of pregnancy.

Article 93 provides the sanction: fines or up to 5 years imprisonment when the interrupting of pregnancy it occurs without the women's consent.

Article 94 - Interruption of pregnancy which is not conducted in public hospitals or specifically licensed private clinics, or by a person who is not doctor is sentenced to a fine or up to two years of imprisonment.

If the act has caused [serious] danger to the life or resulted to death, it is sentenced to a fine or to up to five years of imprisonment.

Article 95 Providing the utensils for interruption of pregnancy

Providing the utensils which serve for interruption of pregnancy of a woman in order to have either her or somebody else interrupt the pregnancy, constitutes criminal contravention and is sentenced to a fine or to up to one year of imprisonment.

2.0 SENTENCING

2.1 SENTENCING DOMESTIC VIOLENCE

See **Section 1.2** above.

3.0 EFFECTIVENESS OF LEGISLATION

No information provided.

4.0 DOMESTIC VIOLENCE

See **Section 1.2** above.

5.0 RAPE AND SEXUAL ASSAULT IN MARRIAGE

No information provided.

6.0 RAPE AND SEXUAL ASSAULT

See **Section 1.3** above.

7.0 SEXUAL HARASSMENT

See **Section 1.5** above.

8.0 INCEST/SEXUAL ABUSE OF GIRLS

See **Section 1.4** above.

ANDORRA

Information provided by the Ministry of Health, Social Protection and Family in December 2006.

1.0 LEGISLATION AND SANCTIONS RELATING TO VIOLENCE AGAINST WOMEN

1.1 LETTER OF LAW – DEFINITIONS

1.2 DOMESTIC VIOLENCE

The Andorran Criminal Code, adopted on 21 February 2005 (Organic Law No. 9/2005 of 21 February 2005), contains definitions of the offences of ill-treatment and injury and domestic abuse in Chapter 2 of Part III, on “Physical or psychological duress”.

Below is a translation into English of a French version of these articles, itself a translation of the Catalan, which proved difficult to translate because of the lack or the inadequacy of equivalents in French for certain specific Andorran legal concepts.

CHAPTER 2 – OFFENCES AGAINST THE HEALTH AND INTEGRITY OF INDIVIDUALS

Article 113 – Basic definition of ill-treatment and injury

1. Anyone who subjects a third party to serious physical ill-treatment or causes him or her an injury which requires medical assistance shall be sentenced to a semi-custodial penalty or house arrest and a fine not exceeding EUR 6 000.
2. If the offence is committed against any of the persons described in the following article, a term of imprisonment of not more than two years shall be applied.
3. Where the facts constituting the offence described in this article are compounded by one of the aggravating circumstances described in the sixth paragraph of Article 30 or where the physical or psychological health of the victim has been harmed in such a way that further medical treatment is required after the initial assistance, a term of imprisonment of not less than three months and not more than three years shall be imposed. Any attempt to commit such an offence shall be punished where the aggravating circumstance described in the sixth paragraph of Article 30 is established.

Article 114 – Domestic abuse

Anyone who repeatedly inflicts physical or psychological violence on someone who is or was his or her partner or with whom he or she cohabits or cohabited, or on the ascendants, descendants or own brothers or sisters of this person or any other person under the custody or care of one partner or the other shall be sentenced to a term of imprisonment of not more than three months and not less than three years, irrespective of any other penalty that may be imposed on account of the injuries caused in each instance.

Abuse shall be deemed to be habitual where at least three acts of violence have been committed on the same person or on any of the other persons mentioned in the previous paragraph within a period of three years, irrespective of whether such offences were investigated and prosecuted together or separately.

PART I – SUMMARY OFFENCES AGAINST PERSONS

Article 476 – Ill-treatment and intentional injury

1. Anyone guilty of minor physical ill-treatment or physical assault on another person shall be sentenced to a semi-custodial penalty or house arrest.

2. The same penalty shall be applied to anyone who causes an injury to someone through an action not defined as an offence by this Code.
3. If these offences are committed against a person with whom the attacker has a family tie or similar link, the penalty may not take the form of house arrest.
4. Any attempt to commit such offences shall be punishable.

1.3 RAPE/SEXUAL ASSAULT

Organic Law No. 9/2005 of 21 February 2005 establishing the Criminal Code.

PART VII – OFFENCES AGAINST SEXUAL FREEDOM

CHAPTER ONE. FORMS OF SEXUAL ASSAULT

Article 144 – Sexual assault

Anyone using violence or intimidation to force another person to take part in a sexual act shall be sentenced to a term of imprisonment of not less than three months and not more than three years.

Any attempt to commit such an act shall be punishable.

Article 145 – Sexual assault constituting rape

When sexual assault consists of vaginal, anal or oral penetration or the introduction of objects or parts of the body into the vaginal or anal passages, the perpetrator shall be sentenced to a term of imprisonment of not less than three and not more than ten years.

Any attempt to commit such an act shall be punishable.

Article 146 – Aggravated assault

Perpetrators of sexual assault as described in Article 144 shall be sentenced to a term of imprisonment of not less than two and not more than seven years and perpetrators of the offence described in Article 145 shall be sentenced to a term of imprisonment of not less than six and not more than fifteen years where the offence takes place in one of the following circumstances:

1. The offence is committed in a group, with the participation of two or more persons;
2. The perpetrator is an ascendant, descendant, or brother or sister of the victim or a person exercising legal or *de facto* family authority over the victim;
3. The victim is particularly vulnerable by virtue of his or her age, or because of illness, disability or circumstances. Victims under the age of fourteen shall be considered especially vulnerable on grounds of age in all cases. In such circumstances, the sentences applied shall lie in the upper half of the scale of punishments;
4. Where, because of the very nature of the sexual act, the means used, the specific circumstances or any other reason, the sexual assault is particularly degrading and hurtful for the victim;
5. Where the sexual assault endangers the victim's life or physical integrity.

1.4 CHILD SEXUAL ABUSE/ INCEST

Article 147 – Non-consensual sexual acts

1. Anyone who engages in a sexual act with a person under the age of fourteen or a person with a physical or mental disability or who is unconscious or incapable of putting up any form of resistance, or does so by taking advantage of the person's disability, shall be sentenced to a term of imprisonment of not less than three months and not more than three years.

2. Where the act consists of vaginal, anal or oral penetration or the introduction of objects or parts of the body into the vaginal or anal passages, the perpetrator shall be sentenced to a term of imprisonment of not less than three and not more than ten years.

3. If the perpetrator is an ascendant, descendant, or brother or sister of the victim or a person who exercises legal or *de facto* family authority over the victim, or if the victim is particularly vulnerable by virtue of his or her age or because of illness or circumstances, the perpetrator shall be sentenced to a term of imprisonment of not less than two and not more than seven years in the case described in paragraph one above and not more than six and not less than fifteen years in the case described in paragraph two above.

4. Any attempt to commit such an offence shall be punishable under all circumstances.

Article 148 – Sexual abuse committed by a person with authority over a minor

1. Anyone who engages in a sexual act with a person over the age of fourteen but under the age of eighteen over whom they have authority shall be sentenced to a term of imprisonment of not less than three months and not more than three years.

2. Where the act consists of vaginal, anal or oral penetration or the introduction of objects or body parts into the vaginal or anal passages, the perpetrator shall be sentenced to a term of imprisonment of not less than two and not more than six years.

3. If the perpetrator is an ascendant, descendant, or brother or sister of the victim or a person who exercises legal or *de facto* family authority over the victim, or if the victim is particularly vulnerable by virtue of his or her age or because of illness or circumstances, the applicable term of imprisonment shall be increased from three to six years.

1.5 SEXUAL HARASSMENT

Article 149 – Sexual abuse committed by a person with authority over an adult (sexual harassment)

1. Anyone who engages in a sexual act with an adult over whom he or she has authority shall be sentenced to a term of imprisonment of not more than one year, a semi-custodial penalty or house arrest.

2. Where the act consists of vaginal, anal or oral penetration or the introduction of objects or body parts into the vaginal or anal passages, the perpetrator shall be sentenced to a term of imprisonment of not less than three months and not more than three years.

Any attempt to commit such an act shall be punishable.

1.6 PORNOGRAPHY

CHAPTER FOUR. OFFENCES CONNECTED WITH PORNOGRAPHY AND SEXUAL PROVOCATION

Article 155 – Use of minors and incapacitated persons for the purposes of pornography

1. Anyone who films minors or incapacitated persons with the intention of producing pornographic material shall be sentenced to a term of imprisonment of not more than one year.

Any attempt to commit such an offence shall be punishable.

2. Anyone who uses a minor or an incapacitated person for pornographic or exhibitionist purposes or who produces, sells, distributes, disseminates, transfers or exhibits by any means pornographic material featuring images of minors which are real or apparently real shall be sentenced to a term of imprisonment of not less than one and not more than four years.

Any attempt to commit such an offence shall be punishable.

3. Anyone who possesses pornographic material containing real or apparently real images of minors with the aim of selling or disseminating it shall be sentenced to a term of imprisonment of not more than two years.

4. Where the person guilty of any of the offences referred to in this article obtains a financial benefit, an additional fine of up to 30,000 euros shall be imposed.

1.7 PROSTITUTION

CRIMINAL CODE

Article 150 – Establishment engaging in prostitution

Anyone operating or financing an establishment engaging in prostitution shall be sentenced to a term of imprisonment of not less than three months and not more than three years and disqualification from managing hotel, catering and leisure establishments for a period of up to five years.

Article 151 – Encouraging prostitution

1. Anyone who promotes, facilitates or fosters the prostitution of another person shall be sentenced to a term of imprisonment of no less than three months and no more than three years.

2. If the victim is a minor or a person who is vulnerable for reasons of illness or physical or mental disability, the term of imprisonment shall be between two and five years. If the act is committed by persons in a position of parental authority or guardianship, the sentences applied shall lie in the upper half of the scale of punishment.

3. If the offence is committed by an organised group, the maximum limit of the applicable sentence may be increased by half.

1.8 OBSCENE PHONE CALLS/TELEPHONE SEX

CRIMINAL CODE

Article 478 – Non-serious intimidation and threats

1. Anyone guilty of non-serious intimidation or harassment shall be sentenced to a fine not exceeding 3 000 euros.

2. Anyone who, in a situation other than those defined elsewhere in this Code as an offence, threatens a person with harm constituting a summary or minor offence, or brandishes weapons or dangerous implements during a dispute shall be sentenced to a semi-custodial penalty, house arrest or a fine not exceeding 3 000 euros.

3. Where the offences described in the previous paragraphs are committed against one of the persons described in Article 476.3, the same provisos with regard to house arrest shall be applied if Article 114 is not applicable.

4. Anyone who makes repeated phone calls intended to cause a person worry, distress or fear shall be sentenced to a semi-custodial penalty, house arrest or a fine not exceeding 3 000 euros.

1.9 FEMALE GENITAL MUTILATION

CRIMINAL CODE

Article 116 – Aggravated injury

Anyone who causes a person to develop a serious and lasting physical or mental illness, a serious deformation, impotence, sterility or the loss or failure of an organ, body part or sense shall be sentenced to a term of imprisonment of not less than three and not more than ten years.

Attempts, conspiracy and incitement to commit such offences shall be punishable.

1.10 INTERNATIONAL CONVENTIONS

No information provided.

1.11 PROTECTION OF PREGNANCY/PREGNANT WOMEN

Andorra's Law No. 8/2003 on employment contracts, adopted on 12 June 2003, contains provisions on the protection of pregnant women including, in particular, rules on dismissal. Under Article 71 of this law, all pregnant women are protected from dismissal. The law lays down special rules for pregnant women as regards night work, under which they are prohibited from night work unless engaged in an occupation which is traditionally carried out at night. It also makes provision for 16 weeks of maternity leave (section 21) and two hours of time off per day for breastfeeding (section 52).

2.0 SENTENCING

2.1 SENTENCING DOMESTIC VIOLENCE

Under Article 113.2 of the Andorran Criminal Code (entitled "Basic definition of ill-treatment and injury"), the punishment for domestic violence is a term of imprisonment of not more than two years. However, under the same article, this term can be increased to up to three years if these offences are compounded by the aggravating circumstances described in Article 30 of the Criminal Code, namely the commission of an offence on racist or xenophobic grounds or on grounds of the victim's ideology, religion, nationality, ethnic background, sex or sexual orientation or because he or she is physically or mentally ill or disabled.

Furthermore, if these offences are carried out repeatedly, Article 114 on domestic abuse applies. This article provides for a three-month to three-year prison sentence irrespective of any other penalties applied in respect of the injuries suffered by the victim.

It should also be noted that, if the impugned offences occurs under the aggravating circumstances of persistence, cruelty, use of weapons, objects or methods sentenced to cause serious injury or death, or special vulnerability of the victim by virtue of his or her age, incapacity or other similar circumstances or if, when the offences were committed, the assistance of third parties was called on to help carry them out or worsen the victim's injuries, Article 115 on "Aggravated abuse" applies and the sentence increases to a prison term of up to five years.

In 2005, seven relevant summary orders were issued:

- three under Article 113.2 of the Criminal Code;
- one under Article 348.4;
- and three under Article 476.3.

In the same year, a total of 40 court judgments were handed down by the Tribunal de Corts (which has jurisdiction over major or very serious crimes), the Tribunal de Batlles (minor offences) and the single-member courts (summary offences).

Of the forty judgments, six were given by the Tribunal de Corts, one by the Tribunal de Batlles and 33 by the single-member courts.

A.-STATISTICS FOR JUDGMENTS GIVEN BY THE TRIBUNAL DE CORTS IN 2005.

Only one judgment was given under Article 194 of the former Criminal Code on intentional injury in a context of domestic violence. In this case the perpetrator was given a two-year suspended sentence together with a ban on entering into contact with the victim, disqualification from holding a firearms licence for four years and compulsory treatment for alcoholism.

Four judgments were given under Article 195 of the former Criminal Code on intentional injury in a context of domestic violence. Under one of these an immediate four-month prison sentence was handed down, combined with a two-year suspended sentence and a fine of 600 euros. In the other three judgments, the perpetrators were given suspended prison sentences, the first for one year, the second for a year and a half and the third for fifteen months together with a fine of 1 000 euros.

In a case under Article 204 of the former Criminal Code on rape – in this case rape in a context of domestic violence – the guilty party was given a three-year suspended prison sentence.

Threats proffered in a context of domestic violence were the subject of eleven judgments during the year, in four of which the guilty parties were sentenced to immediate imprisonment for terms of six months, one month and two months. In the remaining judgments, the perpetrators were given suspended prison sentences ranging from one month to seventeen months, five of which were coupled with fines ranging from 300 to 1 200 euros.

Seven of the judgments given by the Tribunal de Corts during the year related to the offence defined in Article 348.4 of the former Criminal Code and imposed sentences ranging from fifteen days' suspended house arrest to a three-month suspended prison sentence together with a fine of 300 euros.

JANUARY-JUNE 2006

Only one judgment during this period related to intentional injury under Article 195 of the new Criminal Code; the perpetrator was sentenced to twelve months' suspended imprisonment and a fine of 600 euros.

Similarly, only one judgment during this period related to threats proffered in a context of domestic violence under Article 195 of the new Criminal Code; in this case the perpetrator was sentenced to fifteen months' suspended imprisonment and withdrawal of his firearms licence for two years.

B.-STATISTICS RELATING TO JUDGMENTS GIVEN BY THE TRIBUNAL DE BATLLES BETWEEN JANUARY AND JUNE 2006

Only one judgment during this period related to intentional injuries in a context of domestic violence under Article 348.4; the perpetrator was sentenced to fifteen days' suspended imprisonment and a fine of 900 euros.

C.-STATISTICS RELATING TO JUDGMENTS GIVEN BY THE SINGLE-MEMBER BATLLIA COURT IN 2005.

The perpetrator of a summary offence under Article 348.1 of the former Criminal Code on insults in a context of domestic violence was fined 400 euros. In fifteen judgments given pursuant to Article 348.2 of the former Criminal Code (minor insults), the perpetrators were sentenced to fines of 300 to 450 euros.

Twelve judgments during this period related to ill-treatment without physical injury as defined in Article 348.2 of the former Criminal Code, giving rise to warnings in four cases and fines of 300 euros. Eight judgments related to threats proffered in the context of domestic violence constituting summary offences under Article 348.3, giving rise to three warnings and fines of 300 euros.

Thirty-three judgments related to facts constituting intentional injury in the context of domestic violence, for which the single-member Batllia court issued warnings and imposed fines of 200 to 600 euros in 12 cases.

D.-STATISTICS RELATING TO JUDGMENTS GIVEN BY THE SINGLE-MEMBER BATLLIA COURT BETWEEN JANUARY AND JUNE 2006

Two judgments given during this period related to Article 348.2 of the former Criminal Code on insults proffered in a context of domestic violence; in each case the perpetrators were given a warning and fined 400 euros.

3.0 EFFECTIVENESS OF LEGISLATION

3.1 ROLE OF NON-GOVERNMENTAL ORGANISATIONS (NGOs) IN JUDICIAL PROCEEDINGS

Article 14 of the Organic Law amending the Code of Criminal Procedure authorises associations and legally constituted corporations to bring criminal and civil legal proceedings to protect the collective interests they represent. These corporate entities take part in court proceedings through their legal representatives.

3.2 ARE SPECIAL PROVISIONS MADE TO SUPPORT WOMEN AND GIRLS GIVING EVIDENCE?

Where a trial is held, steps may be taken to prevent the victim from having to be seen or be in the presence of her attacker by installing a kind of partition between the victim and the perpetrator in the court room during the victim's statements and throughout the whole of the proceedings. Such measures can be taken either by the court of its own motion or at the request of one of the parties.

3.3 MAIN PROBLEMS AND NEW SOLUTIONS

No information provided.

3.4 SPECIAL LEGISLATION ADDRESSING VIOLENCE AGAINST WOMEN (TREATMENT AS A "SPECIAL CASE" OR AS PART OF ANTI-DISCRIMINATION LEGISLATION"?)

There is no specific legislation on violence against women and so it is treated as an integral part of anti-discrimination legislation.

3.5 CRIMINAL LAW/CIVIL LAW

CRIMINAL LAW

The offence of discrimination is defined in Article 338 of the Criminal Code and punished by a semi-custodial sentence or house arrest and disqualification from professional activities for a period of up to three years.

Article 338 – Discrimination

1. Discrimination shall be deemed to have been committed by anyone who, on discriminatory grounds, refuses to sell or rent out a good or service or makes rental subject to special conditions. Corporate entities may be considered the victims of discrimination where it is aimed at one of their managers or members. Discrimination shall also be considered to have been committed by anyone who, on discriminatory grounds, refuses to employ, dismisses or institutes disciplinary proceedings against a person or makes distinctions with regard to pay, working conditions or career development.
2. Discriminatory grounds shall be constituted by any consideration of a person's place of birth, national or ethnic origin or background, sex, religion, philosophical, political or trade unionist opinion or other personal or social circumstances such as a physical or mental disability or his or her lifestyle, habits or sexual orientation.
3. Anyone found guilty of discrimination shall be sentenced to a semi-custodial penalty or house arrest and disqualification from professional activities or positions of public responsibility for a period not exceeding three years.

CIVIL LAW

The Law on Employment Contracts adopted on 30 June 2003 contains several sections punishing any form of discrimination against employees. These focus in particular on compensation in cases of unfair dismissal, stating that where the dismissal of an employee was the result of discrimination on grounds of place of birth, race, sex, sexual orientation, origin, religion, opinion or any other personal or social circumstance, the employee has the choice between an award of compensation or reinstatement in the company together with some form of redress for the discriminatory act and compensation for the damage suffered to be set by the relevant courts or tribunals.

3.6 SPECIALIST POLICE UNITS – COUNTRY WIDE OR PATCHY

Since 2004, the Andorran Police Force has officially included a unit made up of four men and a woman specialising in matters relating to minors and cases of domestic violence. Its activities are centred primarily on the complaints that it processes and investigates, but it also fulfils prior preventive functions.

It also works with social services and the forensic medicine department on expert reports.

3.7 VIOLENCE AGAINST WOMEN – AN OBSTACLE TO EQUALITY?

No information provided.

3.8 GENDER PERSECUTION AS GROUNDS FOR GRANTING REFUGEE STATUS?

Andorra does not grant refugee status.

4.0 DOMESTIC VIOLENCE

4.1 ARE THERE SPECIFIC LAWS TO COMBAT DOMESTIC VIOLENCE?

As explained in section one above, the Criminal Code contains specific provisions to punish domestic violence, particularly Articles 114 and 476.

4.2 ARE CURRENT DEFENCES ADEQUATE WHEN WOMEN KILL ABUSIVE HUSBANDS OR PARTNERS?

The relevant defences are those provided for by the Criminal Code and the Code of Criminal Procedure.

4.3 IS PRIVATE VIOLENCE PUNISHED IN THE SAME WAY AS PUBLIC VIOLENCE?

It has to be said that violence is punished more severely under Andorran law when it is of a public nature.

5.0 RAPE AND SEXUAL ASSAULT IN MARRIAGE

5.1 IS RAPE IN MARRIAGE OUTLAWED AND PROSECUTED IN THE SAME WAY AS OTHER FORMS OF RAPE?

The Criminal Code makes no distinction between rape in marriage and other forms of rape.

5.2 ARE THE SANCTIONS FOR RAPE AND RAPE IN MARRIAGE THE SAME?

In principle the same sanctions apply.

5.3 HAVE ANY SPECIFIC SOLUTIONS BEEN SUGGESTED FOR RAPE IN MARRIAGE (RESTRICTIONS AND BANNING ORDERS)?

The solutions that have been suggested are not particularly specific to rape in marriage.

5.4 ARE THERE CIVIL LAW REMEDIES – INCLUDING MEASURES RELATING TO THE FINANCIAL SITUATIONS OF WIVES/COHABITERS AFTER SEPARATION AND DIVORCE?

Andorran law provides for a whole range of remedies, both before the courts and with the relevant authorities such as the Ministry of Health's social services.

5.5 IS THERE SPECIAL LEGISLATION TO DEAL WITH RAPE IN MARRIAGE?

No, Andorran law does not deal specifically with rape in marriage.

6.0 RAPE AND SEXUAL ASSAULT

6.1 HOW IS SEXUAL CRIME DEFINED?

Part VII of the Criminal Code defines sexual crime as "offences against sexual freedom".

6.2 DOES THE DEFINITION OF RAPE INCLUDE ALL ASPECTS OF SEXUAL VIOLENCE?

As explained above, the definition of rape in Article 145 of the Criminal Code definitely includes sodomy, among other things.

6.3 ARE THERE DIFFERING DEGREES OF RAPE/SEXUAL HARASSMENT?

There are not differing degrees of rape, only aggravating circumstances which increase the prison sentences applied. The relevant provisions are contained in Articles 144, 145 and 146 of the new Criminal Code.

6.4 HOW IS CONSENT DEFINED?

The Criminal Code does not include any non-specific or general definition of consent or lack of consent with regard to sexual offences. The content of each individual article provides the means of identifying and defining the facts.

6.5 WHAT KIND OF TECHNICAL EVIDENCE IS NECESSARY IN A RAPE TRIAL?

The minimum technical evidence required in a rape trial is an expert medical report on the victim and the attacker by a forensic scientist and an expert report by a psychiatrist.

The court may decide, of its own motion or at the request of one of the parties, to carry out DNA testing.

6.6 IS CROSS-EXAMINATION ON THE VICTIM'S SEXUAL HISTORY AUTHORISED IN RAPE TRIALS AND IN WHAT CONTEXT?

The Code of Criminal Procedure authorises attackers' representatives and defendants to present the court with any evidence they consider to be of relevance and interest. It is subsequently for the court to decide whether it is appropriate and desirable to take this evidence into account.

6.7 WHICH COURT RULES ON CASES OF RAPE?

Rape cases are tried in the first instance in the Tribunal de Corts and on appeal by the Criminal Division of the Tribunal Superior de Justicia.

6.8 DOES MEMBERSHIP OF THIS COURT REFLECT THE PRINCIPLE OF EQUAL OPPORTUNITIES?

Two of the judges in the Tribunal de Corts are men and one is a woman. The Criminal Division of the Tribunal Superior de Justicia is also made up two men and one woman.

6.9 WHAT SENTENCES ARE USUALLY APPLIED TO RAPISTS?

Generally, sentences consist of a six- to nine-year prison term.

6.10 ARE FEMALE POLICE OFFICERS PRESENT IN ALL BODIES CHARGED WITH EXAMINING AND PROSECUTING RAPE?

Not systematically. However, around 22.5% of Andorran police officers are women.

6.11 HAVE PROVISIONS BEEN MADE FOR FEMALE FORENSIC EXAMINERS?

This is already the case and, moreover, there are more women forensic examiners than men. The Forensic Medicine Department comprises one man and two women, one of whom is the head of the department.

7.0 SEXUAL HARASSMENT

7.1 DOES YOUR COUNTRY HAVE LEGISLATION TO PROTECT THE DIGNITY OF WOMEN AT WORK (VIOLENCE AGAINST WOMEN)?

The Law on Employment Contracts includes provisions which protect all employees from acts undermining their dignity. Acts of this type are punished with heavier fines if the employee resigns and they are considered a "very serious" offence, for which employers will pay a fine of 2 501 to 12 000 euros (see Articles 75,76, 95 and 98).

7.2 ARE OTHER FORMS OF SEXUAL VIOLENCE LEGISLATED AGAINST?

No information provided.

8.0 INCEST/SEXUAL ABUSE OF GIRLS

8.1 WHAT IS THE AGE LIMIT BETWEEN CHILD AND ADULT?

18.

8.2 DOES THIS CORRESPOND TO THE AGE OF CONSENT?

Yes.

8.3 IS THERE SPECIFIC LEGISLATION AGAINST CHILD PROSTITUTION?

Articles 151 and 154 of the Criminal Code punish child prostitution.

8.4 WHAT OTHER FORMS OF SEXUAL ABUSE ARE LEGISLATED AGAINST (SEXUAL HARASSMENT, FEMALE GENITAL MUTILATION)?

See **sections 1.5 and 1.10** above.

8.5 ARE THERE PROVISIONS FOR THE REMOVAL OF ABUSERS FROM HOUSEHOLDS?

Yes, Article 38.3 of the Criminal Code gives courts the right, in the interests and for the protection of victims, to impose an additional penalty designed to prevent convicted abusers from entering into contact with victims for a period of up to six years in the case of minor offences and twelve years in the case of major offences.

Restraining orders may also be applied as pre-trial preventive measures.

8.6 ARE THERE DIFFICULTIES REGARDING THE CREDIBILITY OF CHILDREN AS WITNESSES?

No, because evidence from children is subject to all the necessary measures and precautions, meaning that professionals are employed to help to try to uncover the truth and listen to what children have to say. All children's statements are carefully listened to and, of course, taken into account by the Andorran courts.

8.7 ARE THERE ANY SPECIAL PROVISIONS FOR EVIDENCE GIVING BY CHILDREN?

When children give evidence to the police and during the pre-trial proceedings, specialist psychologists are brought in who know how to listen to children.

8.8 ARE CHILDREN ALLOWED TO RECEIVE THERAPEUTIC SUPPORT BETWEEN THE TIME OF REPORTING AND THE COURT CASE?

Not systematically.

8.9 ARE ANY SPECIFIC MEASURES TAKEN TO COMBAT ORGANISED/NETWORKED RITUAL ABUSE RINGS?

There are no particular measures to combat this type of offence. If any such offence were identified, Article 116 of the Criminal Code – on aggravated injury – would be applied.

ARMENIA

Information provided by the Ministry of labour and Social issues in **September 2006**.

1.0 LEGISLATION AND SANCTIONS RELATING TO VIOLENCE AGAINST WOMEN

1.1 LETTER OF LAW – DEFINITIONS

See below.

1.2 DOMESTIC VIOLENCE

The legislation of the Republic of Armenia does not include provisions directly referring to domestic violence. The majority of cases of domestic violence are addressed under the Articles of the Criminal Code of the Republic of Armenia on assault and hooliganism of criminal nature. Articles referring to assault, instead of the nature of the assault, are almost exclusively based on the severity of the injury.

CRIMINAL CODE OF THE REPUBLIC OF ARMENIA

Domestic assault is mainly punished in accordance with the following Articles:

Article 105 – Murder in the state of strong temporary insanity

1. The murder committed in the state of suddenly arising depression caused by regular illegal and immoral behavior of the aggrieved as well as the murder committed in the state of sudden insanity caused by the violence, mockery, heavy insults or other illegal, immoral actions (inaction) of the aggrieved, is punished with imprisonment for the term of up to 4 years.
2. Murder of two or more persons in the state of strong insanity, is punished with imprisonment for the term of up to 6 years.

Article 109 – Causing death by negligence

1. Causing death by negligence is punished with imprisonment for the term of up to 3 years.
2. Causing death by negligence to two or more people is punished with imprisonment for the term of up to 5 years.

Article 110 – Causing somebody to commit suicide

1. Causing somebody to commit suicide or make an attempt at a suicide by indirect wilfulness or by negligence, by means of threat, cruel treatment or regular humiliation of one's dignity is punished with imprisonment for the term of up to 3 years.
2. Perpetration of the same action against a person in financial or other dependence of the criminal is punishable with the imprisonment for the period up to 5 years.

Article 112 – Intentional serious or heavy damage to health

Which has caused serious health disorders and is dangerous for life, or has caused loss of eye-sight, speech, hearing or loss of functions of other organs, or was manifested in irreversible ugliness on face, as well as caused other damage dangerous for life or caused disorder, accompanied with the stable loss of no less than one third of the capacity for work, or with complete loss of the professional capacity for work obvious for the perpetrator, or caused disruption of pregnancy, mental illness, drug or toxic addition, is punished with imprisonment for the term of 3 to 7 years.

The same act, committed:

1. against two or more persons;
2. against a person and his/her close relatives, concerned with this duty or carrying out one's public duty;
3. in relation to the person or his relatives, concerned with his duty or carrying out one's public duty;
4. with particular cruelty;
5. by a means dangerous to many people's lives;
6. by a group of persons, by an organised group;
7. with profit motives;
8. accompanied with terrorism;
9. with hooligan motives;
10. to conceal another crime or facilitate its committal;
11. accompanied with rape or violent sexual acts;
12. with motives of national, racial or religious hatred or religious fanaticism;
13. with the purpose of using the parts of the body or tissues of the aggrieved;
14. if caused the death of the aggrieved by negligence;

is punished with imprisonment for the term of 5 to 10 years.

Article 113 – Infliction of intentional medium-gravity damage to health

Which is not dangerous for life and did not cause consequences envisaged in Article 112 of this Code, but caused protracted health disorder or significant stable loss of no less than one third of the capacity to work, is punished with detention for the term of 1 to 3 months or imprisonment for the term of up to 3 years (milder compared to the previous Criminal Code of RA).

Perpetration of the same actions:

1. in relation to two or more persons;
2. against a person and her/his close relatives, concerned with this duty or carrying out one's public duty;
3. by a group of people, by an organised group;
4. with mercenary motives;
5. in especially heinous way;
6. with hooligan inducement;
7. with national, racist or religious abhorrence or religious fanatic motivation

are punishable by 5 years of imprisonment.

Article 114 – Medium or serious injury to health in the state of temporary insanity

1. Medium injury to health committed in the state of protracted depression caused by regular illegal and immoral behaviour of the aggrieved as well as committed in the state of sudden affect caused by the violence, mockery, heavy insults or other illegal, immoral actions (inaction) of the aggrieved, is punished with correctional works up to 1 year, or with detention for the term of up to 2 months, or with imprisonment up to 2 years.
2. Infliction of grave damage to someone else's health which was committed in the circumstances mentioned in section one of this Article, is punished with detention for 2-3 months, or imprisonment for the term up to 3 years.

Article 116 – Serious or medium injury where the limits of necessary defence are exceeded

The medium injury where the limits of necessary defence are exceeded is punishable by correctional works up to 1 year or by detention for a period of up to 2 months or by imprisonment up to 1 year.

The serious injury where the limits of necessary defence are exceeded is punished with correctional works up to 2 years or by detention for the term of 1 to 3 months or by imprisonment up to 2 years.

Article 117 – Infliction of intentional light damage to health

Infliction of an intentional bodily injury or other damage to health which caused short-term health disorder or insignificant long lasting loss of the capacity to work is punished with a fine in the amount of 50 to 100 times of the minimum wage, or with detention for up to 2 months.

Article 118 – Beating

Beating or other brutal actions, that haven't caused consequences predicted by the Article 117 (*Intentional serious injury*) of the same Criminal Code, is punished either by the fine in the amount of up to 100 established minimum salary or by correctional works up to 1 year, or by detention up to 2 months (comparing to the previous Criminal Code facilitated).

Article 119 – Torture

Torture, deliberate striking or beating, as well as other violent acts that result in physical pain, intentionally hitting or beating, in case when these actions haven't caused consequences predicted by the Articles 112 (*Intentional serious injury*) and 113 (*Intentional medium injury*) of the same Criminal Code, is punishable by imprisonment for the period of up to 3 years.

Perpetration of the same crime:

The same actions, committed:

1. in relation to 2 or more persons;
2. in relation to the person or his relatives, concerned with this person in the line of duty or carrying out one's public duty;
3. in relation to a minor or a person dependent financially or otherwise on the perpetrator, as well as, in relation to a kidnapped person or hostage;
4. in relation to a pregnant woman;
5. by a group of people or by an organised group;
6. in most heinous way;
7. with national, racist or religious abhorrence or religious fanatic motivation is punishable by imprisonment for the period of 3 to 7 years.

Article 120 – Accidental serious injury

Is punished either by the fine in the size of 200 times the minimal wage or by correctional works up to 1 year or by detention for the term of 1 to 2 months.

Inflicting grave damage through negligence to 2 or more persons is punished with a fine in the amount of 100 to 200 times of the minimum wage, or with imprisonment for the term of up to 2 years.

Article 121 – Accidental medium injury

Is punished either by the fine in the size of 50-100 times the established minimal salary or by correctional works up to 1 year or by the detention for a period of up to 2 months.

Inflicting medium-gravity damage through negligence to 2 or more persons is punished with a fine in the amount of 100 to 200 times of the minimum wage, or with imprisonment for the term of up to 1 year.

Article 258 – Hooliganism

1. Hooliganism is brutal violation of public order which is manifested in express disrespect for the public, is punished with a fine in the amount of up to 50 times of the minimum wage, or with detention for the term of up to 1 month.

2. The same action accompanied with violence in relation to individuals or such threat, as well as, destruction or damage of someone else's property, is punished with a fine in the amount of 100 to 300 times of the minimum wage, or with detention for the term of 1 to 3 months, or with imprisonment for the term of up to 2 years.

3. The action predicted by the first or second parts of the same Article

- 1) committed by a group of people or by the organised criminal group;
- 2) by offering resistance to a representative of authorities, or a person carrying out a duty of public order protection or a person preventing breach of public order;

3) or by a person who has previously committed hooliganism or other crimes predicted by Articles 104 (*Murder*) and 112 (*Intentional serious injury*) of the same Criminal Code;

4) accompanied with middle health injury;

is punishable by correctional works for the period of 1 to 2 years or by imprisonment up to 5 years.

5) accompanied by an exceptional cynicism, is punished with a fine in the amount of 200 to 500 times of the minimum wage, or with imprisonment for the term of up to 5 years.

4. The action predicted by the first or second parts of the same Article, which is committed with a weapon or another item used as a weapon, is punished by imprisonment for the period of 4 to 7 years.

1.3 RAPE/SEXUAL ASSAULT

CRIMINAL CODE

Article 138 – Rape

1. Rape, sexual intercourse of a man with a woman against her will, using violence against the latter or some other person, with threat or taking advantage of the helpless condition of the victim is punishable by 3 to 6 years of imprisonment.

2. Rape which is committed:

1) by a group of people;

2) in especially heinous way against the victim;

3) against the minor;

4) has caused accidental death of the victim or other serious consequences;

5) by a person who has previously convicted under the Articles 138 (*Violent sexual actions*) and 139 Articles of this Criminal Code;

is punished with the penalty of imprisonment for a period of 4 to 10 years.

3. The action predicted by the first or second parts of the same Article, which has been committed against a person under age of 14 is punished with the imprisonment for the term of 8 to 15 years.

Article 139 – Violent sexual actions

Homosexual, lesbian actions or other violent sexual actions executed against the will of the victim or taking advantage of the helpless condition of the latter is punished by 3 to 6 years of imprisonment.

The same actions that:

1. have been committed by a group of people

2. have been perpetrated in especially heinous way against the victim

3. against minors

4. have caused an accidental death of the victim or other serious consequences

5. have been committed by the person who previously was convicted under Articles 138 (*Rape*) and 139 (*Violent sexual actions*) of the same Criminal code

are punishable by the imprisonment for the period of 4 to 10 years.

The action predicted by the first or second parts of the same Article, which is committed against the person under age of fourteen years is punished by 8 to 15 years of imprisonment.

Article 140 – Compelling a person to sexual action

Forcing a person into sexual intercourse, homosexuality, or other sexual actions, by means of blackmail, threats to destroy, damage or seize property, or using the financial or other dependence of the aggrieved, is punished with a fine in the amount of 200 to 300 times of the minimum wage, or with imprisonment for the term of 1 to 3 years. (Milder compared to the previous Criminal Code of RA).

1.4 CHILD SEXUAL ABUSE/INCEST**Article 138 – Rape**

Rape, which:

1. was committed by a group of persons,
2. was committed against the aggrieved or other person with particular cruelty,
- 3. was committed against a minor,**
4. has caused the death of the aggrieved or heavy consequences, by negligence,
5. was committed by a person who had previously committed crimes under Articles 138 and 139 of this Code

is punished with imprisonment for the term of 4 to 10 years.

Article 139 – Violent sexual acts

The same actions:

1. committed by a group of persons,
2. committed against the aggrieved or other person with particular cruelty,
3. committed against a minor,
4. have caused the death of the aggrieved or heavy consequences, by negligence,
5. committed by a person who had previously committed crimes under Articles 138 and 139 of this Code

are punished with imprisonment for the term of 4 to 10 years.

Article 141 – Sexual acts with a person under 16

Committing of sexual actions with a person under 16 in case of absence of the criminal actions predicted by 138 (*Rape*), 139 (*Violent sexual actions*) or 140 (*Compelling a person to sexual actions*) Articles of the same Criminal Code is punished by the correctional works up to 2 years, or by imprisonment for a period of up to 2 years (comparing to the previous Criminal Code facilitated).

Article 142 – Lecherous acts

1. Lecherous acts with a person obviously under 16 years of age, in the absence of elements of crime envisaged in Article 140 or 141, is punished with a fine in the amount of 200 to 400 time of the minimum wage, or with imprisonment for up to 2 years.

2. The acts envisaged in section 1 of this Article committed with violence or the threat thereof, are punished with imprisonment for up to 3 years.

1.5 SEXUAL HARRASSMENT

No information available.

1.6 PORNOGRAPHY**Article 263**

1. Illegal dissemination, advertising, sale, as well as manufacturing of pornographic materials or items, including printed publications, films and videos, images or other pornographic objects, is punished with a fine in the amount of 200 to 400 times of the minimum wage, or with detention for the term of up to 2 months, or with imprisonment for the term of up to 2 years.

2. Forcing minors to get involved in creation of software, video or film materials, pictures or other items of pornographic nature, as well as presenting children's pornography through computer network, is punished with a fine in the amount of 400 to 800 of the minimum wage, or with detention for the term of up to 3 months, or with imprisonment for the term of up to 3 years.

3. The same act committed by an organized group, is punished with imprisonment for 2 to 4 years.

1.7 PROSTITUTION

CRIMINAL CODE OF THE REPUBLIC OF ARMENIA

Article 261 – “Involvement in Prostitution”

Forcing someone into prostitution, i.e. by violence or use of violence, abuse of dependent condition of victim, by blackmail, by threat to destroy or damage property, or dissemination of defamatory information about a person or her/his close relatives, or by deception. The crime is punished with a fine in the amount of 200-400 times the minimal salary or with correctional works up to 1 year or by detention for a term from 1 to 3 months or by imprisonment for a term of up to 2 years.

The same actions committed :

1. with respect to a minor
2. by an organised group

are punished with a fine in the amount of 300-500 times the minimal salary, or with correctional works up to 2 years or with imprisonment for a term of 3 to 6 years.

3. The same action committed against:
 - 1) A person under eighteen years of age,
 - 2) A person who as a result of mental disorder is deprived of the possibility to totally or partially acknowledge the nature and meaning of his action or control it,
 - 3) Committed by an organised group, is punished with imprisonment for 3 to 8 years.

Article 262 – Contributing to prostitution

1. Establishing, managing or maintaining a facility for prostitution purposes, or using any public facility for prostitution purposes, or regularly providing an apartment or other dwelling to another person for prostitution purposes, or contributing to prostitution in another form for receiving benefits from property, is punished with a fine in the amount of 300 to 500 times of the minimum wage, or with imprisonment for the term of 1 to 4 years.
2. The same action committed:
 - 1) By a group of persons with prior agreement,
 - 2) With abuse of authority, is punished with imprisonment for the term of 2 to 6 years.
3. The same action committed by:
 - 1) The use of a person under eighteen years of age,
 - 2) The use of a person who as a result of mental disorder is deprived of the possibility to totally or partially acknowledge the nature and meaning of his action or control it,
 - 3) By an organized group, is punished with imprisonment for 3 to 10 years.

1.8 OBSCENE PHONE CALLS/TELEPHONE SEX

No information available.

1.9 FEMALE GENITAL MUTILATION

No information available.

1.10 INTERNATIONAL CONVENTIONS

No information available.

1.11 PROTECTION OF PREGNANCY/PREGNANT WOMEN

LABOUR CODE OF THE REPUBLIC OF ARMENIA

Article 177 – Guarantees for pregnant women and workers caring for children

Employment contract with a pregnant woman can not be terminated for the entire duration of pregnancy (the corresponding medical certificate is made available, if necessary), child-birth leave and the month following the child-birth, as well as with employees caring for children under one year of age.

Article 122 – Performing illegal abortion

1. Illegal abortion performed by a person with relevant higher medical education, is punished with a fine in the amount of up to hundred times the minimum wage, or with detention for a term of up to one month, accompanied by removing the right to occupy certain positions or conduct certain activities for a term of up to three years.

2. Illegal abortion performed by a person without relevant higher medical education, is punished with a fine in the amount of up to two-hundred times the minimum wage, or with detention for a term of one to three months, or imprisonment for a term of up to two years.

3. Actions described in section one or three of this Article, which by negligence have caused the death of or serious damage to the health of the aggrieved, or performed by the person who has prior conviction for performing illegal abortion,

Are punished by imprisonment for a term of up to five years, accompanied by removing the right to occupy certain positions or conduct certain activities for a term of up to three years.

Article 141 – Incomplete working hours

Incomplete work days and incomplete work weeks are prescribed:

By the request of pregnant woman and the employee taking care of a child up to one year of age;

Based on medical conclusion, but for no more than six months, and for each day no more than half of the working hours defined for one day.

Article 172 – Pregnancy and childbirth leave

1. Female employees are awarded with pregnancy and childbirth leaves:

- 1) 140 days (70 days for pregnancy, 70 days for child-birth);
- 2) in case of complicated child-birth: 155 days (70 days for pregnancy, 85 days for child-birth);
- 3) in case of simultaneously giving birth to more than one child: 180 days (70 days for pregnancy, 110 days for child-birth). The leave is calculated together and provided to the woman in its entirety. In case of premature child-birth, the unused pregnancy leave days are added to the child-birth leave days.

2. Employee who has adopted and an infant or has been appointed as the caretaker of an infant is awarded with a leave from the date of adoption or appointment as caretaker until the infant becomes 70 days old (in case of adopting two or more infants or becoming caretaker of two or more infants until the infants become 110 days old).

3. In cases described in section one and section two of this Article, for the period of the leave the employee receives allowance for temporary loss of the capacity to work, in accordance with regulations defined in the legislation of the Republic of Armenia.

Article 258 – Protection of motherhood

1. It is forbidden to involve pregnant women and women taking care of a child up to one year of age in performing duties which are accompanied by hazardous conditions and dangerous factors having a negative impact on mother and child health. The list of hazardous conditions and dangerous factors at

work for pregnant women and women taking care of a child up to one year of age is defined by the Government of the Republic of Armenia.

2. Based on the list of hazardous conditions and dangerous factors at work, as well as the results of the assessment of the workplace, the employer has the obligation to determine the duration and nature of the impact of dangerous factors on the safety and health of pregnant women and women taking care of a child up to one year of age. After determining a possibility of the impact, the employer has the obligation to take temporary measures for eliminating the risk of impact by the hazardous factors.

3. In case of lack of possibilities to eliminate dangerous factors, the employer take measures to improve workplace conditions, so that pregnant women and women taking care of a child up to one year of age will not be subjected to the impact of such factors. If it is not possible to eliminate such impact through changing work conditions, the employer has the obligation to transfer the woman (with her consent) to another job in the same organization.

4. If the pregnant woman or the woman taking care of a child up to one year of age needs to undergo medical examinations during working hours, the employer has the obligation to relieve her from work and to maintain the average salary, which is calculated based on the average wage for an hour of work.

5. Breastfeeding women, other than the general breaks provided for resting and eating, are awarded with additional breaks no shorter than 30 minutes and no less frequent than every three hours for feeding their infant. By the request of the woman, the breaks for feeding the infant can be summed up and joined with the general break, or transferred to the end of the working day with the corresponding reduction in the duration of the working day. In the period of breaks planned for feeding the infant, the employee is paid the average salary, which is calculated based on the average wage for one hour of work.

2.0 SENTENCING

2.1 SENTENCING DOMESTIC VIOLENCE

For some information, see **Section 1.2** above.

3.0 EFFECTIVENESS OF LEGISLATION

No information provided.

4.0 DOMESTIC VIOLENCE

See **Section 1.2** above.

5.0 RAPE AND SEXUAL ASSAULT IN MARRIAGE

No information provided.

6.0 RAPE AND SEXUAL ASSAULT

See **Section 1.3** above.

7.0 SEXUAL HARRASSMENT

No information provided.

8.0 INCEST/SEXUAL ABUSE OF GIRLS

See **Section 1.4** above.

AUSTRIA

Information coordinated and provided by the Federal Ministry of Health and Women and the Federal Ministry of Economic Affairs and Labour in **October 2006**.

1.0 LEGISLATION AND SANCTIONS RELATING TO VIOLENCE AGAINST WOMEN

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

1.1 LETTER OF LAW – DEFINITIONS

AUSTRIAN CRIMINAL CODE

Due to the large range of existing forms of violence against women, numerous general offences from the Austrian Criminal Code need to be mentioned at this point, the most important being:

Murder, manslaughter, wilful bodily injury (the degree of penalty depending on whether the bodily injury is serious, results in severe after-effects or even death or whether a serious injury was done with intent), coercion and aggravated coercion, dangerous threat, rape, and sexual coercion.

A change concerning dangerous threats entered into force on 1st July 2006 as well: whereas previously the victim had to give its consent to prosecution of the perpetrator if he/she was a close relative of the victim, the requirement of the victim's consent to prosecution is no longer necessary. Therefore, psychological pressure against the victim so that he/she would not consent to prosecution will be avoided.

Special provisions deal with other forms of violence against women such as stalking, forced marriage and FGM (female genital mutilation). The new provision on stalking entered into force on 1st July 2006; stalking is defined as illegally pursuing a person persistently in a way which is likely to impair him/her unreasonably in his/her way of life for a longer time by approaching the victim's proximity, or making contact with the victim by way of telecommunications, by using other means of communication or via third persons or ordering goods or services for the victim by using his/her personal data or prompting others to take up contact with the victim by using his/her personal data. Stalking can be punished with imprisonment of up to one year of imprisonment. Furthermore, the victims can obtain an interim injunction similar to the one in cases of domestic violence (see below); said interim injunction is valid for a period of up to one year.

The regulation on forced marriage was amended by clarifying that forcing someone into marriage with himself/herself or someone else constitutes aggravated coercion. It can be punished with imprisonment between 6 months and 5 years; in case of severe effects of the crime, punishments between 5 and 10 years imprisonment are possible.

Further relevant legislation will be dealt with in the following subsections.

1.2 DOMESTIC VIOLENCE

PROTECTION FROM VIOLENCE ACT

With the enactment of the Federal Act on Protection against Violence in the Family ("Protection from Violence Act") on May 1, 1997, the legal provisions for quick and effective protective measures for victims of domestic violence were considerably improved.

Barring Order by the Police Authorities, Security Police Act

Police officers are authorised to expel a (potential) perpetrator from the home and to issue a barring order (§ 38a Security Police Act/Sicherheitspolizeigesetz). Barring orders are issued if "a dangerous assault on a person's life, health or freedom appears imminent". These security police provisions apply to all persons living in a home, regardless of ownership or whether they are related to one another. The decision on imposing eviction and barring orders lies exclusively with the police, showing that domestic violence is no longer perceived as a private "conflict".

When intervening, the police officers are held to inform the person affected by violence to violence about suitable victim protection facilities, i.e. the Intervention Centres (more on that later) and to immediately notify the Intervention Centre in charge about the issuing of a barring order.

Each barring order is to be reviewed by security police organs within 48 hours. Compliance with barring orders has to be checked by the police at least once within the first three days. The order is valid for a maximum of 10 days. If the victim applies to a local Family Court for an interim injunction within the set term, the order is prolonged for a maximum of 20 days.

In 2005, 5.618 barring orders were issued.

Interim Injunction by Family Courts

Only close relatives, defined as persons who live or have lived in a family relationship or family-like relationship with the perpetrator, may apply for an interim injunction.

The family court has to issue an interim injunction, banning the perpetrator from the home of the person at risk (even if it is their common home) and from the immediate vicinity, if the situation makes life or the encounter with the perpetrator unacceptable for the victim and the victim urgently needs somewhere to live.

Moreover, the court may, upon request, forbid the presence of the perpetrator at certain locations (workplace of the woman, kindergarten/school) and further forbid him to establish any form of contact with the victim, as long as this is not prejudicial to the perpetrators gravest interests.

An interim injunction is valid for a maximum period of 3 months. If a family-law action is brought against the perpetrator within this period, e.g. a divorce suit, the interim injunction may remain effective until the suit is closed.

Intervention Centres against Violence in the Family

Intervention Centres against Violence in the Family play an important role in the implementation of the Protection from Violence Act. They are private facilities, which act by order of and are funded in equal parts by the Federal Ministries of the Interior and of Health and Women (§ 25(3) Security Police Act: The Federal Minister of the Interior has the power to contract reliable and appropriate institutions concerned with the protection of victims to contact persons exposed to violence for the purpose of offering counselling and immaterial support. Insofar such an institution is mainly active in counselling and support of women, the contract is to be made jointly with the Federal Minister for Health and Women, insofar such an institution is mainly active in counselling and support of children, the contract is to be made jointly with the Federal Minister for Social Security, Generations and Consumer Protection.

Since autumn 1999 each federal province has its own intervention centre, two provinces support additional regional offices.

The Intervention Centre has to be notified without delay of any eviction/barring order imposed by the police.

Subsequently the Intervention Centre contacts the victim and actively offers support. The main task of the Intervention Centre is to guarantee the safety of the victims, hence to assess in cooperation with the victim the threat posed by the perpetrator and to set up a crisis plan as well as safety programme.

Apart from that, help services include legal counselling, particularly on interim injunctions by the court which prolong the expulsion of the perpetrator from the home, as well as socio-psychological services.

The Intervention Centre coordinates the entire intervention process between all occupational groups involved to optimise its support to the victims, e.g. by saving them from having to repeatedly explain the act of violence.

COOPERATION AND NETWORKING BETWEEN ALL OCCUPATIONAL GROUPS

In order to meet the objective of putting an end to violence, it is necessary for all occupational groups concerned to work closely together and form networks. Apart from the security police, the following institutions are involved: criminal and civil courts (the latter being responsible e.g. for interim injunctions under the Protection from Violence Act, claims to alimony and divorce suits); the youth welfare authorities, if children are involved; social services departments; other non-governmental institutions, e.g. counselling services for debtors and women's refugees. The Intervention Centres play an important role not only in handling individual emergency cases, but also in establishing and extending the cooperation and network of all relevant occupational groups.

TRAINING OF LAW ENFORCEMENT AUTHORITIES

Since 1989, police officers follow a two-day seminar on violence against women in the course of their basic training. As of June 2006, the seminar was extended to last for three days.

QUALITY ASSURANCE THROUGH TRAINING OF ALL OCCUPATIONAL GROUPS CONCERNED

To assure high quality of all counselling services and intervention procedures special training courses for all occupational groups which are in contact with victims of violence (courts, police authorities, youth welfare officers, employees of women's institutions, health personnel, teachers, etc) are essential.

In 1996/97, a series of training courses was offered to the relevant occupational groups across the country.

Employees of institutions concerned with women's affairs, which offer counselling and support for women exposed to violence, are not represented by any trade association responsible for their special training or further education. In response to this need, state funded seminars for this target group are regularly held since 1998.

In addition, cooperation between all occupational groups is supported by state funded interdisciplinary seminars, which were also held regularly from 1998 to 2003. After that date, the need to hold these seminars is no longer given as the established contacts and cooperations are maintained and deepened by the Intervention Centres.

Furthermore an extensive information brochure explaining the Protection from Violence Act and including an extensive list of counselling and support services was first published in 2001 and updated in 2005. This brochure is sent free of charge to relevant information centres for further distribution and, upon request, can be obtained free of charge by all interested individuals.

MANDATORY REPORTING FOR PHYSICIANS

In Austria, all punishable offences, which are to be prosecuted by law, can be reported by any person. Naturally, this also applies to cases of domestic violence.

According to the Physician Law of 1998 (Ärztengesetz), physicians are sworn to secrecy about all secrets entrusted or made known to them in the execution of their duty. But in case of reasonable suspicion that an act punishable by law has led to death or serious bodily injury of a person, they are obliged to report this to the police. In the latter case, they have to inform the victim about institutions for the protection of victims.

Hence, minor bodily injuries are not subject to mandatory reporting.

If the victim is a minor, special provisions apply: If a minor is suspected of having been maltreated, tortured, neglected, or sexually abused, the physician is obliged to report the case. If the suspicion is directed against a close relative, reporting may be omitted as long as this is necessary for the wellbeing of the minor and results in cooperation with youth welfare authorities and, if necessary, the intervention of a child protection team in a hospital.

MIGRANTS

Women migrants who feel victim to domestic violence are also supported by the above mentioned Intervention Centres, which, if necessary, call in translators. Some Intervention Centres also employ native speakers of foreign languages.

In addition, several institutions are promoted in various Austrian provinces, which put particular emphasis on counselling and support services for women migrants.

Taking into account that most women migrants come to Austria following their husbands and regularly do not qualify for a work permit during the first year of their residence, there are special regulations for women migrants victim to domestic violence.

In cases of domestic violence the residence permit does not get lost, even though the one-year period of time has not expired, if the family court has issued an interim injunction under the Protection from Violence Act or the marriage is divorced with the other spouse being at fault or the perpetrator's residence permit ends because of legal measures taken against him.

Spouses of migrants can obtain a work permit after having been lawfully residing in Austria for one year, if their spouse has been lawfully established and working in Austria for a certain period of time (this period depends on the type of work permit sought).

However, lawfully established foreigners may obtain a work permit earlier, if they cannot be expected to continue to live with their spouses as the result of an assault on themselves or on their minor child, the threat to commit such an assault or if conduct of the spouse is harming the victim's mental health considerably.

For this rule to apply, one of the following criteria must be met: for one of the above mentioned reasons the spouse must have been convicted under criminal law, an interim injunction under the Protection from Violence Act must have been issued by the court or the marriage must have been divorced. As of May 2003 the law has been amended, making it easier for the victim to take advantage of this exception. Also if e.g. a doctor or relevant NGO, like an Intervention Centre, confirms suspicion of an above mentioned act of violence, a working permit may be issued.

1.3 RAPE/SEXUAL ASSAULT

RAPE

Rape is realised if the victim is forced (by violence, severe threats or by confining illegally) to perform sexual intercourse or "a sexual act similar to sexual intercourse". The sentence ranges from 6 months up to 10 years in prison.

If the offence leads to severe bodily injury, pregnancy (as of May 2004) or if the victim is humiliated or tortured in a particularly cruel manner, the of the sentence ranges from 5 up to 15 years, and if the victim dies from 10 up to 20 years or life imprisonment.

SEXUAL COERCION

The offence of sexual coercion is realised if the victim is forced by violence or severe threats to perform a sexual act, which is not sexual intercourse, or any other comparable behaviour defined as rape. Sexual coercion is subject to a sentence up to 5 years in prison. If the offence leads to severe bodily injury, pregnancy (as of May 2004) or if the victim is humiliated particularly or tortured, the length of the sentence ranges from one year up to 10 years, and if the victim dies from 5 to 15 years.

RAPE/SEXUAL COERCION IN MARRIAGE OR COHABITATION

Since 1989 rape and sexual coercion in marriage and cohabitation are punishable as crimes. As of May 2004 no more legal differences are made whether the crime has been committed in marriage/cohabitation or otherwise.

1.4 CHILD SEXUAL ABUSE/INCEST

In Austria a wide range of measures is taken to prevent violent acts directed at children and young people as well as to disclose and stop these acts as quickly as possible, comprising measures such as enacting a prohibition to inflict corporal punishment, and introducing the health professionals' duty of reporting cases of violence to the youth welfare authority (see also Point 1.2., "Mandatory reporting for physicians").

The most important offences from the Austrian criminal code will be dealt with here.

INCEST

The consummation of sexual intercourse with a person who is related in a direct line is punishable with imprisonment of up to one year. Whoever seduces a person for sexual intercourse with whom he or she is related in a descending line shall be punished with imprisonment of up to 3 years. Sexual intercourse with siblings is punishable with imprisonment of up to 6 months.

ABUSE OF A POSITION OF AUTHORITY

The misuse of a position of authority is punishable. Whoever abuses a minor relative in a descending line, an adopted child, stepchild or ward for sexual intercourse or who seduces the minor to perform any illicit sexual practices on itself to sexually excite himself/herself or any third party shall be punishable with imprisonment of up to three years ("minors" are persons under the age of 18 years). If someone abuses a minor in the above described way who is under his/her upbringing, education, training or supervision, or if a doctor, psychologist, nurse or priest/pastor abuses an adult person under their professional care by using his/her position over that person, or an educator or employee of an educational institution abuses an adult person under the care of the educational institution, or a civil servant abuses an adult person under his/her official custody by using their position of authority, the same penalty is laid down. Criminal liability of priests/pastors when being perpetrators of sexual abuse by abuse of their position of authority over a person by was introduced in 2006, becoming effective as of 1st July 2006.

SEXUAL ABUSE OF MINORS

"Severe sexual abuse of persons under age" ("persons under age" are children under the age of 14 years) not only covers mere sexual intercourse, but also all "acts similar to intercourse", which includes all forms of oral, vaginal or anal penetration (also with objects) for the satisfaction of the sexual urge. Such acts will thus become subject to sentences of imprisonment ranging from one to 10 years (5 to 15 years in case of severe injuries or pregnancies as a consequence of the offence, 10 to 20 years or life imprisonment in case of death).

"Sexual abuse of persons under age" is the provision for less intensive sexual contacts with persons under age and is punishable with imprisonment of six months up to five years (1 to 10 years in case of severe injuries as a consequence of the offence, 5 to 15 years in case of death). The offender will not be punished if the offender's age does not exceed that of the minor by more than four years and the minor is not less than twelve years of age - if none of the above mentioned consequences (severe injury or death) have occurred.

PORNOGRAPHY CONCERNING MINORS

Legislation on pornography concerning minors has been changed as of May 2004. Sentences have become more severe and a new regulation has been introduced for further protection of minors from prostitution or pornographic actions.

PORNOGRAPHIC IMAGES WITH MINORS AND PERSONS UNDER AGE

Whoever produces pornographic images with minors (pictorial illustrations of a sexual act on persons under age or those persons with themselves or on another person or with an animal on minors or minors on himself/herself, or on another person or with an animal that, when regarding the image, would give the impression that such a sexual act occurred during its production, or pictorial illustrations of sexual acts with/on minors as described above or the genitalia of minors when the illustration is lurid and reduced to the sexual aspect of the image and solely serves the sexual arousal of the viewer) or imports, conveys or exports such images for the purpose of dissemination, or offers, procures, hands over, shows or makes accessible in any other way such images, shall be subject to punishment with imprisonment of up to three years. When such a crime is committed for profit the sentence may range from 6 months to five years. If the crime has been committed by a criminal organization, or by using severe violence or endangering the victim's life, the sentence ranges from one year to 10 years.

The procurement for oneself and the possession of such images of minors is punishable with imprisonment of up to one year, procurement and possession of images of persons under age is punishable with imprisonment of up to two years.

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

ENCOURAGEMENT OF PROSTITUTION AND PORNOGRAPHIC ACTS OF MINORS

Whoever recruits, offers or procures minors either for prostitution or pornographic actions or who wants to profit himself/herself or wants to let someone profit by the prostitution or pornographic actions of minors, is punishable up to three years of imprisonment.

If the crime has been committed within a criminal organization, if severe violence has been used, if the life of the victim has been endangered or if the crime leads to severe disadvantages to the victim, the sentence ranges from 6 months up to 5 years. If the victim is under age the sentence ranges from one year up to 10 years.

The Internet has become a new medium for child pornography, breaking down the barriers to accessibility. In answer to the resulting increase in dissemination and consumption, a reporting agency of Interpol for child pornography on the Internet was set up by the Ministry of the Interior in 1998.

STATUTE OF LIMITATIONS

If the victim of rape, sexual coercion, (severe) sexual abuse of persons under age or abuse of a position of authority has been a minor at the time of the crime, the period of limitations only starts with the victim's 18th birthday.

1.5 SEXUAL HARASSMENT

SEXUAL HARASSMENT IN THE WORKPLACE

Sexual harassment and public sexual acts

As of May 2004, sexual harassment and public sexual acts are punishable under the Criminal Code. Sexual harassment is defined as harassment of a person by sexual acts on that person or in front of that person under circumstances validly found to be offensive. Public sexual acts are sexual acts performed publicly and under circumstances that give rise to offence by mere immediate perception of such act. The crime is punishable with imprisonment of up to 6 months or a penalty of up to 360 per diem rates. The new provision is a strong signal towards society that sexual harassment is not tolerated; before its enactment, conduct amounting to sexual harassment – as long as not achieving the level sexual coercion - was not punishable (only for cases of sexual harassment in the workplace regulations for compensation existed, see below).

Sexual harassment in the workplace

The Federal Act on Equal Treatment (Gleichbehandlungsgesetz) inter alia lays down the provisions for the principle of equal treatment for men and women at work applicable to the private sector including provisions on sexual harassment in the workplace.

The following definition of sexual harassment is laid down in the Act on Equal Treatment: Sexual harassment is any conduct of a sexual nature which affects a person's dignity, is unwanted, unwelcome or offensive and creates an intimidating, hostile or offensive working environment for the harassed person, or if submission to or rejection of such conduct on the part of the subordinate, employer or co-worker is, either explicitly or implicitly, used as the basis for decisions affecting the individual's access to vocational training, employment, further employment, promotion or pay, or is made a condition of another decision on the employer-employee relationship.

Therefore, the laws not only prohibit acts amounting to sexual harassment at the level of a criminal offence, but steps in at a much lower level of intensity (e.g. the displaying of pornographic posters may, under certain conditions, constitute such an offence).

The offence of discrimination by sexual harassment will also be committed when the harassment occurs by "third parties" (i.e. colleagues, customers, guests or clients) and if the employer fails to lend assistance to end the harassment.

The Equal Treatment Act provides that victims are entitled to compensatory damages for pecuniary losses and emotional harm. The amount paid for emotional harm incurred in a case of sexual harassment shall not fall below € 720,--.

Corresponding provisions are laid down in the Federal Equal Treatment Act of 1993 (Bundesgleichbehandlungsgesetz), applicable to the public sector.

1.6 PORNOGRAPHY

As for child pornography, please refer to the information given above.

Participation in pornography is not punishable in Austria; forcing someone to do so is a case of severe coercion, or, if minors are forced to participate in pornography, the special provision referred to above applies.

1.7 PROSTITUTION

PROSTITUTION

The legal competence for prostitution lies with the provinces. The matter is therefore governed in nine different provincial laws. Though the restrictions imposed differ in detail, prostitution is legal in all provinces.

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

SEX TOURISM

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

1.8 OBSCENE PHONE CALLS/TELEPHONE SEX

No information available.

1.9 FEMALE GENITAL MUTILATION

FGM not only violates the right to physical integrity, but also results in considerable mutilation. Under the Austrian Criminal Code (Strafgesetzbuch) such an offence constitutes bodily injury, possibly with severe after-effects (Articles 83 to 87).

Consent of the injured is not possible. Article 90 (3) Criminal Code stipulates: "It is not possible to consent to a mutilation or other injury of the genitals that may cause a lasting impairment of sexual sensitivity". The person performing the operation therefore remains liable to punishment, even if the woman gives her consent (for whatever reason) to the operation.

The explicit elimination of consent as a legal justification shall stress the fact that the injury to (female) genital organs is a crime and, in agreement with worldwide efforts to take steps against these practices; a clear statement against female genital mutilation is therefore given.

In the case of minors both the physician performing the operation of FGM, as well as the parents giving their consent make themselves liable to punishment. According to Article 12 Criminal Code it is

not only the direct perpetrator who commits a punishable offence but each person who determines another person to carry out the act or contributes in any way to the execution thereof.

To make the prohibition of FGM more effective in case of minors, the statute of limitation has been changed as well: from 1 July 2006 on, the limitation period will only start at the victim's 18th birthday.

Physicians who perform FGM further commit a serious offence against their professional duties as medical practitioners laid down in the Physician Law of 1998 (Ärztegesetz). The physician may also be subject to disciplinary sanctions.

1.10 INTERNATIONAL CONVENTIONS

Austria has ratified CEDAW (Convention on Elimination of All Forms of Discrimination Against Women) and the Optional Protocol.

1.11 PROTECTION OF PREGNANCY/PREGNANT WOMEN

No information available.

2.0 SENTENCING

2.1 SENTENCING DOMESTIC VIOLENCE

For some information see **Section 1.2** above.

3.0 EFFECTIVENESS OF LEGISLATION

3.1 SUPPORT/ PROTECTION

LEGAL PROVISIONS TO PREVENT POST-TRAUMATIC SYMPTOMS AND OBSERVING THE VICTIM'S INDIVIDUAL SPHERE OF LIFE

During all official proceedings or the supply of information to third parties the victim's identity and her or his individual rights are to be safeguarded. In this context the media law holds protective provisions including claims for damages if these rights are violated.

During police interrogations, women who are victims of violence have the right to be questioned by a female officer and to be accompanied by a person enjoying her confidence.

Also in the course of criminal proceedings against domestic or sexual violence offences, the victim is entitled to demand that a person enjoying her confidence be present during questioning and that the public may be excluded.

The victim may also ask for a "considerate interrogation" before the examining magistrate to spare her the need to testify again during trial. In the course of this interrogation, the accused, his defending counsel and the public prosecutor need to be given the opportunity to ask questions. Upon request of the victim, the interrogation may be videotaped in such a way that the victim does not have to be interrogated while in the same room as the accused.

Persons under the age of 14 who were victims of a sexual offence have to be interrogated in such a way even without having to apply for it.

In penal proceeding on sexual offences the involved (lay) judges and members of the jury (according to the type of court) have to include a certain number of persons of the same sex as the victim. This is intended to minimise the distress caused to the victims of sexual offences by being questioned in court and to enable more account to be taken of gender-specific perspectives.

Moreover, each victim may refuse to give evidence, if the accused is a relative.

PSYCHO-SOCIAL AND LEGAL COURT ACCOMPANIMENT SYSTEM

Even when interrogated by video transmission and not directly confronted with the accused, minors and even adult victims are subject to considerable stress in court proceedings.

The experience of sheer helplessness felt not just by the victims but also by the people who are closest to them caused a model project titled “psychological and legal court accompaniment in case of sexual abuse suffered by girls, boys and young people” to be conducted from 1998-2000.

When in late 2000 the Federal Ministry of Justice began to make direct case-to-case payments for psycho-social and legal court accompaniment services, the Federal Ministry of Social Security and Generations commissioned a project to implement the service on existing structures.

The project had the training of staff as its central objective, in order to ensure a professional level and to secure quality standards. Secondly, the project intended to initiate and support cooperation between the providers of services to victims of sexual abuse by establishing “co-operation forums” and interdisciplinary “roundtables” in the nine provinces of Austria. To ensure a professional level the Federal Ministry of Social Security, Generations and Consumer Protection funded follow up activities like interdisciplinary workshops and supervision of court accompanying

As of 1st January 2006, victims of physical or sexual violence have a statutory right to psycho-social and legal court accompaniment services and additional rights of information: they have access to file in an early stage of prosecution and they have to be informed if the perpetrator is to be released from pre-trial detention.

All investigation and prosecution authorities are under the duty of inform victims of violence of suitable counseling centres and victim protection facilities.

In preparation of implementation of psychosocial court accompaniment services, an inter-ministerial working group on court accompaniment was set up in 2001. The working group continues meetings to evaluate and ensure the quality of the measures taken.

Numerous counseling centres and the Intervention Centers against Violence in the Family in all of Austria offer psycho-social and legal court accompaniment to all victims (children and adults) free of charge and on a professional level.

Emergency telephone numbers

In 1998 a 24-hour helpline for women exposed to violence was established. The helpline is financed by State funds.

The toll-free 24-hour nationwide service acts as a “first-aid” centre for victims of violence, as well as their environment, such as family members, neighbours, fellow workers, etc. The helpline offers introductory and crisis counselling and the transfer to local counselling and support facilities. Each consultation is handled anonymously and confidentially. In the case of emergency violence situations the police is called to intervene or contact to the nearest women’s refuge is established (upon request of the victim).

In 2005, there were a total of about 29.100 calls (about 80 incoming calls per day), and a total of 16.720 of them could be answered.

Intervention Centres against Violence in the Family and Intervention Centre for Victims of Trafficking in Women

For details on the Intervention Centres against violence in the family please see the comments above; for details on the Intervention Centre for victims of trafficking in women, please see the comments below.

Refuges for battered women

If chances are high that victims will suffer from further acts of violence if they stay in their homes, and if prerequisites for the detention of the perpetrator are not given, the risk of escalation of violence, which is particularly high during times of separation, can only be prevented by moving the victims to a safe place.

At present, Austria has a total of 29 refuges (women shelters, emergency flats and Social-House), which temporarily accommodate women and children affected by domestic violence.

In 2005, 3.256 persons (1.655 women, 1.601 children) were accommodated by 25 autonomous women’s refuges, which at present are associated with the Autonomous Austrian Women’s refuge

Network and a total of 172.880 days of stay was counted (women: 86.625 days of stay; children: 86.255 days of stay) in these refuges.

Counselling agencies

Numerous counselling agencies for women, which focus on the support of female victims of domestic violence, currently receive state funding. Their support includes e.g. legal services, psychological support, housing and financial information, etc.

Furthermore 6 emergency numbers – one of them available around-the-clock - are presently installed in Austria, which provide counselling and support for rape victims.

In 2004 a 24-hour nationwide hotline for all victims of crimes was established by the Federal Ministry for Justice in cooperation with the attorneys' bar association. This hotline is free of charge also and provides legal advice and - if required -refers female victims of violence to specialised facilities to receive psychosocial assistance.

Men's Programmes – Prevention

One aspect of the issue "violence in the domestic sphere and social environment" is the treatment of people who maltreated or sexually abused children and women. Scientific studies demonstrated that social work with the perpetrators decreases the ratio of recidivism and thus helps to prevent suffering in the future.

Therefore social work with the perpetrators makes an important contribution to protect victims and to prevent additional acts of violence.

In Austria, a working group developed standards for perpetrator programs, the model project "Work with men who abused children" was realised, the key insights obtained by research evaluation were published in September 2002.

Concerning domestic violence, the Counselling Agency for Men in Vienna and the Intervention Centre against Violence in the Family in Vienna carry out a joint programme to work with perpetrators since several years. The program consists of three elements:

- an Anti-Violence-Training for perpetrators (carried out by the Counselling Agency for Men),
- a support program for the partners of the participants (carried out by the Intervention Centre) and
- monitoring and cooperation to safeguard the victim's safety (carried out by both of them).

In the Tyrol, one of Austria's nine provinces, a similar project was started in November 2004, carried out by the Intervention Centre Tyrol and the Counselling Agency for Men in Innsbruck (the capital of the province the Tyrol).

4.0 DOMESTIC VIOLENCE

See Section 1.2 above.

5.0 RAPE AND SEXUAL ASSAULT IN MARRIAGE

See Section 1.3 above.

6.0 RAPE AND SEXUAL ASSAULT

See Section 1.3 above.

7.0 SEXUAL HARASSMENT

See Section 1.5 above.

8.0 INCEST/SEXUAL ABUSE OF GIRLS

See **Section 1.4** above.

AZERBAIJAN

Information provided by the State Committee for Women's Issues in **February 2003**, updated by the State Committee for Family, Women and Children's Issues in **September 2006**.

1.0 LEGISLATION AND SANCTIONS RELATING TO VIOLENCE AGAINST WOMEN

In January 1998, the State Committee for Women's Issues was established by the Decree of the President of the Republic of Azerbaijan. In 2000 the Cabinet of Ministers adopted the National Plan of Action on the women's issues (NPA). This NPA based upon Beijing Platform of Action and contains among others the chapter: "Women and Violence".

In January 2003, the State Committee for Women's Issues has established a working group on the issues of violence against women and trafficking in human beings (according to the recommendations of CDEG). This working group consists of representatives of relevant ministries, NGOs and representatives of media. The working group will elaborate the National Plan of Action to combat violence against women and trafficking.

Violence in daily life is one of the obstacles for democratic development in Azerbaijan Republic, as in many countries. National legislation considers appropriate punishments for such crimes and generally regulates issues in this sphere. "Complex Program on fight against violence in daily life in democratic society" has been prepared. The objective of the Program is reduction of facts of domestic violence through special measures in personal and public life of the population and prevention of violent behavior.

1.1 LETTER OF LAW – DEFINITIONS

Violence against women is covered by general legislation. The Constitution of the Republic of Azerbaijan adopted in 1995 provides equal rights of women and men before the law (Art.25). Marriage is based upon free will of the spouses (Art.34). The family and marriage are under the guardianship of state; maternity, paternity and childhood are protected by law; spouses have equal rights (Art.34). According to the article 154 of the Criminal Code of the Republic of Azerbaijan violation of citizens' equality on the grounds of race, nationality, religion, language, sex, origin, property or official status, beliefs, belonging to political parties, trade unions and other public associations using of harm to rights and legal interests of citizens is counting as criminal offence.

Criminal Code of the Republic of Azerbaijan was adopted in 1999 and came into force in 2000. By the year 2002 some changes and amendments relating to the sphere of address were done in Criminal Code.

Along with the Part VIII "Crimes against person" which will be examined below the Criminal Code contains Part VII "Crimes against peace and security of humankind". Here is included following articles of the Part VII relating to the violence against women:

Article 108 – Sexual abuse

Rape, forced prostitution, forced sterilization, or other acts related to sexual abuse shall be punishable by imprisonment for a term of five to ten years or with life imprisonment.

Article 108-1 – Coercive pregnancy

Illegal deprivation of liberty of a woman forced to be pregnant so as to change ethnic compound of one or other population or accompanied with other serious violation of the international law shall be punished with imprisonment for a term from ten to fifteen years or with life imprisonment.

Article 109 – Persecution

Persecution of any of group or organisation on political, racial, national, ethnic, cultural, religion, sex or other grounds prohibited by the international law norms, that is gross violation of fundamental human

rights for belonging to these groups or organisations bound with other crimes against security of humankind shall be punished with imprisonment for a term from five to ten years.

CHAPTER XVII OF PART VII "MILITARY CRIMES" CONTAINS FOLLOWING ARTICLE

Article 116 – Violation of norms of international humanitarian law during the armed conflicts

116.0: Violation of norms of international humanitarian law during the armed conflicts, that is:

116.0.17: conducting other actions, bounding with rape, sexual slavery, coercive prostitution, coercive sterilization, coercive pregnancy and sexual abuse shall be punished with imprisonment for a term from seven to fifteen years or with life imprisonment.

CHAPTER XVIII "CRIMES AGAINST LIFE AND HEALTH" CONTAINS FOLLOWING ARTICLE

Article 136 – Illegal artificial impregnation and implantation of embryo, medical sterilization

136.1.: Illegal artificial impregnation and implantation of embryo to a woman without her consent or a woman minor shall be punished with a fine from 500 to 1000 conditional financial units, with two years of correctional labor, or with imprisonment for a term not exceeding three years with deprivation of right to occupy certain positions or conduct certain activities for a term not exceeding three years or without it.

136.2.: Conducting operation for medical sterilization without consent of a person, that is deprivation of person's capability of continuation of family or preservation of women from pregnancy shall be punished with a fine from 500 to 1000 conditional financial units, with two years of correctional labor, or with imprisonment for a term not exceeding three years with deprivation of right to occupy certain positions or conduct certain activities for a term not exceeding three years or without it.

136.3.: Offences prescribed in articles 136.1. and 136.2 of the present Code which due to carelessness caused death or heavy or less heavy damage to person's health shall be punished with a fine from 1000 to 5000 conditional financial units, by two years of correctional labour, or with imprisonment for a term from two to five years with deprivation of right to occupy certain positions or conduct certain activities for a term not exceeding three years or without it.

1.2 DOMESTIC VIOLENCE

There is no separate law on domestic violence in the Republic of Azerbaijan. The provisions of the Criminal Code regulate these issues: Chapter XVII "Crimes against life and health", Chapter XIX "Crimes against person's liberty and dignity", Chapter XX "Crimes against sexual inviolability and sexual liberty of person", Chapter XXII "Crimes against minors and family relations".

There is no notion of "domestic violence" in the Criminal Code.

A Task Force was established in 2003 consisting of governmental, non-governmental and media representatives related to implementation of Council of Europe Recommendations on "Protection of women against violence" and "Action against trafficking in human-beings with the purpose of sexual exploitation" translated into Azerbaijani. The Task Force conducted an expertise assessing the accordance of national legislation with international documents in this sphere. The Task Force worked out several recommendations during its meetings. One of the recommendations was preparation of Draft Law "On fight against domestic violence" and submission to the National Parliament. At the present a new Task Force consisting of experts from relevant structures, as well as experts of Parliament has been established in order to prepare Draft Law and the Task Force is expected to submit it to the Parliament till the end of the year. The Draft Law will reflect such issues, like protection of women and children against violence in daily life, their social rehabilitation etc. In order to provide the effective implementation of the Law the National Plan of Action on prevention of domestic violence is planned to be worked out.

A draft National Plan of Action on Family and Women's Issues (2007-2010) also reflects issues of domestic violence. The Plan means the preparation and adoption of the Law on Domestic violence, amendments to relevant normative legal acts, preparation of legislative base on arrangement of shelters and crisis centers for the victims of violence, preparation of programs on work with offenders (especially with juveniles) etc.

1.3 RAPE/SEXUAL ASSAULT

There are several articles in the Chapter XX “Crimes against sexual inviolability and sexual liberty of person” relating to sexual assault.

Article 149 – Rape

149.1.: Rape, that is sexual intercourse using violence, threat of violence to victim or other people, or using the victim’s helpless state shall be punished with imprisonment for a term from four to eight years.

149.2.: The same offences shall be punished with imprisonment for a term from five to ten years if:

149.2.1: committed by a group of persons, by a group of persons conspiring in advance, or by an organised group;

149.2.2: The victim of the crime was infected (STD) as a result of violence;

149.2.3: committed knowingly against a minor under the age of eighteen;

149.2.4: committed by threat of death or making heavy harm to victim’s health or other people as well as committed with particular severity;

149.2.5: committed repeatedly.

149.3: The same offences shall be punished with imprisonment for a term from eight to fifteen years if:

149.3.1: resulted in the inadvertent death of the victim;

149.3.2: resulted in the inadvertent infecting of the victim with HIV or another contagion;

149.3.3: committed knowingly against a child under the age of fourteen.

Article 150 – Violence of a sexual nature

150.1: Homosexuality or other violence of a sexual nature against a person by means of force or threatened force, or violence resulting in the disability of the victim, shall be punished with imprisonment for a term from three to five years.

150.2: The same offences shall be punished with imprisonment for a term from five to eight years if:

150.2.1: committed by a group of persons, by a group of persons conspiring in advance, or by an organised group;

150.2.2: The victim of the crime was infected (STD) as a result of violence;

150.2.3: committed knowingly against a minor under the age of eighteen;

150.2.4: committed with particular severity;

150.2.5: committed repeatedly.

150.3: The same offences shall be punished with imprisonment for a term from eight to fifteen years if:

150.3.1: resulting in the inadvertent death of the victim;

150.3.2: resulting in the inadvertent infecting of the victim with HIV or another contagion;

150.3.3: committed knowingly against a child under the age of fourteen.

1.4 CHILD SEXUAL ABUSE/INCEST

Aforementioned Chapter XX of the Criminal Code also contains articles relating to child sexual abuse:

Article 152 – Sexual intercourse or activity with a minor under the age of sixteen

Sexual intercourse or activity with a minor under the age of sixteen committed knowingly by an adult shall be punished with correctional labour for a period not exceeding three years, or with imprisonment for the same term.

Article 153 – Lecherous actions

Commission the lecherous actions knowingly against minor under the age of fourteen without use of violence shall be punished with a fine from 500 to 1000 of conditional financial units, or with two years of correctional labour, or with imprisonment for a term not exceeding two years. The criminal legislature of Azerbaijan does not contain such crime as incest.

The issues of violence against women and children are widely reflected in the State Program for Poverty Reduction and Sustainable Development for 2006-2015. In the “Gender policy” sector of the Program reflects measures like establishment of monitoring mechanism on gender-based violence and violence against children, negative impact of early marriages to the future life of girls and finance have been allocated from the state budget to solve this problems.

1.5 SEXUAL HARASSMENT

The Criminal Code of Azerbaijan envisages responsibility for the following crime which can be defined as sexual harassment:

Article 151 – Forcible sexual activity

Forcible sexual intercourse, homosexuality or other acts of a sexual nature achieved by threats of property destruction, damage or embezzlement, or by exploiting the victim’s dependence, materially or otherwise, shall be punished with a fine from 500 to 1000 conditional financial units, with two years’ correctional labour, or with imprisonment for a term not exceeding three years.

1.6 PORNOGRAPHY

Chapter XXVII “Crimes against public morality” contains the following article:

“Illegal production with the purpose of distribution or advertising, distribution, advertising of pornographic materials or items, as well as illegal trading of printed publications, film- or video materials, pictures or other items of pornographic nature shall be punished with a fine from 1000 to 3000 of conditional financial units, or with imprisonment for a term not exceeding two years, or with two years of correctional labour.”

1.7 PROSTITUTION

Chapter XXII “Crimes against minors and family relations” contains the following articles:

Article 171 – Coercion of minors into prostitution or commitment of amoral actions

171.1: Coercion of minors into prostitution or commitment of amoral actions shall be punishable by imprisonment for a term of three to six years.

171.2: The same offence shall be punishable by imprisonment for a term of four to eight years if:

171.2.1: committed by force or threatened force;

171.2.2: committed by an organised group.

And in Chapter XXVII “Crimes against public morality” there are the following articles:

Article 243 – Coercion to engage in prostitution

243.1: Coercion to engage in prostitution by force or threatened force, by blackmail, by destruction of or damage to property, and with the intent to profit or benefit shall be punishable by a fine of from 500 to 5000 conditional financial units, by correctional labour for 160 to 240 hours, or by imprisonment for a term not to exceed three years.

243.2: The same offence shall be punishable by imprisonment for a term of three to six years if:

243.2.1: committed against a disabled person or a person with physical or mental disorders;

243.2.2: committed by an organised group.

Article 244 – Maintaining a brothel

244.1: Organizing or maintaining brothels, or leasing premises for brothels, shall be punishable by assignment to community service for 200 to 240 hours, by not more than two years' correctional labour, or by imprisonment for a term not to exceed three years.

244.2: The same offence shall be punishable by imprisonment for a term of three to six years if:
244.2.1: committed repeatedly;

244.2.2: committed by a group of persons conspiring in advance or by an organised group.

1.8 OBSCENE PHONE CALLS/TELEPHONE SEX

Obscene phone calls and telephone sex are not regulated in the Azerbaijani legislation.

1.9 FEMALE GENITAL MUTILATION

Practices of such kind have never been existed in Azerbaijan.

1.10 INTERNATIONAL CONVENTIONS

Azerbaijan has ratified the Convention on the Elimination of all Forms of Discrimination against Women and the Optional Protocol to it, and Convention on Children's Rights and Optional Protocols to it.

1.11 PROTECTION OF PREGNANCY/PREGNANT WOMEN

Chapter XXII "Crimes against constitutional rights and freedoms of citizen" of the Criminal Code contains the following article:

Article 164 – Violation of labour rights of pregnant woman or woman having children under the age of three

Groundless cancellation of labour contract with woman on the motive of her pregnancy or having at the maintenance child under the age of three shall be punished with a fine from 500 to 1000 conditional financial units.

According to Labour Code pregnant women have certain privileges, for example: they do not pass attestation; it is prohibited to draw them to work at nights; they have leaves on pregnancy and birth and some other privileges.

2.0 SENTENCING

2.1 SENTENCING DOMESTIC VIOLENCE

No information provided.

3.0 EFFECTIVENESS OF LEGISLATION

No information provided.

4.0 DOMESTIC VIOLENCE

See **Section 1.2** above.

5.0 RAPE AND SEXUAL ASSAULT IN MARRIAGE

No information provided.

6.0 RAPE AND SEXUAL ASSAULT

See **Section 1.3** above.

7.0 SEXUAL HARASSMENT

See **Section 1.5** above.

8.0 INCEST/SEXUAL ABUSE OF GIRLS

See **Section 1.4** above.

BELGIUM

This information was supplied in **November 2000** by the Department of Multilateral Relations at the Ministry of Employment and Labour, in **February 2003** by the Service of Equal Opportunities in Flanders at the Ministry of Flanders, in **January 2004** by the Directorate for Equal Opportunities at the Federal Ministry of Employment and Labour and in **September 2006** by the Institute for Equality of Women and Men.

1.0 LEGISLATION AND SANCTIONS RELATING TO VIOLENCE AGAINST WOMEN

1.1 LETTER OF LAW – DEFINITIONS

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

The list below gives an overview of recent legislation and legal instruments on physical and sexual violence in force at the federal level in Belgium¹. Some pieces of legislation have been subject to appraisal, in which case the comments are shown in italics. They are listed in chronological order.

A. ECONOMIC REORIENTATION LAW OF 4 AUGUST 1978 (MB OF 17 AUGUST 1978)

B. LAW OF 4 JULY 1989 AMENDING CERTAIN PROVISIONS CONCERNING THE CRIME OF RAPE (MONITEUR BELGE (OFFICIAL GAZETTE), 18.07.1989)

This law gives a broader definition of rape.

As a result of the law a larger number of cases come within the definition of the offence of rape, which has resulted in an increase in the rape statistics at the level of both the police and the public prosecution service, corresponding to acts previously classified as indecent assault. In 2001, 2,389 cases of indecent assault were recorded, compared with 2,404 in 1998 and 1,432 in 1994. As to rape, 1,940 cases were recorded in 2001, compared with 1,784 in 1998 and 835 in 1994². A further consequence of this broadening of the definition of rape is heavier penalties for a larger number of offences, with the result that sentences handed down for lesser sexual offences are also more severe.

C. PROTECTION AGAINST VIOLENCE AND MORAL AND SEXUAL HARASSMENT AT WORK ACT OF 11 JUNE 2002

This act replaces the Crown Decree of 18 September 1992 on the protection of workers against sexual harassment in the workplace (MB of 7 October 1992).

The new Act of 11 June 2002, the Act of 17 June 2002 amending the Judicial Code and the Crown Decree and circular of 11 July 2002 on the protection of workers against moral and sexual harassment in the workplace have been incorporated into the existing Act of 4 August 1996 on the wellbeing of employees in the workplace.

¹ It does not include legislation on trafficking in human beings.

² Hutsebaut F., Goethals J., J. Messine, Hirsch M., "La politique judiciaire en matière de violences sexuelles", KUL-UCL, 2002.

D. CROWN DECREE OF 9 MARCH 1995 ON THE PROTECTION OF STAFF AGAINST SEXUAL HARASSMENT IN THE WORKPLACE IN ADMINISTRATIVE AUTHORITIES AND OTHER DEPARTMENTS OF FEDERAL MINISTRIES AND IN SOME PUBLIC-INTEREST BODIES (MB OF 6 APRIL 1995)

E. LAW OF 27 MARCH 1995 INTRODUCING AN ARTICLE 380 QUINQUIES IN THE CRIMINAL CODE AND REPEALING ARTICLE 380 QUATER, PARAGRAPH 2, OF THE SAME CODE (MONITEUR BELGE, 25/04/1995)

This law bans advertising of sexual services, involving minors or prostitution, for direct or indirect pecuniary gain.

F. LAW OF 13 APRIL 1995 ON SEXUAL ABUSE OF MINORS (MONITEUR BELGE, 25/04/1995)

Under this law the limitation period begins running from the date of the victim's 18th birthday. This applies to "anyone who has perpetrated a sexual offence by inciting, encouraging or facilitating ... the prostitution of a minor of either gender." This makes it possible to compensate for the fact that victims of such offences tend to delay reporting them.

This law also establishes a right for minors to have someone present for support during interviews, reinforces the notification obligation, modifies the penalties incurred and makes it obligatory for persons convicted of such offences to be made subject to supervision or to undergo treatment on their release from prison. The law also provides for the possibility of trying the crime of rape as a lesser offence so that the proceedings can be expedited and an under-age victim can be spared the distress of a lengthy court case. The law of 28 November 2000 (see below) nonetheless provides that this "downgrading" of the offence cannot result in a sentence reduced to less than 10 years.

G. LAW OF 24 NOVEMBER 1997 AGAINST DOMESTIC VIOLENCE (MONITEUR BELGE, 6.02.1998)

This law introduces aggravating circumstances for cases of physical violence within a couple. It also applies between former partners. It does not apply to cases of murder, manslaughter or sexual violence. The law broadens the scope for taking legal action, as soon as possible, so as to separate the physically violent partner from his or her victim, for apprehending him or her and for placing the matter on record, where the victim so requests. However, the latter is possible only in the case of a married or cohabiting couple. The law also entitles certain aid organisations to take legal action, subject to the victim's consent.

Although the police recorded 6,587 cases in 2001 and 5,806 in 1999, the prosecution service still decides not to proceed in too many instances. The decision to drop a case is often linked to the nature of the couple's relationship and the risk of the victim's withdrawing the complaint or returning to live with the violent partner. Other key factors are the inadequate information provided in police reports, the lack of any link between reports so that a pattern of violence is not perceptible, failure to record the case as one involving domestic violence, the too infrequent use of medical certificates as evidence³ and the fact that such certificates are sometimes incorrectly or incompletely made out.

The question of separate recording of offences of domestic violence by prosecutor's offices has been raised within the Board of Principal Crown Prosecutors.

In 2001, under the aegis of the minister for equality opportunities, the federal government inaugurated the first national action plan to combat violence against women. In late 2003, the plan was reviewed and led to the national action plan to combat violence between partners, 2004-2007 (available on www.iefh.fgov.be, the site of the institute for equality between women and men, which also includes brochures in twelve languages on how to escape violence and "breaking the silence").

The ministerial conference of 13 July 2005 decided to modify this plan to establish one that was common to the federation, communities and regions, the last two of which have broad responsibilities for combating marital violence, particularly regarding prevention and the care of victims.

³ Hutsebaut F., Goethals J., J. Messine, Hirsch M. "La politique judiciaire en matière de violences sexuelles" KUL-UCL, 2002.

The conference also produced a common definition that would be applicable throughout the country. This definition was then included in circular 3/2006 of 1 March 2006 of the general prosecutors to the courts of appeal, to ensure that the police and prosecuting authorities registered such cases in a uniform fashion.

Circular 4/2006 of 1 March 2006 on penal policy with regard to violence within couples, a joint circular of the Minister of Justice and the general prosecutors to the courts of appeal, is designed to improve co-ordination in combating intra-family violence and make it more effective.

H. LAW OF 12 MARCH 1998 ON IMPROVING CRIMINAL PROCEDURE AT THE STAGES OF THE POLICE AND JUDICIAL INVESTIGATIONS (MONITEUR BELGE, 2 APRIL 1998)

This law, which came into force on 2 October 1998, improved the status of the victim in criminal proceedings. It also amended the provisions on physical examinations. The Crown Prosecutor can now order a physical examination in cases of flagrante delicto (this applies to both minors and adults); in other cases the written consent of an adult victim or perpetrator is required. This consent is officially recorded. This change in the law makes it possible to act faster in response to a complaint by a rape victim. Except in the above cases, it is for the investigating judge, and no longer the court in chambers, to order a physical examination. A person required to submit to such an examination may refuse to do so or may suspend the examination at any time. He/she may request that a doctor of his or her choice attend the examination free of charge.

I. LAW OF 30 OCTOBER 1998 INTRODUCING AN ARTICLE 442 BIS IN THE CRIMINAL CODE TO CREATE AN OFFENCE OF HARASSMENT (MONITEUR BELGE, 17/12/1998)

This law makes psychological violence a punishable offence. A prosecution can be brought only where a complaint is lodged by the person alleging harassment.

The law provides that the offence of harassment shall be punishable by a 15-day to two-year prison sentence and a fine of € 1.24 to 7.43, or only one of these two penalties.

In 2000, a good year after the law's entry into force, the police recorded 4,114 cases of harassment. In 2002 the number rose to 7,972. Sexual harassment is involved in only a very small percentage of cases (1.5%).

J. LAW OF 23 NOVEMBER 1998 INSTITUTING STATUTORY COHABITATION (MONITEUR BELGE, 12.01.1999)

Along the same lines as Article 223 bis of the Criminal Code (applicable to married couples), this law empowers a justice of the peace (juge de paix) to order urgent, provisional measures (Article 1479 of the Civil Code) where "relations between statutory cohabitants are seriously disrupted". These measures concern, *inter alia*, occupancy of the shared home and personal protection. For instance, the judge may impose a separate residence and ban one of the parties from living in the shared home. Urgent, provisional measures may also be ordered - under certain conditions - in respect of a former partner (one year at most after cohabitation has ceased).

K. MINISTERIAL ORDER OF 15 DECEMBER 1998 ON THE "SEXUAL ASSAULT KIT" FOR PUBLIC PROSECUTOR'S OFFICES AND POLICE DEPARTMENTS

This ministerial order took effect on 1 March 1999. The aim is to improve investigations in cases of rape or sexual assault. The kit is intended for use by the doctor called upon to assist the judicial authorities and includes instructions and instruments enabling the doctor to take the necessary samples from victims with a view to enabling the forensic science laboratory to find evidence of the perpetrator's identity.

An analysis of case-files shows that the kit is still too little used, but that where it is in use the prosecution service takes more time before deciding to discontinue proceedings. The kit is currently subject to review.

L. ROYAL DECREES OF 10 FEBRUARY 1999 AND 28 OCTOBER 1999 RELATING TO MEASURES TO BE TAKEN IN CASES OF CONDITIONAL RELEASE (MONITEUR BELGE, 23/02/1999 AND 11/12/1999)

These decrees provide for measures intended to safeguard the interests of victims. For example, certain categories of victims must be informed of an offender's conditional release and must be asked, through the victims reception service, whether they wish certain specific conditions for the offender's release to be imposed, in their interest. This concerns in particular the victims of violent offences such as rape, sexual assault, intentional physical assault and robbery (involving physical violence or threats), which have caused them permanent harm.

M. LAW OF 22 MARCH 1999 ON THE PROCEDURE FOR USE OF DNA ANALYSIS AS A MEANS OF IDENTIFICATION IN CRIMINAL PROCEEDINGS (MONITEUR BELGE, 20/05/1999)

This law contains criminal-law provisions on DNA analysis of samples of human cells taken or traces of human cells found at the site of a crime. The law and its implementing decrees afford greater possibilities for use of DNA analysis in judicial proceedings. For instance, an investigating judge may order, subject to certain conditions, that a sample be taken from a suspect. In such cases, the suspect's consent is not required. In addition, the law governs the establishment of two DNA databases to be kept by the INCC (the National Institute of Crime Detection and Criminology). These are a "Crime detection" database, in which the results of the DNA analysis of traces found are systematically stored, and an "Offenders" database, in which the DNA profiles of certain categories of convicted offenders and internees are stored. This allows faster identification of repeat offenders.

The conditions of application are laid down in a royal decree of 4 February 2002 (Moniteur Belge, 30.03.2002). However, some matters remain to be dealt with in a ministerial decree.

N. LAW OF 7 MAY 1999 ON EQUAL TREATMENT FOR MEN AND WOMEN WITH REGARD TO WORKING CONDITIONS, ACCESS TO EMPLOYMENT AND PROMOTION OPPORTUNITIES, ENTRY TO THE PROFESSIONS, AND SUPPLEMENTARY SOCIAL SECURITY SCHEMES (MB OF 19 JUNE 1999)

O. LAW OF 28 NOVEMBER 2000 ON PROTECTION OF MINORS IN CRIMINAL MATTERS (MONITEUR BELGE, 17/03/2001)

This law extends the protection afforded to minors in criminal matters to sexual offences (prostitution, sexual assault, rape) and to intentional homicide not qualifying as murder and inflicting intentional physical harm. The aggravated penalties are increased in cases of ill-treatment of children and violence against minors within the family and now apply to all persons having some form of authority over children (for instance, a friend of a parent) or living under the same roof as them. Neglect of children is more severely punished. Sexual mutilation of women and girls is outlawed. Forms of compulsory therapy are introduced for perpetrators of offences and, in some cases, are made a condition for granting probation and/or release from detention. Certain rights are withdrawn from offenders convicted of sexual abuse or prostitution of minors or child pornography. Belgian citizens are also liable to be punished for similar offences of sexual violence, prostitution and pornography perpetrated abroad.

Doctors, social workers and other persons acting in confidence are released from their duty of professional secrecy in cases involving ill-treatment of children.

The law also includes provisions governing the taking of evidence from minors, and use of video recordings is officially permitted.

P. LAW OF 2 AUGUST 2002 ON THE TAKING OF STATEMENTS USING AUDIOVISUAL MEDIA (MONITEUR BELGE, 12/09/02)

This law permits the use of audiovisual media in a preliminary inquiry or police or judicial investigation. The specific measures for taking statements from minors are included in the description as special measures. However, the law contains no special provisions concerning the taking of statements concerning acts of domestic violence or sexual violence perpetrated against adults.

Q. LAW OF 28 JANUARY 2003 CONCERNING ALLOCATION OF THE FAMILY HOME TO THE SPOUSE OR STATUTORY COHABITANT WHO IS THE VICTIM OF PHYSICAL VIOLENCE PERPETRATED BY HIS OR HER PARTNER, SUPPLEMENTING ARTICLE 410 OF THE CRIMINAL CODE (MONITEUR BELGE, 12/02/03)

This law provides for heavier penalties in the aggravating circumstances set out in Article 410 of the Criminal Code, increasing the maximum prison sentence to one year. In cases of physical assault or (attempted) poisoning, it enables an investigating judge to order preventive detention or issue an arrest warrant, making it possible to remove the perpetrator from the shared home. Where the judge considers that preventive detention is no longer necessary, he or she may order alternative measures or conditions such as a ban on entering the shared home or an obligation to undergo treatment. This applies to all persons covered by this article of criminal law: partners, spouses, former partners and former spouses. Contrary to the civil-law principles enshrined in this law, cohabitants (and former cohabitants) include couples living together on a lasting basis without this constituting statutory cohabitation.

The civil-law provisions stipulate that in the event of (attempted) physical assault in cases of temporary separation of spouses or statutory cohabitants, the justice of the peace shall award the victim the right to live in the shared home. This decision can be taken as part of a series of urgent or provisional measures. Such a measure may also be included among urgent, provisional measures taken by the court of first instance dealing with a divorce application, where the spouse is guilty of (attempted) physical assault and/or poisoning. These same principles apply on granting divorce. Both the justice of the peace and the court of first instance may derogate from these principles in exceptional circumstances. This last provision gives the judiciary discretionary power in such matters. The judge or court is free to determine the duration of the provisional or urgent measure, which is stipulated in the judicial decision.

R. LAW OF 25 FEBRUARY 2003 TO COMBAT DISCRIMINATION, AMENDING THE LAW OF 15 FEBRUARY 1993 ESTABLISHING A CENTRE FOR PROMOTING EQUALITY OF OPPORTUNITY AND FIGHTING RACISM (MONITEUR BELGE, 17/03/2003)

This law bans discrimination on a whole series of specified grounds. It also provides that certain existing offences may carry heavier penalties, where motivated in part by hatred, contempt or hostility in respect of a person or a group of persons for reasons of gender. In such cases sexism is treated as a reprehensible motive. Heavier penalties are imposed, *inter alia*, for the following offences: sexual assault, rape, manslaughter, murder, poisoning, culpable failure to act, deprivation of liberty, harassment, slander and defamation. The result has been the insertion of Articles 377 bis, 405 quater and 442 bis in the Criminal Code.

1.2 DOMESTIC VIOLENCE

In addition to the articles in the Criminal Code relating to assault and battery⁴, the Law of 24/11/1997 on combating violence between partners establishes an aggravating circumstance:

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

CRIMINAL LAW

Violence within the family does not exist as a specific offence in criminal law, but a family relationship between the perpetrator and the victim may constitute an aggravating circumstance. (see above, Section 1.1, G and Q) Depending on its form, various legal classifications are used. It all depends on the type of violence committed and its seriousness. Assault and battery, homicide and murder are classified as physical violence. Indecent assault and rape are classified as sexual violence. In certain cases, threats against a person may be treated as an offence.

In criminal cases generally, the Crown prosecutor may propose criminal mediation and may, in this context, ask perpetrators of violent acts to undergo treatment or training. In the event of criminal

⁴ Articles 398 to 410 of the Criminal Code.

proceedings, the judge may impose immediate imprisonment, defer judgment or suspend the sentence, perhaps with probationary measures.

Law of 28 January 2003 concerning allocation of the family home to the spouse or statutory cohabitant who is the victim of physical violence perpetrated by his or her partner, supplementing Article 410 of the Criminal Code (Moniteur Belge, 12/02/03) provides for heavier penalties in the aggravating circumstances set out in Article 410 of the Criminal Code, increasing the maximum prison sentence to one year. In cases of physical assault or (attempted) poisoning, it enables an investigating judge to order preventive detention or issue an arrest warrant, making it possible to remove the perpetrator from the shared home. Where the judge considers that preventive detention is no longer necessary, he or she may order alternative measures or conditions such as a ban on entering the shared home or an obligation to undergo treatment. This applies to all persons covered by this article of criminal law: partners, spouses, former partners and former spouses. Contrary to the civil-law principles enshrined in this law, cohabitants (and former cohabitants) include couples living together on a lasting basis without this constituting statutory cohabitation.

CIVIL LAW

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

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

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

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

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

Along the same lines as Article 223 bis of the Criminal Code (applicable to married couples), Law of 23 November 1998 instituting statutory cohabitation empowers a justice of the peace (*juge de paix*) to order urgent, provisional measures (Article 1479 of the Civil Code) where "relations between statutory cohabitants are seriously disrupted". These measures concern, *inter alia*, occupancy of the shared home and personal protection. For instance, the judge may impose a separate residence and ban one of the parties from living in the shared home. Urgent, provisional measures may also be ordered - under certain conditions - in respect of a former partner (one year at most after cohabitation has ceased).

Under Law of 28 January 2003 concerning allocation of the family home to the spouse or statutory cohabitant who is the victim of physical violence perpetrated by his or her partner, supplementing Article 410 of the Criminal Code, the civil-law provisions stipulate that in the event of (attempted) physical assault in cases of temporary separation of spouses or statutory cohabitants, the justice of the peace shall award the victim the right to live in the shared home. This decision can be taken as part of a series of urgent or provisional measures. Such a measure may also be included among urgent, provisional measures taken by the court of first instance dealing with a divorce application, where the spouse is guilty of (attempted) physical assault and/or poisoning. These same principles apply on granting divorce. Both the justice of the peace and the court of first instance may derogate from these principles in exceptional circumstances. This last provision gives the judiciary discretionary power in such matters. The judge or court is free to determine the duration of the provisional or urgent measure, which is stipulated in the judicial decision.

In conjunction with some ten other organisations, the institute for equality between women and men has carried out a review of this legislation, which will be discussed at the next ministerial conference on 16 November 2006.

PENALTIES FOR "PUBLIC" VIOLENCE AND "PRIVATE" VIOLENCE

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

SPOUSAL RAPE

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

1.3 RAPE/SEXUAL ASSAULT

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

DEFINITION OF RAPE

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

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

VARIOUS DEGREES OF RAPE⁵:

The following are aggravating factors:

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

DEFINITION OF CONSENT

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

⁵ Penal Code

EVIDENCE

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

THE VICTIM'S SEXUAL HISTORY

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

THE COMPETENT COURT

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

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

PENALTIES

The factors taken into account include the age of the victim, whether the offence was a repeat one, the number of victims, whether or not the perpetrator had authority over the victim (parent, teacher, doctor, etc). The criminal policy department in the Ministry of Justice maintains statistics.

THE POLICE

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

WOMEN DOCTORS

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

1.4 CHILD SEXUAL ABUSE/INCEST

The law of 28 November 2000 on protection of minors in criminal matters (see above, under Section 1.1, O) extended the aggravating considerations of perpetrator status to include "the brother or sister of the child victim or any person in a similar position within the family or any person habitually or occasionally residing with and exercising authority over the child victim".

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

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

THE AGE OF MAJORITY

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

EVIDENCE BY CHILDREN

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

THERAPEUTIC ASSISTANCE BETWEEN REPORTING THE OFFENCE AND THE TRIAL

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

INDECENT ASSAULT⁶

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

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

1.5 SEXUAL HARASSMENT

For purposes of the Law of 7/05/1999 on equal treatment for men and women⁷, sexual harassment in the workplace is automatically treated as discrimination on the basis of gender.

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

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

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

MORAL HARASSMENT

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

“Anyone who harasses another person although they know, or ought to know, that it will perturb that person shall receive from 15 days’ to two years’ imprisonment and a fine of € 1,24 to 7,43, or only one of these penalties.” (See above, under **Section 1.1, F**, comments on this legislation)

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

See above **Section 1.1 C** concerning the June 2002 legislation, which was assessed in 2004 and will be the subject of new draft legislation, on which the national labour council is currently being consulted.

1.6 PORNOGRAPHY

The Law of 13/04/1995 on trafficking in human beings and child pornography inserted Article 383bis in the Criminal Code, which article was then amended by the Law of 28 November 2000 on protection of minors in criminal matters. During parliamentary discussion of the act, the Minister of Justice stated that Article 383bis is also applicable to pornography in cyberspace.

“Article 383 bis

(1) ... Anyone who displays, sells, offers for rental, distributes or supplies items, videos, photographs, slides or other visual material showing pornographic sexual positions or acts directly or indirectly

⁶ Articles 372 to 377

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

involving minors (whether under or over the age of 16) or anyone who, for trade or distribution, produces, possesses, imports or causes to import such material or supplies it to a carrier or distributor shall be sentenced to prison and fined between five hundred (€12.38) and ten thousand francs (€247.89).

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

1.7 PROSTITUTION

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

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

Article 380⁸ makes it an offence:

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

1.8 OBSCENE PHONE CALLS/TELEPHONE SEX

No information available.

1.9 FEMALE GENITAL MUTILATION

The offence of (ritual) sexual mutilation of women or girls, even with their consent, was introduced into Belgian law (Article 409 of the Criminal Code) by the Law of 28 November 2000 on protection of minors in criminal matters.

1.10 INTERNATIONAL CONVENTIONS

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

⁸ Previously Article 380 bis

1.11 PROTECTION OF PREGNANCY/PREGNANT WOMEN

The current regulations refer to maternity protection, of which the protection of pregnant workers is naturally one aspect (in particular, articles 88 and 131 of the general labour protection regulations, chapter VIII of the Labour Protection Code and articles 39 to 44 of the 1971 Employment Act were amended in 1999). Maternity protection is the subject of the Crown Decree of 2 May 1995. This lists the risks that employers must assess. Several risk assessment projects are currently under way, with the support of the European Social Fund. In each of these projects, particular attention is being paid to gender.

A regulation (collective labour agreement 80), which entitles female employees to time off for nursing, came into force in the private sector on 1 July 2002.

Work and maternity provision also includes parental leave and other measures, available on www.meta.fgov.be.

In 2004, the gynaecology department of the University of Gent drew up a procedure on the reception and treatment of pregnant women who were the victims of violence. This "good practice" has been communicated under the national action plan to the health and social affairs ministry.

2.0 SENTENCING

2.1 SENTENCING DOMESTIC VIOLENCE

See **Section 1.2** above.

3.0 EFFECTIVENESS OF LEGISLATION

EXTENSION OF THE EXTRA-TERRITORIAL JURISDICTION OF BELGIAN COURTS

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

USE OF AUDIOVISUAL MEDIA

Law of 2 August 2002 on the taking of statements using audiovisual media permits the use of audiovisual media in a preliminary inquiry or police or judicial investigation. The specific measures for taking statements from minors are included in the description as special measures. However, the law contains no special provisions concerning the taking of statements concerning acts of domestic violence or sexual violence perpetrated against adults.

SPECIAL SUPPORT TO WOMEN AND GIRLS IN GIVING EVIDENCE

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

RECEPTION OF VICTIMS

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

Article 46 has been supplemented by instructions in a circular from the Ministry of the Interior. This states that assistance to crime victims consists in giving practical help, providing information and guiding the victims towards specific bodies for help or assistance.

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

member of its staff through the necessary training in specialised interview techniques for questioning victims.

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

IMPROVED RECEPTION OF VICTIMS IN PROSECUTORS' OFFICES AND COURTS

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

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

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

THE SEXUAL ASSAULT KIT (SAK)

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

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

MEDICAL CERTIFICATES

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

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

3.1 ROLE OF NON-GOVERNMENTAL ORGANISATIONS (NGOs) IN LEGAL PROCEEDINGS

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

3.2 MAIN PROBLEMS AND NEW SOLUTIONS

Encouraging victims of violence to act, defy the taboos and speak up and providing them with the information to help them do this is a basic problem. While previous programmes were more focused

on the services dealing with victims, an awareness-raising campaign⁹ was developed in 1999 for the victims themselves. The campaign's message was "Don't put up with violence! Break the silence before it breaks you". It was targeted at young people and adults, men and women. The campaign leaflet tells victims what organisations they can contact.

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

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

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

Residential welfare assistance includes private juvenile-welfare institutions, reception centres for children, reception centres for women, and refuges. A refuge is an unmarked house which provides accommodation for abused women and their children and which applies strict confidentiality rules; this gives victims safe haven and support, making it more realistic for them to leave their partners.

Finally, it is crucial to assess the difficulties regularly and co-ordinate the solutions. The National Forum on Victim Assistance was set up to do this in 1996. The forum brings together six ministries and nine other bodies representing the federal level and the federated entities. Among other things it has drawn up a victim's charter, a key document for victims' rights. It is also important to have a clear, up-to-date picture covering prosecutions and sentences, and Belgium is developing improved judicial statistical tools which in turn will help improve provision (see **section 1.1 C** above).

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

This network, under the auspice of the national action plan, is also supported by the communities and the regions.

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

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

3.3 SPECIAL LEGISLATION ADDRESSING VIOLENCE AGAINST WOMEN

Action on violence has been incorporated into policy on equal opportunities. Equally, as already mentioned (see **Section 1.5** above), sexual harassment is automatically treated as a form of sex discrimination for purposes of the 1999 act.

See also under **Section 1.1, N**.

3.4 GENDER PERSECUTION AS GROUNDS FOR GRANTING REFUGEE STATUS?

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

⁹ Posters in stations, advertisements in cinemas and on television, leaflets in post offices and pharmacies.

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

4.0 DOMESTIC VIOLENCE

In implementation of the actions laid down in the National Plan of Action against violence against women the Flemish Minister for Welfare, Health, Equal Opportunities and Development Co-operation launched the campaign "*Laat je geweld aandoen. Trek je grens.*" (translated as: Do not become a victim of violence. Draw the line.) in November 2002. This campaign is intended to make young people aware of transgressive behaviour as well as to provide them with information and channels for assistance. (www.wvc.vlaanderen.be/relaties/).

Currently preparatory talks are being held between the federal Ministry of Employment and labour, the federal Ministry of Justice and the federated entities about financing of experimental projects for supporting domestic violence offenders.

5.0 RAPE AND SEXUAL ASSAULT IN MARRIAGE

See **Section 1.2** above.

6.0 RAPE AND SEXUAL ASSAULT

See **Section 1.3** above.

7.0 SEXUAL HARASSMENT

See **Section 1.5** above.

8.0 INCEST/SEXUAL ABUSE OF GIRLS

See **Section 1.4** above.

BOSNIA AND HERZEGOVINA

This information was provided by the Directorate for European Integration in **April 2003** and updated by the Gender Equality Agency of Bosnia and Herzegovina and the Gender Centers of Federation of Bosnia and Herzegovina and of Republika Srpska in **September 2006**.

1.0 LEGISLATION AND SANCTIONS RELATING TO VIOLENCE AGAINST WOMEN

1.1 LETTER OF LAW – DEFINITIONS

THE GENDER EQUALITY LAW IN BOSNIA AND HERZEGOVINA

The law provides additional definitions in as follows:

Article 4

- a) **gender based violence:** any act causing physical, mental, sexual or economic damage or suffering, as well as threats of such actions, which interferes with the enjoyment of rights and freedoms based on gender equality, in public and private life, including trafficking in human beings for the purpose of forced labor, and any restriction or arbitrary deprivation of liberty, for persons exposed to such acts;
- b) **harassment:** any situation where an unwanted conduct related to gender occurs, with the purpose or effect of violating the dignity of a person or of creating an intimidating, hostile, degrading, humiliating, offensive or similar situation;
- c) **sexual harassment:** any situation where by any form of verbal, non-verbal, physical or psychological unwanted conduct based on sex occurs, with the purpose or effect of violating the dignity of a person, or creating an intimidating, hostile, degrading, humiliating, offensive or any similar situation, motivated by the fact that the individual is of the opposite sex or of different sexual orientation;

1.2 DOMESTIC VIOLENCE

THE GENDER EQUALITY LAW IN BOSNIA AND HERZEGOVINA

Article 17

All forms of gender based violence in private and public life is prohibited.

Competent authorities shall undertake all appropriate measures in order to eliminate and prevent gender based violence in public and private life, and shall provide instruments of protection, assistance and compensation to the victims.

Competent authorities shall also develop measures of protection of gender based violence, especially in education, in order to eliminate bias, customs and all other practices based on the idea of inferiority or superiority of either sex, as well as stereotype roles of men and women. This includes but is not limited to education and raising awareness among civil servants, the public, etc.

 CRIMINAL CODE OF THE FEDERATION OF BOSNIA AND HERZEGOVINA
Article 172 – Grievous Bodily Injury

(1) Whoever inflicts grievous bodily injury upon another person or gravely impairs his/her health, shall be punished by imprisonment for a term between six months and five years.

(2) Whoever commits the act described in paragraph 1. of this Article to his/her spouse, cohabiting partner, or to the parent of his/her child with whom he/she does not cohabit, shall be punished with one to five years in prison.

(3) Whoever inflicts bodily injury upon another person or impairs his/her health so gravely that the life of the injured person is endangered, or if an important part or organ of his/her body was destroyed or permanently weakened to a substantial degree, or if the injured person was made permanently unable to work, or if permanent and grave damage to his/her health or disfigurement took place, shall be punished by imprisonment for a term between one year and ten years

(4) Whoever commits the act from paragraph 1. of this Article out of racial, national or religious reasons, shall be punished with the sentence from paragraph 3. of this Article

(5) Should the injured person die as a result of injuries referred to in paragraphs 1 through 4 of this Article, the perpetrator shall be punished by imprisonment for a term between one year and twelve years.

(6) Whoever negligently commits the acts referred to in paragraphs 1 through 3 of this Article, shall be punished by imprisonment for a term not exceeding three years.

(7) Whoever commits the acts referred to in paragraphs 1 through 3 of this Article shall be punished by imprisonment for a term between three months and three years.

(8) Whoever commits the act referred to in paragraph 4 of this Article while under influence of irresistible impulse caused through no fault of his/her own by an attack or rude insult on the part of the injured person by imprisonment for a term between six months and five years.

Article 173

(1) Whoever inflicts light bodily injury upon another person or impairs his/her health in a minor way, shall be fined or punished by imprisonment for a term not exceeding one year.

(2) Whoever commits the act from paragraph 1. of this Article upon his/her spouse, cohabiting partner, or non-cohabiting parent of his/her child, shall be sentenced to up to one year in prison.

(3) The court may administer a judicial admonition to the perpetrator of an act referred to in paragraph 1 of this Article if the perpetrator has been provoked by rude or indecent behavior of the injured person.

CRIMINAL CODE OF REPUBLIKA SRPSKA

Article 208 – Violence in family or in family community

- scale of penalty in paragraph 1. has changed- jail sentence up to two years
- other 6 paragraphs contain qualified forms of this criminal offence

Article 207 – Neglect and abuse of a juvenile

(1) Parent, adapter, guardian or other person who by rough disregard of their duties of care and education neglects a juvenile of whom is obligated to take care of, shall be fined or punished by imprisonment up to two years.

(2) Parent, adapter, guardian or other person who abuses a juvenile or forces him to exaggerated work, which is not suitable for stature of juvenile, or to begging, or out of self- interest guides him on performing other actions that are harmful for his development, shall be punished by imprisonment term up to three years.

(3) If there has been, because of the acts from paragraph 1 and 2, inflicted a grievous bodily injury or a grievous entrenchment of health of a juvenile, or a juvenile has gave away to prostitution, alcohol or other forms of antisocial behaviour, the perpetrator shall be punished by imprisonment for a term between six months and five years.

Article 205 – Taking of a juvenile

(1) Whoever illegally keeps or takes a juvenile from a parent, adapter, guardian, an institute or persons whom they are entrusted , who keeps or restrains a juvenile from beeing at persons titled to them, or disables execution of a decision with whom a juvenile was entrusted to a certain person, shall be fined or punished by imprisonment term up to two years.

(2) If the act reffered to in paragraph 1 of this article has been committed out of self-interest or other low motive or if act has caused serious disturbance of health, of education or schooling, the perpetrator shall be punished by imprisonment term ranging between three months and three years.

Article 209 – Violation of family obligations

(1) Who by heavy violation of law determined family obligations leaves in difficult position a family member, who is not in position to take care of himself, shall be fined or punished by imprisonment up to two years.

(2) If from act described in paragraph 1 of this article arrived a serious disturbance of health of a family member, the perpetrator shall be punished by imprisonment term ranging between six months up to five years.

(3) If from act described in paragraph 1 arrived death of a family member, the perpetrator shall be punished by imprisonment term ranging between one year up to eight years.

(4) On adjudating suspended sentence, Court of law can before a perpetrator set a condition of his precise executing obligations of care, education and sustenance.

Article 210 – Avoidance of giving alimentionation

(1) Whoever avoides to give alimentionation for a person, which by law is obligated to sustein, and that duty was declared on basis of executive court's decision or executive court's settlement or other authorized organ, shall be fined or punished by imprisonment term up to one year.

(2) If from act in paragraph 1 arrived difficult consequence's for supported person, the perpetrator shall be punished by imprisonment term up to two years and fined.

(3) On adjudating suspended sentence, Court of law can before a perpetrator set an obligation to settle it's dued duties and to lawfully give alimentionation.

LAWS ON PROTECTION AGAINST DOMESTIC VIOLENCE IN BOTH ENTITIES

Laws on Protection against Domestic Violence adopted in both Federation of Bosnia and Herzegovina and Republika Srpska further enhance protection of women and girls from family violence through adoption of special protective measures (as described below).

The Law on Protection against Family Violence was adopted in May 2005 in the Federation of Bosnia and Herzegovina and in December 2005 in the Republika Srpska. The Law regulates protection against family violence, the concept of family violence, persons considered as family members in terms of this Law, ways of protection of family members, as well as kind and purpose of the offence sanctions for perpetrators of violent actions. The basic concept of this Law is that a perpetrator is removed from a flat, house or some other kind of living place of victim.

The minor offence sanctions for protection against family violence are protective measures. The protective measures are aimed at preventing and eliminating family violence, removing the effects of perpetrated violence, taking effective retraining measures for the perpetrators, and removing the circumstances that encourage and stimulate repeated violence in the family. The perpetrators of family

violence can be proscribed the following protective measures that are the same for both Laws for Protection from Family Violence in Republika Srpska and Federation of B&H:

1. Removing from a flat, a house or some other kind of living place of victim, and prohibition on returning to the flat, the house or some other kind of living place of victim;
2. Restriction on approaching the victim of violence,
3. Provision of protection to victims of violence;
4. Restriction on abusing behaviours or following the victim;
5. Mandatory psycho-social treatment;
6. Mandatory addiction treatment.

The perpetrator of family violence is responsible to act in compliance with the issued protective measure.

The fines in amounts from KM 2000.00 to KM 10,000.00 shall be imposed for the offence to the person who fails to comply with an issued protective measure.

In Law for Protection from Family Violence in Republika Srpska fines for a person acting in official duty that does not report violence to the police authorities range from KM 800 to KM 1800.

Beside this, substantial difference exists between Laws for Protection from Family Violence in Republika Srpska and Federation of B&H. RS Law introduced monetary fines for acts of family violence range from KM 100 to KM 1500, while Federation of B&H Laws recognizes only above mentioned protective measures that can be sentenced to a perpetrator in a form of minor offense.

Such differences in legal treatment of family violence between entities in B&H are contributing to the legal insecurity and preventing real protection of women and girls that are identified as the most common victims.

Numerous problems encountered when implementation of these Laws started in a practice in 2005/2006. For example, public prosecutors have difficulties to identify qualification of acts of family violence - when it ends to be a minor offence and when it starts to be a criminal act.

1.3 RAPE/SEXUAL ASSAULT

CRIMINAL CODE OF BOSNIA AND HERZEGOVINA

Article 172

Whoever coerce another by force or by threat of immediate attack upon his life or limb, or the life or limb of a person close to him/her, to sexual intercourse or an equivalent sexual act (rape), sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation or any other form of sexual violence of comparable gravity, shall be punished by imprisonment for a term not less than ten years or long-term imprisonment.

Article 173

Whoever in violation of rules of international law in time of war, armed conflict of occupation, coerce another by force or by threat of immediate attack upon his life or limb, or the life or limb of a person close to him/her, to sexual intercourse or an equivalent sexual act (rape), or forcible prostitution, shall be punished by imprisonment for a term not less than ten years or long-term imprisonment.

CRIMINAL CODE OF BRČKO DISTRICT

Article 206

- (1) A person who compels another person to sexual intercourse by use of force or by threat of direct attack on life and body of that person, or life and body of somebody close to that person, shall be sentenced to prison from one to ten years.
- (2) If the offense referred to in Paragraph 1 of this Article resulted in pregnancy of the female, grievous bodily injury, serious impairment of health or death of the injured party, or if the offense was committed by several persons, or in an extremely brutal or humiliating way, the perpetrator shall be sentenced to prison from three to fifteen years.

- (3) A person who commits the criminal offense referred to in Paragraph 1 of this Article because of differences in ethnic or national origin, race, religion or language, shall be sentenced in accordance with Paragraph 2 of this Article.

Article 207

A person who forces another person to sexual intercourse by use of serious threat of revealing something which would harm the honour or reputation of that person or somebody close to that person, or by use of threat of doing some other serious harm, shall be sentenced to prison from six months to five years.

CRIMINAL CODE OF THE FEDERATION OF BOSNIA AND HERZEGOVINA

Article 203

“(1) Whoever compels another person to sexual intercourse by force or threat of immediate attack upon life and limb, or life or limb of someone close to that person, shall be punished by imprisonment for a term between one and ten years.

(2) Whoever commits the act referred to in paragraph 1 of this Article in a particularly brutal or degrading way or if the act on the same occasion has been repeatedly committed over the same person the perpetrators shall be punished by imprisonment for a term between three and fifteen years.

(3) If pregnancy of the female victim, grievous bodily injury or a serious disturbance of health or the death of the victim occurred as a result of the act referred to in paragraph 1 of this Article, the perpetrator shall be punished by imprisonment for not less than three years.

(4) Sentence from paragraph 2. of this Article shall be pronounced to whoever commits the act described in paragraph 1. of this Article because of differences in national or ethnic origin, race, religion, or language.

(5) Whoever performs s the act referred to in paragraph 1 of this article with a juvenile, shall be punished by imprisonment for not less than three years.

(6) Whoever performs s the act referred to in paragraphs 2., 3. and 4, of this article with a juvenile, shall be punished by imprisonment for not less than five years.

(7) If by the act referred to in paragraph 2 of this article the effects referred to in paragraph 3 of this article, the perpetrator shall be by imprisonment for not less than five years.“

Article 206

Whoever has forced another person into sexual intercourse or other act that may be treated as sexual intercourse by use of serious threat to reveal something that would seriously harm that person's honor or reputation or that of a person close to him/her, or by seriously threatening that person with some other harm, shall be punished by imprisonment for a term between six months and five years.

CRIMINAL CODE OF REPUBLIKA SRPSKA

Article 193 – Rape

(4) Who forces other person into intercourse or other sexual act with serious threat to discover something that would cause the loss of honor or reputation of victim or victim's close person or threat with other severe troubles, is to be sentenced with inprisonment from 6 months to 5 years.

Article 194 – Intercourse with helpless person

(1) Who commits intercourse or other sexual act with other person using their mental illness, insufficient psychological development, other psychological disorder, weakness or other condition of that person because of which the victim is not able to resist, is to be sentenced with inprisonment from 6 months to 5 years.

(2) If the criminal act from paragraph 1. of this Article is committed with minor person or in particularly brutal or particularly humiliating way, or if more criminal acts are committed by more persons, or there are severe physical injury, severe violation of health or pregnancy of helpless female person, perpetrator(s) is to be sentenced with imprisonment from 3 to 15 years.

(3) If acts from paragraph 1. and 2. caused death of victim, perpetrator(s) is to be sentenced with imprisonment for at least 5 years.

Article 196 – Intercourse abusing superior position

(1) Who abuse superior position to force into intercourse or other sexual act an other person who is in subordinate or dependant position, is to be sentenced with imprisonment up to 3 years.

(2) Teacher, pedagogue, guardian, adoptant parent or other person who abuse superior position to force into intercourse or other sexual act a minor person who is committed to their care, education, guardianship or attendance, is to be sentenced with imprisonment from 6 months to 5 years.

1.4 CHILD SEXUAL ABUSE/INCEST

LEGISLATION ON THE STATE LEVEL

There is no legislation on the State level.

CRIMINAL CODE OF BRČKO DISTRICT

Article 209

- (1) A person who performs a sexual intercourse on a juvenile under fourteen, shall be sentenced to prison from six months to five years.
- (2) A person who commits the offense referred to in Paragraph 1 of this Article to a helpless juvenile under fourteen, or by use of force or by threat of direct attack on life and body, shall be sentenced to prison from three to fifteen years.
- (3) If the offense referred to in Paragraphs 1 and 2 of this Article resulted in the pregnancy of a juvenile female person, griveous bodily injury, severe impairment of health, or if the offense was committed by several persons or in a particularly brutal or humiliating way, the perpetrator shall be sentenced to prison from five to fifteen years.
- (4) If the criminal offense referred to in Paragraphs 1 and 2 of this Article resulted in the death of a juvenile, the perpetrator shall be sentenced to prison for at least ten years or long-term imprisonment.

Article 211

- (1) A person who panders a juvenile, shall be sentenced to prison from three months up to three years.
- (2) A person who enables a sexual abuse of a juvenile, shall be sentenced to prison up to three years.
- (3) A person who panders another person for a reward, or a person who enables a sexual abuse for a reward, shall be sentenced to prison up to three years and fined.

CRIMINAL CODE OF THE FEDERATION OF BOSNIA AND HERZEGOVINA

Article 207

(1) Whoever performs sexual intercourse or equivalent sexual act on a child, shall be punished by imprisonment for a term between one and eight years.

(2) Whoever performs forcible sexual intercourse or equivalent sexual act on a child (Article 203, *Rape*, paragraph 1) or on a helpless child (Article 204, *Sexual Intercourse with a Helpless Person*, paragraph 1),

shall be punished by imprisonment for not less than three years.

(3) Whoever performs sexual intercourse or equivalent sexual act on a child by abusing his position (Article 205, *Sexual Intercourse by Abuse of Position*, paragraph 2),

shall be punished by imprisonment for a term between one and ten years.

(4) Whoever perpetrates the criminal offence referred to in paragraphs 1 through 3 of this Article in a particularly cruel or humiliating manner or if on the same occasion a number of perpetrators perform a number of acts of sexual intercourse or equivalent sexual acts against the same victim,

shall be punished by imprisonment for not less than five years.

(5) If, by the criminal offence referred to in paragraphs 1 through 3 of this Article, the death of a child is caused, or serious bodily injury is inflicted on a child or his health is seriously impaired, or the female child is left pregnant, the perpetrator

shall be punished by imprisonment for a term not less than five years or by long-term imprisonment.

Article 205

(1) Whoever, by abusing his position, induces into sexual intercourse or equivalent sexual act a person who is in a dependent position in relation to him due to the person's financial, family, social, health or other condition or straitened circumstances,

shall be punished by imprisonment for a term between three months and three years.

(2) A teacher, educator, parent, adoptive parent, guardian, step-father, step-mother or any other person who, by abusing his status or relationship toward a juvenile who is entrusted to him for education, upbringing, custody or care, performs sexual intercourse or equivalent sexual act upon a juvenile,

shall be punished by imprisonment for a term between six months and five years.

Article 219

(1) A parent, adoptive parent, guardian or any other person who severely neglects his duties in maintaining or upbringing a child or juvenile,

shall be punished by imprisonment for a term between three months and three years.

(2) The punishment referred to in paragraph 1 of this Article shall be imposed on a parent, adoptive parent, guardian or any other person who maltreats a child or juvenile, compels a child or juvenile to work that is unsuitable for his age, or to excessive work, or to beg, or induces him for gain to behave in a manner harmful to his development.

(3) If, by the criminal offence referred to in paragraphs 1 and 2 of this Article, serious bodily injury to a child or juvenile is inflicted, or his health is severely impaired, or because of the criminal offence referred to in paragraphs 1 and 2 of this Article a child or juvenile has taken to begging, prostitution or other asocial behaviour or delinquency, the perpetrator

shall be punished by imprisonment for a term between three months and five years.

Article 213

(1) Whoever performs sexual intercourse or equivalent sexual act with a relative by blood in a direct line or a sibling,

shall be punished by a fine or imprisonment for a term between six months and two years.

(2) Whoever perpetrates the criminal offence referred to in paragraph 1 of this Article with a juvenile, shall be punished by imprisonment for a term between one and five years.

(3) Whoever perpetrates the criminal offence referred to in paragraph 1 of this Article with a child,

shall be punished by imprisonment for a term between two and ten years.

CRIMINAL CODE OF REPUBLIKA SRPSKA

Article 201 – Incest

(1) Who commits intercourse with relative in straight blood line or with brother, as with sister, is to be sentenced with imprisonment up to 3 years or with fine.

(2) Who commits act from paragraph 1. with child or minor person, is to be sentenced with imprisonment from 1 to 8 years.

(3) Criminal sanctions will not be applied to victims of acts from paragraph 2. who was minor at the time of committed act. This applies also in the case when the act continued after the victim became mature.

1.5 SEXUAL HARASSMENT

THE GENDER EQUALITY LAW IN BOSNIA AND HERZEGOVINA

Article 19

Everyone whose right set by this Law has been violated shall have the right to initiate criminal or civil proceedings before courts of general jurisdiction, in accordance with relevant laws. Charges may be brought before a court prior to or without initiating proceedings for protection with the employer.

Article 20

Unless the respondent party proves otherwise, a ruling of discrimination shall be made if a plaintiff claiming to have suffered damages due to a violation of the right to gender equality, as guaranteed by this Law, provides arguments in support of facts that lead to a conclusion that he or she has been a victim of direct or indirect discrimination.

Article 28

Any person who commits gender based violence, harassment or sexual harassment as described in Article 4 of this Law shall be punished for a criminal offence and sentenced to 6 months to 5 years of imprisonment.

Prosecution shall be ex officio, pursuant to the Law on Criminal Proceedings of B&H.

Article 29

A legal person shall be sentenced with a fine of 1,000 KM to 30,000 KM in cases of:

- failure to undertake appropriate and effective measures against gender discrimination, [...] harassment and sexual harassment;
- failure to undertake appropriate measures to eliminate and prevent unlawful gender discrimination in labour and employment, as defined by Article 8 of this Law;
- failure to provide curricula, syllabi and methodology in educational institutions which guarantee the elimination of stereotyped curricula which produce discrimination and gender inequality as a consequence;
- failure to maintain gender-disaggregated statistical data and information collected, recorded and processed;
- failure to provide public access to statistical data held, pursuant to this Law; public presentation of any person in an offensive, humiliating or degrading way, irrespective of sex.

An offence set forth in paragraph 1 of this Article shall entail a fine of 100 KM to 1,000 KM against a responsible person within the legal person as well as against any individual in charge of an independent private business.

No provision of this law can be interpreted as a limitation or restriction of the right to initiate criminal or civil proceedings, under the conditions set by this Law.

Fines shall be collected in favour of the budget of joint institutions of Bosnia and Herzegovina.

Article 30

Proceedings and rulings on criminal and other offences defined by this Law shall be of urgent nature and dealt with in an expedited manner, and shall take priority in the work of competent bodies.

CRIMINAL CODE OF RS

Article 196 – Intercourse abusing superior position

(1) Who abuse superior position to force into intercourse or other sexual act an other person who is in subordinate or dependant position, is to be sentenced with imprisonment up to 3 years.

(2) Teacher, pedagogue, guardian, adoptant parent or other person who abuse superior position to force into intercourse or other sexual act a minor person who is committed to their care, education, guardianship or attendance, is to be sentenced with imprisonment from 6 months to 5 years.

Article 197 – Satisfaction of sexual lust in front of others

(1) Who commits sexual acts in public in front of other person, is to be sentenced with fine or imprisonment up to 1 year.

(2) Who commits acts of satisfying ones own or somebody else's sexual lust in front of child or minor person, or who leads a child to commit such acts in front of them or other persons, is to be sentenced with fine or imprisonment up to 3 years.

1.6 PORNOGRAPHY

LEGISLATION ON THE STATE LEVEL

There is no legislation on the State level.

CRIMINAL CODE OF BRČKO DISTRICT

Article 213

(1) A person who sells, shows or makes available by public presentation or in some other way texts, photographs, audio-visual and other material with pornographic content to a juvenile under fourteen, or shows him a pornographic performance, shall be fined or sentenced to prison up to one year.

(2) A person who abuses a juvenile under fourteen for taking photographs, audio-visual material or other material with pornographic contents, or abuses him for pornographic performance, shall be sentenced to prison from three months to three years.

(3) The material referred to in Paragraphs 1 and 2 of this Article shall be confiscated.

CRIMINAL CODE OF THE FEDERATION OF BOSNIA AND HERZEGOVINA

Article 211

Abuse of a Child or Juvenile for Pornography

(1) Whoever photographs or films a child or juvenile with an aim of developing photographs, audio-visual tapes or other pornographic materials, or possesses or imports or sells or deals in or projects such material, or induces such persons to play in pornographic shows,

shall be punished by imprisonment for a term between one and five years.

(2) Items meant or used for the perpetration of criminal offence referred to in paragraph 1 of this Article shall be forfeited and the items produced by the perpetration of criminal offence referred to in paragraph 1 shall be forfeited and destroyed.

Article 212

Introducing Pornography to a Child

(1) Whoever sells, shows or renders available through a public display or in any other way writings, pictures, audio-visual and other objects containing pornography to a child, or whoever shows him a pornographic show,

shall be punished by a fine or imprisonment for a term not exceeding one year.

(2) The items referred to paragraph 1 of this Article shall be forfeited.

CRIMINAL CODE OF THE REPUBLIKA SRPSKA

Article 199 – Abuse of minors for pornography

In document EG (2004) 2- BiH cited as Article 189.

Article 200 – Production and showing children pornography

(1) Who offers, distributes, shows or makes accessible with public exhibition or other ways documents, pictures, audio-visual or other objects representing children pornography, or who produces or keeps such materials for these purposes, or who shows off a performance of children pornography, is to be sentenced with fine or imprisonment up to 1 year.

(2) If act from paragraph 1. is committed with person under 16, perpetrator is to be sentenced with imprisonment up to 3 years.

(3) If acts from previous paragraphs are committed through media or Internet, perpetrator is to be sentenced with imprisonment from 6 months to 5 years.

(4) The children pornography in the sense of this regulation means pornographic material which visually shows:

- a) child or minor person participating in evident sexual behavior, and
- b) realistic pictures showing child or minor person in evident sexual behavior.

(5) Objects and facilities from paragraphs 1. and 2. are to be confiscated

1.7 PROSTITUTION

CRIMINAL CODE OF BOSNIA AND HERZEGOVINA

Article 187

(1) Whoever procures, entices or leads away another person to offer sexual services for profit within a state excluding the one in which such a person has residence or of which he is a citizen,

shall be punished by imprisonment for a term between six months and five years.

(2) Whoever, by force or threat to use force or deceit, coerces or induces another person to go to the state in which he has no residence or of which he is not a citizen, for the purpose of offering sexual services upon payment,

shall be punished by imprisonment for a term between six months and five years.

(3) If the criminal offence referred to in paragraphs 1 and 2 of this Article is perpetrated against a child or a juvenile, the perpetrator

shall be punished by imprisonment for a term between one and ten years.

(4) The fact whether the person procured, enticed, led away, forced or deceived into prostitution has already been engaged in prostitution is of no relevance for the existence of a criminal offence.

CRIMINAL CODE OF BRČKO DISTRICT

Article 212

- (1) A person who recruits, induces, encourages or lures female persons to prostitution, or whoever in any sense participates in handing a female person over to another for the purpose of prostitution, shall be sentenced to prison from three months to three years.
- (2) If the offense referred to in Paragraph 1 of this Article was committed against a juvenile person, or by use of force, threat or deception, the perpetrator shall be sentenced to prison from one to ten years.
- (3) If the offense referred to in Paragraphs 1 and 2 of this Article was committed against a child, the perpetrator shall be sentenced to prison from two to twelve years.

CRIMINAL CODE OF THE FEDERATION OF BOSNIA AND HERZEGOVINA

Article 210

Pandering

(1) Whoever, for gain, induces, incites or lures another in offering sexual services or in another way enables turning another over to a third person for offering sexual services, or in any way takes part in organizing or managing of sexual services offering,

shall be punished by imprisonment for a term between one and five years.

(2) Whoever, for gain, by use of force or by threat to use force or to inflict greater harm, coerces another or by deceit induces another into offering sexual services,

shall be punished by imprisonment for a term between one and ten years.

(3) The punishment referred to in paragraph 2 of this Article shall be imposed on whoever, for gain, in the manner referred to in paragraph 2 of this Article, by abusing a difficult situation of a person residing in a foreign country, coerces or induces that person into offering sexual services.

(4) Whoever perpetrates the criminal offence referred to in paragraphs 1 and 3 of this Article against a child or juvenile,

shall be punished by imprisonment for a term between three and fifteen years.

(5) The fact whether the person who is induced, incited, lured or coerced has already been engaged in prostitution is of no relevance to the perpetration of criminal offence under this Article.

CRIMINAL CODE OF THE REPUBLIKA SRPSKA

Prostitution as a deviate action is incriminated as a criminal offence of the trafficking with human beings for the purpose of prostitution (article 188 of CCRS). It appears in different ways, especially through inducement, incitement or luring other persons to offer sexual services for profit. For the most serious offenses, when offence has been committed against a person under twenty- one years of age, the perpetrator shall be punished by imprisonment term up to twelve years.

Article 198 – Human trafficking for the purpose of prostitution

In document EG (2004) 2- BiH is cited as Article 188.

LAW ON PUBLIC PEACE AND ORDER OF REPUBLIKA SRPSKA

Article 7

Whoever rents, that is transfers facilities for the practise of prostitution, or whoever in a public place allures other on prostitution or interposes in practising prostitution – shall be fined ranging from 1.500 up to 3.000 KM or punished by imprisonment term up to 60 days.

For misdemeanor from paragraph 1 of this article, a corporation and other legal person shall be fined ranging from 500 up to 10.000 KM.

Responsible person in a corporation or in another legal person, for misdemeanors from paragraph 1 of this article, shall be fined ranging from 50 up to 1.000 KM.

1.8 OBSCENE PHONE CALLS/TELEPHONE SEX

Obscene phone calls are not incriminated.

1.9 FEMALE GENITAL MUTILATION

CRIMINAL CODE OF BOSNIA AND HERZEGOVINA

Article 172

Whoever coerce another by force or by threat of immediate attack upon his life or limb, or the life or limb of a person close to him/her, to sexual intercourse or an equivalent sexual act (rape), sexual slavery, enforced prostitution, forced pregnancy, **enforced sterilisation** or any other form of sexual violence of comparable gravity, shall be punished by imprisonment for a term not less than ten years or long-term imprisonment.

CRIMINAL CODE OF BRČKO DISTRICT

Female Genital Mutilation is regulated in the framework of the group criminal offences against life and limb.

CRIMINAL CODE OF FEDERATION OF BOSNIA AND HERZEGOVINA

Female Genital Mutilation is regulated in the framework of the group criminal offences against life and limb.

CRIMINAL CODE OF THE REPUBLIKA SRPSKA

Female Genital Mutilation is regulated in the framework of the group criminal offences against life and limb.

1.10 INTERNATIONAL CONVENTIONS

- Convention for Protection of Human Rights and Fundamental Freedoms;
- 1948 Convention on the Prevention and Punishment of the Crime of Genocide
- 1949 Geneva Conventions I-IV on the Protection of the Victims of War, and the 1977 Geneva Protocols I-II thereto
- 1951 Convention relating to the Status of Refugees and the 1966 Protocol thereto
- 1957 Convention on the Nationality of Married Women
- 1961 Convention on the Reduction of Statelessness
- 1965 International Convention on the Elimination of All Forms of Racial Discrimination
- 1966 International Covenant on Civil and Political Rights and the 1966 and 1989 Optional Protocols thereto
- 1966 Covenant on Economic, Social and Cultural Rights
- 1979 Convention on the Elimination of All Forms of Discrimination against Women
- 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

- 1987 European Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
- 1989 Convention on the Rights of the Child
- 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
- 1992 European Charter for Regional or Minority Languages
- 1994 Framework Convention for the Protection of National Minorities

1.11 PROTECTION OF PREGNANCY/PREGNANT WOMEN

LEGISLATION ON THE STATE LEVEL

There is no legislation at the State level.

CRIMINAL CODE OF FEDERATION OF BRČKO DISTRICT

Article 171

- (1) A person who in contravention with abortion regulations performs an abortion on a pregnant woman with her consent, commences performing an abortion, or assists her in procuring her own miscarriage, shall be sentenced to prison from three months to three years.
- (2) A person who performs or commences performing an abortion on a pregnant woman without her consent, if she has not reached age of 16, without written consent of her parent, adoptive parent or guardian, shall be sentenced to prison from one to eight years.
- (3) If a grievous bodily harm or a serious illness or death of the pregnant woman occurs as a consequence of the act referred to in Paragraphs 1 and 2 of this Article, the perpetrator shall be sentenced for the act referred to in Paragraph 1 of this Article to prison from six months to five years, and for the act referred to in Paragraph 2 of this Article he shall be sentenced to prison from two to twelve years.

CRIMINAL CODE OF FEDERATION OF BOSNIA AND HERZEGOVINA

Article 176

Illicit Abortion

- (1) Whoever in contravention of abortion regulations performs abortion on a pregnant women with her consent, commences performing abortion, or assists her in procuring her own miscarriage, shall be punished by imprisonment for a term between three months and three years.
- (2) Whoever performs or commences performing abortion on a pregnant woman without her consent, shall be punished by imprisonment for a term between one year and eight years.
If by the criminal offence referred to in paragraph 1 of this Article a serious bodily harm, or a serious illness or death of the pregnant woman was caused, the perpetrator shall be punished by imprisonment for a term between six months and five years.
- (4) If by the criminal offence referred to in paragraph 2 of this Article a serious bodily harm, or a serious illness or death of the pregnant woman was caused, the perpetrator shall be punished by imprisonment for not less than one year.

CRIMINAL LAW OF REPUBLIKA SRPSKA

Article 154 – Illegal abortion

- (1) Whoever in contravention to abortion regulations performs an abortion on a pregnant woman on her consent, start performing an abortion or assist her in causing her own miscarriage, shall be sentenced ranging between three months to three years in prison.
- (2) Whoever performs or start performing an abortion on a pregnant woman without her consent, and if she is under sixteen years of age without written approval of her parent, adopter or guardian, shall be sentenced from one to eight years in prison.
- (3) If severe bodily harm, serious damage to health or death of a pregnant woman occurs as a result of acts referred to in paragraph 1 and 2 of this Article, the perpetrator shall be sentenced for the act from paragraph 1 of this Article from two to twelve years in prison.

Article 226 – Violation of basic rights of employee

Whoever consciously breaks the Law, other regulations or collective agreement on beginning or the end of employment, wage and its supplements, working hours, vacation or absence, special protection at work for women, youth and disabled people or prohibition of overtime or night shifts and by that violate, deprive or limit the right to employee, shall be fined or sentenced to prison up to one year.

THE LABOUR LAW OF REPUBLIKA SRPSKA

Special protection of women and maternity

Article 71

The employer cannot refuse to employ a woman because she is pregnant, or terminate the contract on employment because of her pregnancy or maternity leave.

Article 72

Based on the evidence and recommendation of the authorized physician, during the pregnancy and breast feeding a woman can be temporary assigned to other post if it is in the best interest for her health and the health of her baby.

If the employee is not in a position to assign woman to other post in the sense of paragraph 1 of this Article, a woman has right to be absent from work with wage compensation and in accordance with collective agreement and the Rule book on work. This compensation cannot be smaller than her wage if she has left working. Pregnant woman and a mother of a child under two years of age can be assigned to another post by the employee only with her consent.

Article 73

During pregnancy, delivery and child care, a woman has right to continuing one year maternity leave, and for twins and every third and following child continuing 18 months maternity leave.

Upon the request of a woman and recommendation of authorized physician, woman can start using paternity leave 28 days before the term.

Parents of a child can make arrangement that the leave referred to in paragraph 1 of this Article is going to be used by father instead of mother only starting 60 days after the baby was born.

Article 74

On her personal request, a woman can start working before the end of her maternity leave referred to in Article 73, paragraph 1, but not before 60 days after the delivery.

If a woman starts working before the end of her maternity leave referred to in Article 73, paragraph 1, she has a right to 60 minutes off work for breast feeding a child besides her regular break at work.

If a woman delivers stillborn child or if a child dies before the end of her maternity leave she has right to maternity leave as much time as authorized physician assesses as necessary for woman to recover from delivery and mental state caused by child loss and the minimum time is 45 days from delivery or the day child died.

Article 76

After the maternity leave is ended, one of employed parents has right to work half of the full working hours for the period until baby is two years old if authorized physician assessed that child needs intensive care.

Article 78

During maternity leave a woman has right to allowance that is the average wage she has had during last three months before she went on maternity leave. The amount of money is monthly adjusted to increase of average wages in the Republic.

If a woman did not have wage for all six months before leave, the allowance is same as average wage for as many months as she had wage before she went on maternity leave.

2.0 SENTENCING

2.1 SENTENCING DOMESTIC VIOLENCE

GENDER EQUALITY LAW

Article 20

- (1) Gender based violence, harassment and sexual harassment based on gender present discrimination in the sense of this Law and they are foundation for compensation for damage. In these cases, regulations of the Law on obligation relations and regulations of appropriate Laws on legal procedure and the Law on executive procedure.

Article 27

- (1) Whoever performs violence, harassment and sexual harassment on the basis of gender prescribed in regulations of Article 4 of this Law will be sentenced for criminal act to period of 6 months to 5 years in prison.
- (2) Prosecution is done by official duty.

Other sanctions for sentencing acts of domestic violence are enlisted in **section 1.2**.

Progress in prosecuting these acts is made by adoption of the Law on protection from domestic violence that regulates urgent decision on the case that goes under this category.

Although these acts are sentenced as misdemeanor's, that is protection measures (7 types of protection measures), and authorized Court has the duty to sentence it immediately, three days latest; carrying out these sanctions is disabled by the new Law on misdemeanors that prescribes that these acts should no more be processed in procedure for misdemeanors but in criminal procedures. In the following period we will have urgent adjustment of the Law on protection from domestic violence and the Criminal proceedings law.

3.0 EFFECTIVENESS OF LEGISLATION

3.1 ROLE OF NON-GOVERNMENTAL ORGANISATIONS (NGOs) IN JUDICIAL PROCEEDINGS

This issue has not been regulated in the legislation, however it is within the mission of women associations and they find the ways to interact and get involved in such legal proceedings.

3.2 WHAT SPECIAL PROVISIONS ARE THERE FOR SUPPORT OF WOMEN AND GIRLS IN GIVING EVIDENCE?

The courts are very careful during the presentation of evidence of these kinds of criminal offences and they have respect a role of victim.

3.3 MAIN PROBLEMS AND NEW SOLUTIONS

PROBLEMS

One of the key problems is the lack of funding. For example, the Law on Protection Against Family Violence of the Federation of Bosnia and Herzegovina provides protective measures, among others, *removing from a flat, a house or some other kind of living place of victim, and prohibition on returning to the flat, the house or some other kind of living place of victim*, but there is no solution for the accommodation for the perpetrators of family violence sentenced to such protective measure as the main problem is the lack of funding.

Another problem still remains: not reporting cases of violence so that the real number of domestic violence victims is far over the reported number.

Prejudice and stereotypes on domestic violence as private issue are still present.

Legal solution that enables certain people such as spouse and partner, relatives, adoptee and adopter of the suspect, or accused, to refuse to testify is also problematic from the aspect of proving domestic violence.

NEW SOLUTIONS

Through activities of government and non-government sector we have worked on informing public and started with institutional solving of problem of violence against women.

Plans for adoption of the following documents are made:

1. Declaration that proclaims 2007 "Year of struggle against domestic violence".
2. Plan of action for struggle against domestic violence in 2007
3. Strategy for struggle against domestic violence 2008 – 2012

Although the main holder of these activities is government sector, equal participants on importation of these documents are representatives of scientific community, NGOs that work on these problems, health, educational, social and police departments.

In practice, we already have SOS line for all victims of domestic violence functioning with unique number for the whole territory of REPUBLIKA SRPSKA (phone number is 1264). Operational work on SOS line is done by the following NGOs: "Udružene žene" (United Women) Banja Luka, "Lara" Bijeljina, "Buducnost" (Future) Modrica, and "Ženski centar" (Women's Centre) Trebinje.

On the republic level as well as on local level we have induced establishment and work of non-government organizations that work on reducing violence against women and there is active cooperation with them, including logistic and financial support (financing is regulated directly from the Government budget).

For the first time, a joint database is being created on the entity level for victims of domestic violence in REPUBLIKA SRPSKA, and it has been managed by Gender Centre of REPUBLIKA SRPSKA in cooperation with competent institutions for collecting data.

High quality educational programs have been established as well as research centers, including those at the university level (Law Clinics), which deal with problems of gender equality, especially those who deal with violence against women.

Legal faculty in cooperation with Gender Center of REPUBLIKA SRPSKA organizes the work of law clinic with the following topics:

1. Foundation of gender equality /Legal standards and mechanisms for gender equality
2. CEDAW and Peking declaration
3. Gender analysis of legislation Gender assessment of influence
4. Humanitarian right with emphasis on women's rights and gender equality
5. Work, employment and access to resources – application of gender equality principle

6. Domestic violence – Legal aspects of victims protection
7. Gender budgeting/application of Gender equality law in local administration
8. Gender sensitive language in laws, regulations and strategic documents

Regarding previously listed solutions we can say that Rec Recommendation (2002) 5 of the Committee of Ministers to member states on the protection of women against violence is accepted and we work on its full application.

3.4 SPECIAL LEGISLATION ADDRESSING VIOLENCE AGAINST WOMEN (ARE WOMEN DEALT WITH AS A "SPECIAL CASE" - "SPECIAL TREATMENT OR IN TERMS OF ANTIDISCRIMINATION LEGISLATION"?)

There is no *lex specialis* legislation of Bosnia and Herzegovina regulating violence against women as a special case, but there are other laws (The Law on Protection Against Family Violence, Criminal Code of the Federation of Bosnia and Herzegovina, Gender Equality Law of BiH) regulating violence as criminal offence regardless of victim's or perpetrator's sex.

3.5 CRIMINAL LAW/CIVIL LAW

The Criminal Codes are not designed to protect only women, it regulates protection of victims and punishment of perpetrators regardless of sex.

The formulation of the law recognises deprivation of the life of an infant as a criminal offence that may be committed only by a mother, and it actually is the only criminal offence exclusively assigned to a specific sex.

The Article 169. of the Criminal Code of the Federation of Bosnia and Herzegovina states: "A mother who deprives her infant of life at birth or immediately after birth shall be punished by imprisonment for a term between one and five years."

3.6 SPECIALIST POLICE UNITS - COUNTRY WIDE OR PATCHY

In Federation of Bosnia and Herzegovina, police units are organised and act systematically. Currently, there is a reform of police forces in Bosnia and Herzegovina, so that all police forces of B&H should be organised and become a system.

In Republika Srpska, at local level, Police Stations have inspectors for domestic violence. Special police units do not exist.

3.7 VIOLENCE AGAINST WOMEN – AN OBSTACLE TO EQUALITY?

Violence against women has been recognised as the obstacle to gender equality, therefore it is regulated by Gender Equality Law of BiH, and in Article 4, item b, «gender based violence» is defined as criminal offense.

In addition, at the entity level (FBiH and RS), the Laws on Protection Against Family Violence have been adopted. It contains protective measures as the sanctions for protection against family violence, while the act of family violence itself, in accordance with the Article 222. of the Criminal Code of the Federation of Bosnia and Herzegovina, is defined as the criminal offence.

3.8 GENDER PERSECUTION AS GROUNDS FOR GRANTING REFUGEE STATUS?

According to the Law on presence and stay of foreigners of BiH as one of the grounds for refugee status is membership to some social group, under which belonging to a female sex can be qualified. There is a legal solution, but it is not enforced in practice.

3.9 WHAT GOOD IDEAS HAVE BEEN SUGGESTED BUT NOT YET IMPLEMENTED?

1. Declaration that proclaims 2007 "Year of struggle against domestic violence".
2. Plan of action for struggle against domestic violence in 2007
3. Strategy for struggle against domestic violence 2008 – 2012
4. Special police units for struggle against domestic violence.

All the projects have been implemented in cooperation with NGOs.

4.0 DOMESTIC VIOLENCE

4.1 ARE THERE SPECIFIC LAWS TO COMBAT DOMESTIC VIOLENCE?

Yes, there are entity Laws on Protection against Family Violence in both Federation of Bosnia and Herzegovina and Republika Srpska.

4.2 ARE CURRENT DEFENCES ADEQUATE WHEN WOMEN KILL ABUSIVE HUSBANDS/PARTNERS?

FEDERATION OF BOSNIA AND HERZEGOVINA

In case that woman kills an abusive husband/partner, her defense could be grounded on appropriate provisions of the Criminal Code of FBiH, i. e. Article 26 (Defence of Necessity), Article 27 (Extreme Necessity), Article 38. (Negligence), Article 50. (Reduction of Punishment), Article 52. (Release from Punishment), Article 53 (Special Condition for Releasing from Punishment for the criminal offence committed by negligence), etc, which is decided by the court on the grounds of specific circumstances of each individual case. According to the law, each person accused for the criminal offence is entitled to adequate defence. Further in the text, the reference is made to the criminal offense of «Homicide caused by Irresistible Impulse». The Criminal Code of FBiH defines a special form of the criminal offence under privileged circumstances, for its legal nature is essentially determined by the conflict deriving from personal relations between the perpetrator and the victim as the active participants in its creation and execution as the «Homicide caused by Irresistible Impulse», mainly for the reason that it occurs as a result of a specific psychological capacity of a perpetrator, defined as the state rage caused by another person. In this case, behaviour of the victim provokes the criminal offence, actually the victim provokes the own victimization.

Conflict situations usually start by insulting or assaults, and are result of long term violence (sometimes it lasts over the years by the well known principle «step by step»); the violent behaviour gradually assumes the rudest forms of insulting or the assaults and the person exposed to such violent behaviour ends up as the perpetrator of violence. The legislator added harassment to assault and insulting as an additional form which provokes an irresistible impulse. Rati legis of such legal solution derives from the fact that there are some forms of behaviour by which the passive subject provokes specific psychological capacity of the perpetrator which could be hardly included under meaning of assault or insulting. So, provocation of the victim creates a delict situation which puts perpetrator into the state of irresistible impulse of high intensity which ends by killing the provocateur at the moment. Such behaviour of the victim reflects in a way that behaviour of the perpetrator becomes to some extent justifiable, and is considered to be privileged form of criminal offence. The proscribed punishment is imprisonment for a term between one and ten years.

The Criminal Code of the Federation of BiH in Article 167 states:

“Whoever deprives another person of his/her life while subject to an irresistible impulse, having been brought with no fault of his/her own into a fit of rage by an attack or serious insult on the part of the person murdered, shall be punished by imprisonment for a term between one and ten years.”

The court decides by the specific case whether this kind of protection represents adequate defence of woman who kills abusive husband/partner or some additional measures will be applied.

REPUBLIKA SRPSKA

Womankind are by Constitution and by law equal in their rights and obligations with menkind. In case of a woman who committed murder, there are no obstacles for her to be represented in front of a court of law in adequate and statutory way.

4.3 IS PRIVATE VIOLENCE PUNISHED IN THE SAME WAY AS PUBLIC VIOLENCE?

FEDERATION OF BOSNIA AND HERZEGOVINA

Yes, depending of the weight of criminal offense (which is divided into several levels), family violence (private violence) is almost equalled with public violence, but the criminal offence in the field of family violence includes more measures for prevention of violence and sanctions for the perpetrators of

violence; the penalty regulations include sanctions ranging from fines to long term imprisonment (in accordance with Article 222 of the Criminal Code of FBiH), depending of the weight of criminal offence and the effects caused by criminal offence, and also, the sanctions may be prescribed in accordance with the Law on Protection Against Family Violence of FBiH, which includes following:

1. *Removing from a flat, a house or some other kind of living place of victim, and prohibition on returning to the flat, the house or some other kind of living place of victim;*
2. *Restriction on approaching the victim of violence,*
3. *Provision of protection to victims of violence;*
4. *Restriction on abusing behaviours or following the victim;*
5. *Mandatory psycho-social treatment,*
6. *Mandatory addiction treatment.*

In addition, according to the Law on Protection against Family Violence of FBiH, apart from protective measures, the fines in amounts from KM 2000.00 to KM 10000. 00 may be applied for the person who violates any of the above listed measures (Article 21. of the Law on Protection Against family Violence).

Pursuant to the provisions of articles 380-382. of the Family Law of FBiH, in case that the person has violent behaviour or if there is a danger of such behaviour, the said person may be removed or put into adequate institution.

For the public violence defined as the felony or criminal offence, depending of the weight of committed act, the adequate sanctions are prescribed in accordance with appropriate laws, such as criminal sanction of imprisonment for criminal offense against life and limb, special provisions of articles 172-174 of the Criminal Code of BiH (Grievous Bodily Injury; Light Bodily Injury; Participation in Brawl; etc.).

REPUBLIKA SRPSKA

There are equal law penalties, but practice differs. Family tyrants are, as a rule, mildly sentenced (suspended punishments).

5.0 RAPE AND SEXUAL ASSAULT IN MARRIAGE

5.1 IS RAPE IN MARRIAGE OUTLAWED AND PROSECUTED IN THE SAME WAY AS OTHER FORMS OF RAPE?

FEDERATION OF BOSNIA AND HERZEGOVINA

By the adoption of the new Criminal Code of FBiH (2003.), the gender based discrimination and gender based discrimination in marriage has been excluded in characterisation of criminal offense of rape. Therefore, the criminal offense of rape has become gender neutral, which means that the perpetrator or the passive subject may be any person irrespective of sex and regardless of the fact whether they are in marital or nonmarital relationship. This way, the legislator has finally taken into account that the sexual freedom and the sexual free will of a man and a woman is ensured equally to anyone regardless of his/her sexual or marital status. Sex or marriage, in fact legally arranged unit cannot be ground for discrimination of people.

According to the Criminal Code of FBiH rape represents any sexual activity which by its effects may be treated as sexual intercourse against the will of the passive subject.

REPUBLIKA SRPSKA

Rape in marriage is not outlawed. Article 193.of the Criminal Code of REPUBLIKA SRPSKA includes rape in marriage.

It is prosecuted in the same way as other forms of rape, but in practise there is a very small number of these cases that are proven in front of a court of law.

5.2 ARE THE SANCTIONS FOR RAPE AND RAPE IN MARRIAGE THE SAME?

FEDERATION OF BOSNIA AND HERZEGOVINA

Yes, they are. By the adoption of the new Criminal Code of FBiH, the gender based discrimination and gender based discrimination in marriage has been excluded, so for each criminal offence of rape, regardless of whether it is about gender based discrimination or gender based discrimination in marriage, the same sanction is applied, which is pronounced depending of the weight of criminal offence and the effects caused by the committed criminal offence (See the answer under 5.1).

REPUBLIKA SRPSKA

They are.

5.3 HAVE ANY SPECIFIC SOLUTIONS BEEN SUGGESTED FOR RAPE IN MARRIAGE (RESTRICTIONS AND BANNING ORDERS)?

The Criminal Codes do not provide for the solutions exclusively related to the criminal offence of rape in marriage as the rape in marriage is included in criminal offence of rape (see the answer under 5.1.). However, the Laws on protection Against Family Violence provide for protective measures that the court may pronounce for perpetrator of violence, and for the perpetrator of rape in marriage. Those measures are listed in Article 9. of the Laws on Protection Against family Violence, which states:

The following protective measures may be applied for the perpetrators of family violence:

1. *Removing from a flat, a house or some other kind of living place of victim, and prohibition on returning to the flat, the house or some other kind of living place of victim;*
2. *Restriction on approaching the victim of violence;*
3. *Provision of protection to victims of violence;*
4. *Restriction on abusing behaviours or following the victim;*
5. *Mandatory psycho-social treatment;*
6. *Mandatory addiction treatment.*

5.4 ARE THERE CIVIL LAW REMEDIES – INCLUDING MEASURES RELATING TO THE FINANCIAL SITUATIONS OF WIVES/COHABITERS AFTER SEPARATION AND DIVORCE?

FEDERATION OF BOSNIA AND HERZEGOVINA

The right to alimony to spouse is prescribed by Criminal Code Of FBiH in Article 221 (Breach Of Family Obligations) and Article 223 (Evading Provision of Maintenance Support), which state:

Article 221

Breach Of Family Obligations

(1) Whoever in gross violation of his/her legal family obligations leaves in a difficult situation a member of his/her family who is not capable of taking care of himself, shall be punished by imprisonment for a term between three months and three years.

(2) Should the member of the family lose his/her life or should his/her health be severely damaged as a result of such an act from paragraph 1, the perpetrator shall be punished by imprisonment for a term between one year and eight years.

(3) When pronouncing a suspended sentence, the court may also pronounce as a condition that the perpetrator should regularly fulfill his/her obligations of taking care, tutoring and supporting.

Article 223

Evading Provision of Maintenance Support

(1) Whoever evades providing support for another person whom he/she is obliged to support on the basis of a decision of the court, or an effective agreement entered into before another competent body, shall be punished by imprisonment for a term up to three years.

(2) When pronouncing a suspended sentence the court may pronounce as a condition that the perpetrator should regularly pay for the maintenance support and all his/her other due obligations.

(3) If the person committing the act under paragraph 1 of this Article has fulfilled his/her obligation prior to ruling the first-instance judgment, he/she may be released from punishment.

The Family Law of FBiH (Official Gazette of FBiH, No 35/05) – articles 213-249 regulate this issue.

FAMILY LAW OF REPUBLIKA SRPSKA

Family Law of REPUBLIKA SRPSKA in it's Part 6. entitled "Alimentation" regulates sustentation of a marital spouse in cases when marriage ends by divorce or by annulment, as well as sustentation (alimony) between cohabiters after the breakup of illegitimate community which lasted for three years and longer. For stated persons regulatory rules are ascribed from article 241.- 252. of the Family Law of REPUBLIKA SRPSKA. Stated articles represent general legal provisions, which equally refers to women and men; special remedies for women after separation and divorce does not exist.

5.5 IS THERE SPECIAL LEGISLATION TO DEAL WITH RAPE IN MARRIAGE?

No, there is not special law regulating the rape in marriage. The rape in marriage falls under criminal offence of rape as discribed and regulated by the Criminal Codes (See the answer under item 5.1)

6.0 RAPE AND SEXUAL ASSAULT

6.1 HOW IS SEXUAL CRIME DEFINED?

CRIMINAL CODE OF THE FEDERATION OF BOSNIA AND HERZEGOVINA

Article 203 – paragraph 1. of the Criminal Code of the Federation of BiH states

„Whoever compels another person to sexual intercourse or other act that may be treated as sexual intercourse by force or threat of immediate attack upon life and limb, or life or limb of someone close to that person, shall be punished by imprisonment for a term between one and ten years.”

The solution provided for in Article 203. of the Criminal Code of FBiH has accepted the modern understanding of the term rape, according to which the rape exists in any case when the sexual intercourse or other sexual activity which by its effects may be equalled KZ FBiH je prihvatio savremeno shvatanje pojma silovanja, prema kojem silovanje with sexual intercourse is committed against the will of the passive subject. The practical effect of this new concept is abolishing of incriminations that are absorbed by the criminal offence of rape.

From the legal formulation it derives that it is about doubleact criminal offense, consisted of forccing and seyxual intercourse, or other sexual act. Since the forcing by its nature is criminal offense, which on the contrary does not refer to sexual intercourse, or other sexual acts that are not treated as the activities forbidden by the law, the rape belongs into complex criminal offenses. Apart from the basic form of the criminal act, the legislator also provides several other seriously qualified forms.

CRIMINAL CODE OF RS

It is defined as: The crime against sexual integrity

6.2 DOES THE DEFINITION OF RAPE INCLUDE ALL ASPECTS OF SEXUAL VIOLENCE (INCLUDING SODOMY FOR EXAMPLE)?

It does. The legal definition of rape includes all aspects of sexual violence:

“(1) Whoever compels another person to sexual intercourse or other act that may be treated as sexual intercourse by force or threat of immediate attack upon life and limb, or life or limb of someone close to that person, shall be punished by imprisonment for a term between one and ten years.

(2) Whoever commits the act referred to in paragraph 1 of this Article in a particularly brutal or degrading way or if the act on the same occasion has been repeatedly committed over the same person the perpetrators shall be punished by imprisonment for a term between three and fifteen years.

(3) *If pregnancy of the female victim, grievous bodily injury or a serious disturbance of health or the death of the victim occurred as a result of the act referred to in paragraph 1 of this Article, the perpetrator shall be punished by imprisonment for not less than three years.*

(4) *Sentence from paragraph 2. of this Article shall be pronounced to whoever commits the act described in paragraph 1. of this Article because of differences in national or ethnic origin, race, religion, or language.*

(5) *Whoever performs s the act referred to in paragraph 1 of this article with a juvenile, shall be punished by imprisonment for not less than three years.*

(6) *Whoever performs s the act referred to in paragraphs 2., 3. and 4, of this article with a juvenile, shall be punished by imprisonment for not less than five years.*

(7) *If by the act referred to in paragraph 2 of this article the effects referred to in paragraph 3 of this article, the perpetrator shall be by imprisonment for not less than five years.“*

The gravest form of criminal offense exists if it is committed in a particularly brutal or degrading way. The act is considered to be committed in particularly brutal way if during the act brutality overcomes the extent that is common to any criminal offence. The objective component of cruelty overcomes the common way such acts are usually committed, and subjective one reflects that such act is done with premeditation and that the perpetrator was aware of his/her deed but still wanted to do it or if he/she consented to it. Such way of violence includes for example causing of great sufferings or serious injury by putting out the cigarettes on the body of the victim, or if there is a huge disproportion in strength or age between the perpetrator and the victim.

Extremely degrading way of execution of criminal act is considered to be the one when during the rape a victim is exposed to extreme humiliation which means that it overcomes twas is provoked by perpetrator or by other circumstances under which it was committed. This means that extremely degrading way in objective sense derives from specific circumstances under which the act was committed, in addition, the subjective component must be fulfilled, e.i. premeditation and the intention of the perpetrator to expose the victim to a higher level of humiliation than it is common by applying extremely degrading method. Such method of criminal offence exists for example in case of rape in presence of others, especially in presence of relatives of the passive subject (a mother or a child), or if it is about a passive subject which belongs to category of elderly people, or if the acts of perpetrator represent extreme torturing over the victim, etc.

6.3 ARE THERE DIFFERING DEGREES OF RAPE/SEXUAL HARASSMENT?

FEDERATION OF BOSNIA AND HERZEGOVINA

Yes, there are. In Criminal Code of FBiH, Article 203, the levels of rape have been determined. (See answer under item 6.2.).

In addition, Chapter XIX, Criminal Offenses Against Personal Dignity and Morality, include following criminal offenses:

- Rape (Article 203.)
- Sexual Intercourse with a Helpless Person (Articlečlan 204.)
- Sexual Intercourse by Abuse of Position (Article 205.)
- Forced Sexual Intercourse (Article 206.)
- Sexual Intercourse with a Juvenile (Article 207.)
- Fornication (Article 208.)
- Concupiscence before a Child or Juvenile (Article 209.)
- Promoting Prostitution (Article 210.)
- Exploitation of a child or a juvenile for a purpose of pornography (Article 211.)
- Showing Obscene (Pornographic) Material to a Child (Article 212.)
- Incest (Article 213.)

REPUBLIKA SRPSKA

For the felony of rape there is a basic form of rape, qualified forms, the most difficult one, as well as a special form of rape- sexual blackmail.

6.4 HOW IS CONSENT DEFINED?

CRIMINAL CODE OF FEDERATION OF BOSNIA AND HERZEGOVINA

The consent of the victim (aged over 18) mustn't be on volunteer basis, it must be forced or exerted under the treat. The Criminal Code of FBiH defines „The consent to rape“, or sexual harrasment as it follows:

- In Article 203. (Rape) – There is no consent, the rape is committed by *«compelling another person to sexual intercourse or the act which is leveled as sexual intercourse by force or threat of immediate attack upon life and limb, or life or limb of someone close to that person,*
- In Article 204. (Sexual Intercourse with Helpless Person), also there is no conscious consent of the victim, since the perpetrator takes advantage of that person's mental disease, temporary mental disorder, infirmity or any other state of that person which makes him/her incapable of resisting,
- In Article 205. (Sexual Intercourse by Abuse of Position) –the perpetrator induces into sexual intercourse another person because he/she is in a subordinate or dependent position in relation to him/her by abusing that person's position, on the ground of her/his property status, family status, social status, state of health, or other conditions or difficulties, or it is a teacher, educator, guardian, adoptive parent, step-father, step-mother or any other person, who by abuse of his/her status has sexual intercourse or the act which is leveled as sexual intercourse with a juvenile and who has been entrusted to him/her for the purpose of instructing, educating, custody or care
- In Article 206. (Forced Sexual Intercourse) – the perpetrator has forced another person into sexual intercourse, without consent, by *“seriously threatening that person with some harm”*.

A child, or juvenile under the age of 14, is not allowed to provide any consent to sexual intercourse, therefore each form of sexual intercourse with such a person is considered to be criminal offence described in Article 207. (Sexual Intercourse with Juvenile) By the basic form of criminal offence of Sexual Intercourse with Juvenile, any kind of sexual intercourse or sexual act with juvenile is incriminated. Therefore, the essence of this incrimination represents the absolute prohibition of any sexual act with juvenile regardless of free will, or even initiative by juvenile. Ratio legis of such legal solution is grounded on incapability of underage persons to possess free will in terms of consent to sexual intercourse or other sexual acts, e.i even if there is such will it is legally irrelevant. Such position of the legislator derives from generally accepted attitude that a child, juvenile under age of 14, is in the special phase of developing her/his personality and is not capable to understand the essence and importance of sexual intercourse, therefore is not entitled to decide on issues in the sphere of sexual life.

CRIMINAL CODE OF REPUBLIKA SRPSKA

For the felony of rape the key element is absence of victim's consent.

Selfvoluntary consent for an intercourse, which exist when a pasive subject by his/ her liking decide on an act of intercourse or any other sexual act or to stop giving resistance, can affect as a circumstance that excludes existance of rape. Regarding that, it is considered that a voluntary consent in the context of a previous statement exist only when it is given before the act of rape is completed. Additional compliance or consent to intercourse or some other sexual act, followed after the felony was completed, can not have the strenght of that kind of circumstance. Intercourse is completed, in the sense of rape felony, at the moment of joining of sexual organs (coniunctio membrorum).

CRIMINAL PROCEEDINGS LAW OF REPUBLIKA SRPSKA

Article 271 – Special regulation on evidence in cases of sexual crimes

(3) In cases of committing a criminal akt against mankind and international humanitarian law, wictim's consent could not be used in addition to the accused's defense.

6.5 WHAT KIND OF TECHNICAL EVIDENCE IS NECESSARY IN A RAPE TRIAL?

FEDERATION OF BOSNIA AND HERZEGOVINA

The act of rape as criminal offense comprises coercion and intercourse or some other sexual action. The coercion includes the use of force or threat that the life or body of victim or a person close to victim shall be attacked. This is a functional coercion because the coercion is targeted – on one hand, the main goal of coercion is to perform the intercourse or other sexual action, and on the other hand, the purpose of coercion is to break down the resistance, what again makes the forced intercourse or other sexual action possible. Force, as understood in criminal law, means use of physical, mechanical or other power that is pointed at persons or objects. In addition, the notion of force includes the use of hypnosis or intoxicating substances with the aim of bringing a person, against their own will, into a state of unconsciousness or inability to put up resistance. By its intensity, it may be absolute (irresistible) or compulsive (psychical).

Absolute force exists when the person it is used against is not able to make decisions or is unable to realize the decision that had been made, or more precisely, when a person has been incapacitated to provide resistance. It is believed that the force must be so powerful or effective that the person it is used against can not resist it, i.e. that the physical capacities or abilities of the victim at the time of use do not allow them to resist or deter or overpower it.

Compulsive force does not exclude decision making, but a decision is made under its effect. This typically means such action against other person that does not exclude the possibility of using physical resistance, but the mental state the victim had been brought into prevents the resistance. Such power may cause in the victim a blockade of motivation to offer physical resistance. What mechanisms are used to block the resistance of the victims, what may be the victim's emotional or rational reasons to renounce the resistance is irrelevant. What is important though that there is an intention on the part of the perpetrator to affect a physical force and that this force has caused the desired effect in the person against whom it was used. Therefore, the force that in a concrete case was enough to overpower the shown resistance or eliminate the possibility of offering resistance is considered to be the force of sufficient intensity in any individual case. The force is a means to achieve a goal – perform intercourse or another sexual action. It may be aimed against persons or objects (for instance, breaking through a door to enter the apartment of the passive subject).

As we have already said, the act of rape as criminal offense comprises two actions – coercion and intercourse or other sexual action, where one has to keep in mind close link between the two actions so that they give each other a new quality. This is not, therefore, a simple sum of intercourse or another sexual action and the coercion, but an intercourse or another sexual action that was performed by use of coercion, and the coercion that is used to perform the intercourse or some other sexual action.

The sexual intercourse, in the sense of criminal law, means natural unification of sexual organs of persons of opposite sexes, or *immissio penis in vaginam*. Intercourse is considered complete, for the purposes of this criminal offense, at the moment of joining the sexual organs (*coniunction membrorum*), i.e. at the beginning of penetration of the male sexual organ into the female sexual organ. (For a sexual intercourse to be considered complete what suffices is that the sexual organ of the defendant has penetrated the sexual organ of the victim even in a limited degree. The details of the act, including how long the sexual intercourse lasted, and whether there was ejaculation in vagina or outside of it, whether an orgasm was reached or not, are irrelevant. Therefore, a simple contact is not enough to consider that the criminal offense of rape was completed. One novelty in legal definition of the criminal offense of rape is the addition of term or some other sexual action. The intention of the legislator was to expand the description of rape as criminal offense to include all those actions that serve the purpose of satisfying sexual lust and are performed by use of force or threat of use of force, thus bringing it in line with international standards in the area of criminal protection of sexual integrity of a person.

From all stated above follows that in order to consider that the crime of rape was actually committed, the action of the crime must include both coercion and intercourse. To prove the criminal offense of rape one needs to prove existence of both of those mutually closely connected actions.

Also, in order to prove both actions that make the criminal offense of rape, one may use laboratory, forensic and other evidence in order to prove, in case of doubt, that the above described actions were committed and the identity of the rapist by use of DNA analysis or in another technically available way.

REPUBLIKA SRPSKA

Forensic medical evidence, DNK analyses are used as technical evidence.

CRIMINAL PROCEEDINGS LAW OF REPUBLIKA SRPSKA

Article 271 – Special regulation on evidence in cases of sexual crimes

- (1) Facts, that refers on previous sexual behavior and sexual predispositions of the damaged party could not be used as evidence in criminal procedures.
- (2) Exceptionally from paragraph 1 of this article, it is possible in procedure to use evidence that sperm, medical documentation on injuries or other material evidence derives from another person, and not from the accused.
- (3) In cases of committing a criminal act against mankind and international humanitarian law, wictim's consent could not be used in addition to the accused's defense.
- (4) Before accepting evidence in accordance with this article, an appropriate hearing would be carried out, from whom the public would be excused.
- (5) Solicitation, following documentation and interrogatory descriptor, are kept sealed in a special envelope, unless the court of law determines differently.

6.6 IS CROSS-EXAMINATION ON THE VICTIM'S SEXUAL HISTORY AUTHORISED IN RAPE TRIALS AND IN WHAT CONTEXT?

FEDERATION OF BOSNIA AND HERZEGOVINA

Article 279**Special Evidentiary Rules When Dealing With Cases of Sex Crimes**

- (1) The evidence offered to prove that injured party was engaged in other events related to sexual behavior and to prove a sexual predisposition of the injured party is not admissible.
- (2) Notwithstanding Paragraph 1 of this Article, evidence offered to prove that semen, medical documents on injuries or any other physical evidence may stem from a person other than the accused, is admissible.
- (3) In the case of the criminal offense against humanity and values protected by the international law, the consent of the victim may not be used in a favor of the defense.
- (4) Before admitting evidence pursuant to this Article, the court must conduct an appropriate hearing *in camera*.
- (5) The motion, supporting documents and the record of the hearing must be sealed in a separate envelope, unless the court orders otherwise.

Provision under paragraph 1 of article 279 of the Law on Criminal Proceedings of the Federation of BiH ("Official Gazette of FBiH no. 35/03, 37/03, 56/03 and 78/04), protects the victim from harassment and humiliation, prevents possible discrediting of the victim or its sexual pre-disposition. Previous sexual behavior, in terms of this provision of law, may have to do with the number of marriages, use of contraception, number of pregnancies, number of abortions, etc. Sexual predispositions of the victim may be related to homosexuality, transsexuality etc. Evidence related to earlier sexual conduct of the victim and the victim's predisposition may not be used in the proceedings and the Court may not found its decision on the evidence obtained through violation of human rights and liberties (right to protection of private and family life...) or through violations of this law because any interrogation of the victim of a crime about their sexual conduct prior to the crime is prohibited. Sexual predisposition may include the prior or later inclinations of the victim, meaning their inclinations before or after perpetration of the crime. Because of this, the Court is obliged to prohibit any questions and answers the purpose of which is to prove the earlier sexual conduct or sexual predispositions of the victim. Also, the Court must dismiss the evidence if the proposed evidence is related to the described circumstances.

Provision under paragraph 2 of the same article states an exception from the provision of the previous paragraph that is related to use of material evidence and their value as evidence in case that they indicate that the material evidence stated in this paragraph come from another person (organic traces such as sperm, blood, hair, etc.), not from the defendant. This exception constitutes a part of the right

to defense of the defendant, right of the defense to adduce evidence to the benefit of the defendant, but in a way that is not detrimental to the interests of the victim.

CRIMINAL PROCEEDINGS LAW OF REPUBLIKA SRPSKA

Article 271 – Special regulation on evidence in cases of sexual crimes

(1) Facts, that refers on previous sexual behavior and sexual predispositions of the damaged party could not be used as evidence in criminal procedures.

(2) Exceptionally from paragraph 1 of this article, it is possible in procedure to use evidence that sperm, medical documentation on injuries or other material evidence derives from another person, and not from the accused.

6.7 WHICH COURT RULES ON CASES OF RAPE?

FEDERATION OF BOSNIA AND HERZEGOVINA

Municipal courts or cantonal courts are considered to be courts of jurisdiction in first instance proceedings in cases of rape, depending on the punishment stipulated by law, all in accordance with the Law on Courts in the Federation of BiH («Official Gazette of FBiH» number: 38/05). Based on the above, a municipal court is in charge of first-instance trials for criminal offenses punishable by a fine or up to ten years in prison, unless a jurisdiction of another court has been stipulated under a special law, while the cantonal courts are responsible for first instance trials in case of offenses punishable under the law by over ten years of imprisonment or a long term imprisonment, unless the jurisdiction of another court has been stipulated by law.

REPUBLIKA SRPSKA

Court's of general authority on the basis of the Law on criminal procedure, in REPUBLIKA SRPSKA those are primary courts.

6.8 DOES MEMBERSHIP OF THIS COURT REFLECT THE PRINCIPLE OF EQUAL OPPORTUNITIES?

Yes. Most courts that are responsible for cases of rape reflect the principle of equal opportunities.

6.9 WHAT SENTENCES ARE USUALLY APPLIED TO RAPISTS?

FEDERATION OF BOSNIA AND HERZEGOVINA

The prescribed punishment for rape ranges between 1 and 10 years in prison, depending on the severity of the crime of rape.

REPUBLIKA SRPSKA

Prison sentence in range from one to ten years, and for the most difficult form of rape from five to twenty years.

6.10 ARE FEMALE POLICE OFFICERS PRESENT IN ALL BODIES CHARGED WITH EXAMINING AND PROSECUTING RAPE?

FEDERATION OF BOSNIA AND HERZEGOVINA

Yes, it is obligatory. A policewoman must be member of the team collecting proofs for sexual crimes and she is the one contacting the victim.

REPUBLIKA SRPSKA

There is an intention of being so.

6.11 HAVE PROVISIONS BEEN MADE FOR FEMALE FORENSIC EXAMINERS?

There is no legal provision. In the Federation of Bosnia and Herzegovina, the presence of female forensic examiners is ensured in practice.

7.0 SEXUAL HARASSMENT

7.1 DOES YOUR COUNTRY HAVE LEGISLATION TO PROTECT THE DIGNITY OF WOMEN AT WORK (VIOLENCE AGAINST WOMEN)?

LAW ON GENDER EQUALITY IN BOSNIA AND HERZEGOVINA

(«Official Gazette of BiH» number: 16/03) - The Gender Equality Law of Bosnia and Herzegovina sets forth that all forms of violence in private and public life on the grounds of gender are prohibited.

Article 4

(1) d) sexual harassment is any behaviour that in word, action or psychological effect of a sexual nature in intent or effect inflicts injury on the dignity of a person or gives rise to intimidation, hostility, or demeaning, threatening or similar situations and which is motivated by belonging to another sex or different sexual orientation and which to the victim represents inappropriate physical, verbal, suggestive or other behaviour.

Article 8

(2) An employer is required to undertake effective measures to prevent harassment, sexual harassment and gender discrimination at work and in employment as set out in paragraph 1 of this Law, and may undertake no measures against an employee by reason that that employee has brought proceedings for harassment, sexual harassment or discrimination on the grounds of gender.

Article 20

(1) discrimination, in terms of this Law, gender-based violence, harassment and sexual harassment on the grounds of gender constitute grounds for compensation. In such case, the provisions of the Obligations Law and the provisions of the relevant Civil Proceedings Law and the Law on Enforcement Proceedings shall be applied.

- Law on Protection from Domestic Violence («Official Gazette of FBiH» number: 22/05) – article 6, paragraph 2, point 6 (sexual harassment and harassment of a family member),
- Criminal Code of Federation BiH («Official Gazette of Federation BiH» No. 36/03, 37/03, 21/04, 69/04 and 18/05) – special provisions under art. 205, paragraph 1, (sexual intercourse by abuse of position), art. 206. (Forced sexual intercourse) and art. 208. (Lechery (Conscupience)) etc.
- Criminal Code of REPUBLIKA SRPSKA (**Article 196. Intercourse by misuse of office** - Stated article regulates this criminal act on a general level, without emphasising the protection of women as a special question.

7.2 ARE OTHER FORMS OF SEXUAL VIOLENCE LEGISLATED AGAINST?

According to the Gender Equality Law of Bosnia and Herzegovina, anyone who perpetrates violence, harassment or sexual harassment on the grounds of gender as described by the provisions of Article 4 of this Law shall be convicted of a criminal offence and sentenced to serve a term of from six months to five years in custody. In addition to forms of sexual violence already described, the Law on Gender Equality of BiH under provisions of article 4, points b) and c) defines a broader notion of “sexually based violence” and “harassment”.

CRIMINAL ACTS AGAINST SEXUAL INTEGRITY

Rape, Intercourse over a helpless person, Sexual violence over a child, Intercourse by misuse of office, Satisfaction of sexual mania in front of another, Human trafficking for the transaction of prostitution, Exploitation of juveniles for pornography, Production and representation of child pornography, Incest.

8.0 INCEST/SEXUAL ABUSE OF GIRLS

8.1 WHAT IS THE AGE LIMIT BETWEEN CHILD AND ADULT?

Children are considered to be persons under full 14 years of age, persons of the age from 14 to 18 years are the juveniles, while the adults (persons having full working capacity) are considered the persons who are over 18.

8.2 DOES THIS CORRESPOND TO THE AGE OF CONSENT?

FEDERATION OF BOSNIA AND HERZEGOVINA

In order for a marriage to be considered valid it is necessary, among other things, that the future spouses express their consent.

A person under 18 years can not get married.

On exceptional basis, the court may allow marriage following the non-litigation procedure to a person who is 16 years of age should it consider that there are justified indication (based on opinion of social and health workers) that the person is physically and mentally ready to undertake marital rights and duties, and that the marriage is in the interest of that person.

Marriage is considered contracted when the future spouses state their consent.

A juvenile over 16 may acquire full business capacity after having become a parent, in accordance with the provisions of the Family Law of the Federation BiH, art. 8, 28, and 157.

REPUBLIKA SRPSKA

Incrimination of the crime of Sexual violence over a child (Article 195. Criminal Code RS), established an absolute prohibition of any kind of sexual activities with a child, that is a person up to 14 years of age, irrespective of the fact that they are voluntary or even initiated by a child.

8.3 IS THERE SPECIFIC LEGISLATION AGAINST CHILD PROSTITUTION?

No, there is not.

However, this matter is partially defined by:

- Law on Gender Equality of BiH – provisions under article 4. point d) (Sexual harassment), as well as art. 7. 8. and 12. of the same Law,
- Criminal Code of BiH („official Gazette of BiH“ No. 03/03, 32/03, 37/03, 54/04, 61/04 and 30/05) – provisions under art. 185. paragraph 2. (Establishment of Slavery and Transport of Slaves) 186. paragraph 2. (Trafficking in Persons) 187. paragraph 3. (International Procuring in Prostitution) and 189. (Smuggling of Persons).
- Criminal Code of Federation BiH – provisions under art. 207. (Sexual Intercourse with a Child), art. 210. paragraph 4. (Pandering) if this offense has been committed against a child or a juvenile, art. 211. (Abuse of a Child or Juvenile for Pornography) and art. 212. (Introducing Pornography to a Child) etc.
- Criminal Code of Republika Srpska (Article 198. Human trafficking for the transaction of prostitution: If the actions that represent the essence of this crime were perpetrated against child or a juvenile, perpetrator would be punished with jail sentence ranging from 1- 12 years; Article 199. Exploitation of juveniles for pornography: Who misuses a child or a juvenile for the production of pictures, audio-visual material or other objects of pornographic content, or misuses a child or a juvenile for pornographic show, would be punished with jail sentence ranging from six months to five years.
- Laws on Protection from Domestic Violence – art. 6. paragraph 2. point 6. (Sexual harassment and harassment of a family member),
- Rulebook on protection of foreigners – victims of trafficking in humans – provisions under art. 7. and 19. (Special Protection of Children) art. 20. (Placing Children in Shelters) and art. 21. (Return of a Child).

8.4 WHAT OTHER FORMS OF SEXUAL ABUSE ARE LEGISLATED AGAINST (SEXUAL HARASSMENT, FEMALE GENITAL MUTILATION)?

FEDERATION OF BOSNIA AND HERZEGOVINA

Other forms of sexual abuse legislated against include, inter alia, the following:

- „Gender based violence “ and „Harassment “ – art. 4 point b) and c) of the Law on Gender Equality in BiH.
- Rape of a Juvenile (article 203, paragraph 5 of the Criminal Code of Federation BiH); Sexual Intercourse by Abuse of Position (art. 205, paragraph 2 of the Criminal Code of Federation BiH); Sexual Intercourse with a Child (art. 207 of the Criminal Code of Federation BiH); Pandering (art. 210, paragraph 4 of the Criminal Code of Federation BiH); Abuse of a Child or Juvenile for Pornography (art. 211 of the Criminal Code of Federation BiH); Introducing Pornography to a Child (art. 212 of the Criminal Code of Federation BiH) etc.

REPUBLIKA SRPSKA

Criminal acts against sexual integrity:

Rape, Intercourse over a helpless person, Sexual violence over a child, Intercourse by misuse of office, Satisfaction of sexual mania in front of another, Human trafficking for the transaction of prostitution, Exploitation of juveniles for pornography, Production and representation of child pornography, Incest.

8.5 ARE THERE PROVISIONS FOR THE REMOVAL OF ABUSERS FROM HOUSEHOLDS?

FEDERATION OF BOSNIA AND HERZEGOVINA

The Law on Protection of Domestic Violence of Federation of BiH provides for measures that may be pronounced to the abuser as well as to perpetrator of criminal offense of rape in marriage.

Those measures are stipulated in article 9 of the Law on Protection of Domestic Violence, which reads as follows:

“The following protective measures shall be taken against an abusive person:

- 1) *Removal from the apartment, house or other dwelling and being barred from returning to that apartment, house or other dwelling;*
- 2) *A restraining order;*
- 3) *The protection of the victim of domestic violence;*
- 4) *Prohibition from harassment and stalking;*
- 5) *Mandatory psycho-social treatment;*
- 6) *Mandatory rehabilitation.”*

The Family Law of the Federation of BiH – provisions under art. 145 (Prohibiting the Parent which Does not Live with the Child to Get to the Child without Permission and Disturb it); art. 153. (Depriving a Parent of the Right to Live with the Child), art. 154 (Taking Away Parental Rights).

LAW ON PROTECTION FROM DOMESTIC VIOLENCE IN REPUBLIKA SRPSKA

Court of law can for a domestic abuser deliver the following measures of protection:

1. enstrangement from apartment, house or some other housing area,
2. distraint of approaching the victim of violence,
3. assurance for protection of the victim of violence,
4. distraint of harassing or stalking the victim of violence,
5. obligatory psychosocial treatment,
6. obligatory treatment from addiction,
7. work in behalf of a humanitarian organisation or local community.

Article 18

Measures of protection are pronounced in length, not shorter than 30 days, nor longer than 2 years.

8.6 ARE THERE DIFFICULTIES REGARDING THE CREDIBILITY OF CHILDREN AS WITNESSES?

FEDERATION OF BOSNIA AND HERZEGOVINA

The Law on Criminal Procedure of the Federation of BiH prescribes that the juveniles under 16 years of age would be invited to testify through their parents or legal guardian, except when the necessary urgency of the matter or other circumstances render this impossible. (art. 95, paragraph 2 of the Law on Criminal Procedure of FBiH).

However, a juvenile who, because of his/her age and mental immaturity, is unable to understand the right not to testify, may not be heard as witness (art. 96, point d) of the Law on Criminal Procedure of FBiH).

CRIMINAL PROCEEDINGS LAW OF REPUBLIKA SRPSKA

Article 143 – Persons who can not be interrogated as witnesses

g) a juvenile person, who considering stature and psychical development is not capable to understand the significance of the right not having to testify.

8.7 ARE THERE ANY SPECIAL PROVISIONS FOR EVIDENCE GIVING BY CHILDREN?

FEDERATION OF BOSNIA AND HERZEGOVINA

When a juvenile is testifying, particularly in cases when he/she is the victim of the criminal offense, he/shall be treated carefully in order to avoid harmful effects on the juvenile's mental state, in accordance with article 100, paragraph 4 of the Law on Criminal Procedure of FBiH.

CRIMINAL PROCEEDINGS LAW OF REPUBLIKA SRPSKA

Article 150 – Cours of a witness questioning

(4) During the questioning of a juvenile, particularly if he is damaged by crime, he would be dealt with concern, so the questioning would not have a harmful effect on his mental condition.

If it is necessary, the questioning of a juvenile would be carried out with the help of a pedagogue, psychologist or other expert.

(6) Considering the life age, physical and mental condition or other justifiable interests, a witness can be questioned via technical devices for transmission of picture and sound in a way that parties and defence lawyer can ask the questions without presence in a room where there is a witness. For the requirements of that kind of questioning an expert person can be appointed.

LAW ON WITNESS PROTECTION IN CRIMINAL PROCEEDINGS OF REPUBLIKA SRPSKA

Article 3 – Witnesses under threat and endangered witnesses

(3) Endangered witness is a witness who is seriously physically or psychologically traumatized by circumstances under which a crime has been executed or who suffers from serious mental disruption that makes him extremely sensitive, as well as a child or a juvenile.

Article 6 – Assurance of psychological, social and expert help

Prosecutor, during the investigation, and after the raising of court's indictment, notifies the organ authorized for questions of social care on including the endangered witness in the procedure and enables rendering of that organ, as well as psychological support for the witness, including presence of experts during examination or questioning.

8.8 ARE CHILDREN ALLOWED TO RECEIVE THERAPEUTIC SUPPORT BETWEEN THE TIME OF REPORTING AND THE COURT CASE?

Yes, in both entities of Bosnia and Herzegovina.

If necessary, the juvenile shall give his/her testimony with assistance of psychologists, pedagogue or other expert, in accordance with art. 100, paragraph 4 of the Law on Criminal Procedure of FBiH.

8.9 ARE SPECIFIC MEASURES TAKEN TO COMBAT ORGANISED/NETWORKED RITUAL ABUSE RINGS?

FEDERATION OF BOSNIA AND HERZEGOVINA

Provision of Criminal Code of BiH – Article 185, paragraph 2 (Establishment of a Slavery Relationship and Transport of Persons in Slavery Relationship), Article 186, paragraph 2 (Trafficking in Humans), Article 187, paragraph 3 (International Procuring in Prostitution, and 189 (Smuggling of Persons).

REPUBLIKA SRPSKA

There are, they are a joint operation between governmental and nongovernmental sector

on the plans of making new laws, sublaw acts, policies, declarations, action plans, trainings and educations, on establishing and financing safe houses, on raising conscience through media's and actions of other kind.

BULGARIA

Information provided by the Ministry of Labour and Social Policy, International Relations Service, in **September 2006**.

1.0 LEGISLATION AND SANCTIONS RELATING TO VIOLENCE AGAINST WOMEN

1.1 LETTER OF LAW – DEFINITIONS

In 2005 the National Assembly of the Republic of Bulgaria adopted the **Protection against Domestic Violence Act** (promulgated in State Gazette 27 of 29 March 2005).

1.2 DOMESTIC VIOLENCE

In 2005 the National Assembly of the Republic of Bulgaria adopted the Protection against Domestic Violence Act (promulgated in State Gazette 27 of 29 March 2005).

Protection against Domestic Violence Act shall regulate the rights of individuals, victims of domestic violence, the measures for protection and the procedures for enforcement thereof. Responsibility sought after under this Act does not bar the any civil or penal responsibility of the perpetrator.

Domestic violence denotes any act of physical, psychic or sexual violence, as well as attempts of such violence, coercive restriction of personal liberty and privacy committed against individuals, who are or who have been in a family relationship or kinship, in a de-facto conjugal co-habitation or who reside in one and the same dwelling.

Protection under this Act may be sought by any person, who has become victim of domestic violence, perpetrated by spouse of former spouse; person, with whom he/she is or has been in a de-facto conjugal co-habitation; person, who has fathered her child; ascendant; descendant; brother or sister; relative by marriage up to the second degree; guardian, custodian or foster parent.

In case of domestic violence the victim shall be entitled to turn to court for protection. In cases when there is data indicating of direct and immediate threat for the victim's life or health, it may submit a request to police bodies for enforcement of urgent measures. The bodies of the Ministry of Interior shall forward such request to the court together with the explanation of the perpetrator (if any) and the protocol of the measures imposed, outlining the circumstances for immediate court protection.

Under this Act, protection against domestic violence is ensued by obligating the perpetrator to refrain from committing domestic violence; removing the perpetrator from the jointly occupied dwelling for a term, specified by court; prohibiting the perpetrator to enter the dwelling, place of work and the locations of social contacts and recreation of the victim under conditions and for a term, specified by the court; provisional designation of the place of residence of the child with the victim parent or the parent, who did not perpetrate violence, under conditions and for a term, specified by the court if this would not be against the child's interests; obligating the perpetrator of violence to attend specialized programs; directing the victims into rehabilitation programs. The aforementioned measures are to be imposed for a period between one month and one year. In all cases the court in its verdict must also impose a fine in the amount of 200 to 1000 leva (100 do 500 Euro) to the perpetrator.

The Protection against Discrimination Act foresees that the state shall create conditions for the implementation of programs for prevention and protection against domestic violence and programs providing support to victims.

The competence to impose a protection measure belongs to the regional court, serving the area of the current address of the victim or, in some cases, to the regional court, serving the area of the police precinct, on the territory of which protection was sought.

Proceedings on issuance of the order may be initiated on petition of the victim; request of the Director of Social Assistance Directorate; petition of a brother or sister or of an individual, who is directly of kin to the victim without limitation - in the event of immediate court protection. The petition or request shall be in writing and contain names, addresses and the Personal Numbers of the petitioner or of the

person submitting the request if the victim is not able or does not wish to reveal his/her address, a court address should suffice; names and the current address of the perpetrator or another address, at which he/she can be subpoenaed, including telephone and fax numbers; data on the family, kin or de-facto relationship between the victim and the perpetrator; description of the facts and circumstances, when domestic violence was committed; signature.

The petition or the request must be submitted up to one month after the act of domestic violence. The petition or the request is then entered in a special register and sorted according to the day of acceptance. There is no stamp tax due for submitting a request. When issuing the order, the court orders that the stamp tax and expenses of the case are paid by the perpetrator of domestic violence. In the event of rejection to issue an order or reversal of an order, the stamp duty and the expenses of the case are to be paid by the petitioner or the by the Social Assistance Agency.

On the day of receiving the petition or the request the court must schedule an open court session not later than a term of 30 days. The means of evidence under the Code of Civil Procedure shall be admissible in the proceedings for issuance of a protective order. Where no other evidence is available, the court may issue a protective order only on the grounds of the declaration attached.

The court delivers its verdict at an open session and when upholding the request or petition, it issues a protection order. With this order the court imposes one or more protection measures.

The ruling is subject to appeal before the district court within 7 days of handing it in. The petition must be submitted through the court, having delivered the ruling, with a copy to the other party. New evidence may also be attached to the petition. Any appeals do not suspend the enforcement of the order. The district court reviews the appeal in a 14 day period at an open session with summoning the parties and delivers a ruling on the merits of the case, whereby it leaves in effect, repeals or amends the ruling appealed. If the ruling is amended, the court issues a new order. The ruling of the district court is final.

Where the petition or the request contains data on a direct and immediate threat for the victim's life or health, the district court issues, at a closed session without summoning the parties, an order for immediate protection within 24 hours of receiving the petition or the request. The order for immediate protection is valid until the issuance of a protective order or of the rejection by court to do so.

The protection order is subject to immediate implementation. The police bodies monitor the implementation of the order. In the event of failure to comply with the court order the police body, which has established the violation, must detain the perpetrator and advise forthwith the services of the prosecutor's office.

1.3 RAPE/SEXUAL ASSAULT

Rape of a person of the female sex is criminalised – sanction: 2-20 years imprisonment. The draft new penal code envisages raising the upper limit.

1.4 CHILD SEXUAL ABUSE/INCEST

The child sexual abuse is settled in article 149 of the Criminal Code of the Republic of Bulgaria. Under this provision a person who performs an act for the purpose of arousing or satisfying sexual desire, without copulation, with a person under 14 years of age, is to be punished for lewdness by deprivation of liberty for a period between one and six years. Where the lewdness has been performed through the use of force or threat, through taking advantage of the helpless condition of the victim or by reducing the victim to such condition, the punishment is to be deprivation of liberty from two to eight years.

When the deed has been done for a second time or represents a particularly grave case, the punishment must be deprivation of liberty from three to ten years.

Lewdness is punished by deprivation of liberty from three to twelve years if committed by two or more persons. Lewdness is punished by deprivation of liberty from five to fifteen years if committed with two or more minors; if a severe bodily injury has been inflicted or a suicide has been attempted; if it constitutes a dangerous recidivism.

Under article 150 of the Criminal Code a person who performs an act for the purpose of arousing or satisfying sexual desire, without copulation, with regard to a person who has completed 14 years of

age, by using force or threat, by taking advantage of the helpless condition of that person or by reducing the person to such condition, shall be punished by deprivation of liberty for up to five years, and in particularly grave cases - by deprivation of liberty from two to eight years.

A person who has sexual intercourse with a person who has not completed the age of 14 years is punished by deprivation of liberty for two to six years whilst a person who has sexual intercourse with a person who has completed the age of 14 years, who does not understand the essence and meaning of the act, is punished by deprivation of liberty for up to three years.

In 2004 the Ministry of Labour and Social Policy adopted the National Child Strategy 2004-2006.

This Strategy is created based on the goals and principles of the Child Protection Act and the UN Convention on the Rights of the Child. The National Strategy is developed in an environment of an established system for child protection at both central and local level and of an improved legal order.

The goal of the Strategy is to identify national priorities in the field of child protection that are to be reflected in municipal child protection programmes while preserving a flexible approach in order to reflect specific local necessities.

The National Child Strategy is a political document that defines the way to improve the protection of children's rights in Bulgaria. The Strategy outlines the framework of practical activities in implementation of the Child Protection Act as well as other legislative instruments.

Over the last few years there is an increase in the number of children who become victims of crimes of different character and graveness. Ministry of Interior data for 2002 shows a deepening of the problem of violence on children. The greatest share is that of sexual violations (rapings, lewdnesses, etc.) These represent 454 out of the total number of 3 427 crimes against children. According to data from the National Statistics Institute the number of mistreated children on the books of the children's pedagogical rooms (CPR's) for 2002 is 944 most of whom are mistreated underaged girls (for all kinds of violence). There is a continuing trend of violence to be executed by the child's immediate surroundings: parents, relatives, friends and classmates.

SEXUAL EXPLOITATION

According to data from the National Statistics Institute, in 2002 some 501 minors and underaged persons went to the CPR's for prostitution. According to data from the Central Commission for Combating Antisocial Acts of Minors and Underaged for the same year, 40 children were inclined or forced into prostitution. Ten girls became victims of trafficking. There is a trend of lowering the age of the victims of trafficking with the purpose of sexual exploitation.

In order to solve the problems related with **the worst forms of child labour** (prostitution, drug trafficking, begging, involving children in theft, etc.) and in connection to the country's commitments under International Labour Organization Convention 182, in 2002 the Council of Ministers adopted a National Action Plan against the Worst Forms of Child Labour.

CRIMES AGAINST AND ABUSES WITH CHILDREN ON THE INTERNET

During the transition to IT society in Bulgaria there is an increasing number of signals for computer related crimes and abuses from and against children (child pornography, xenophobia, hacking and spam, ethnic and religious intolerance propaganda, gambling, piracy, drugs and arms advertising and trading, etc.) These problems already have a global nature and Bulgaria must not lag behind in its efforts to introduce effective measures for protection of children as internet users.

One of the main goals of the National Programme for Child Protection is increasing the effectiveness of the measures for protection of children from violence, abuse and other forms of exploitation through awareness raising amongst children and their families regarding the problem of violence, as well as promoting their active participation in combating this phenomenon, improving the qualification of professionals working with children regarding the problem of violence in all of its forms, developing a system of measures aimed at the perpetrators of violence on children, rehabilitation and reintegration of the victims of violence and exploitation, increasing public involvement in the problems of children's safety on the internet, opening a hotline for reaction in case of crimes and abuses against children on the internet.

Another significant goal of the National Programme for Child Protection is the establishment of a system for monitoring the observing of children's rights and the quality standards of children's services

through developing and introducing in practice a methodology for control and observation of the observing of children's rights, creating a environment for attracting the public and the children themselves in the implementation of the monitoring of children's rights and others.

The expected results from the Programme include the establishment of a developed system for monitoring the children's rights and the quality of children's services, increased number of hours dedicated to studying children's rights as part of the mandatory school curriculum, computer cabinets with internet access in every hi-school and mandatory training in safe work with new information technologies for students under the age of twelve and a developed institutional network for protection of children against crimes and abuses on the internet in correspondence with European experience in this field.

1.5 SEXUAL HARASSMENT

Under article 153 of the Criminal Code a person who has sexual intercourse with a person of the female sex, by compelling her thereto through taking advantage of her material or official dependency upon him, shall be punished by deprivation of liberty for up to three years.

In 2003 the National Assembly adopted the Protection against Discrimination Act (Promulgated, SG No. 86/30.09.2003, effective 1.01.2004, supplemented, SG No. 70/10.08.2004, effective 1.01.2005, amended, SG No. 105/29.12.2005, effective 1.01.2006, SG No. 30/11.04.2006, effective 12.07.2006, amended SG No. 68/22.08.2006).

This Act regulates the protection against all forms of discrimination and contributes to its prevention.

Under this Act "harassment" means any unwanted physical, verbal or other conduct on the grounds referred to in Article 4 (1), aimed at, or resulting in, a violation of a person's dignity and the creation of a hostile, offensive or intimidating environment, while "sexual harassment" shall mean any unwanted physical, verbal or other conduct of a sexual nature, which violates dignity or honour and creates a hostile, offensive, degrading or intimidating environment, and in particular where refusal to accept such conduct or the compulsion thereto may influence the taking of decisions affecting the person.

Any direct or indirect discrimination on grounds of gender, race, nationality, ethnicity, human genome, citizenship, origin, religion or belief, education, convictions, political affiliation, personal or social status, disability, age, sexual orientation, marital status, property status, or on any other grounds established by law or by an international treaty to which the Republic of Bulgaria is a party, is banned.

Under the Act all harassment based on the abovementioned signs, sexual harassment, incitement to discrimination, persecution and racial segregation, as well as the building and maintenance of an architectural environment hampering the access to public places of people with disabilities is considered discrimination.

An employer who has received a complaint from a factory or office worker who believes that he/she is subject to harassment, including sexual harassment, in the workplace, shall be obliged to immediately hold an inquiry, take measures to stop the harassment, as well as to hold disciplinarily liable another factory or office worker if he/she caused the harassment.²

Upon receiving a complaint from a student who considers himself subject to harassment by a person on the teaching or non-teaching staff or a student, the head of the training institution shall be obliged to immediately hold an inquiry and take measures to stop the harassment, as well to impose a disciplinary sanction.

1.6 PORNOGRAPHY

The 2002 Criminal Code amendments provide that a person who creates, exposes, provides, broadcasts, offers, sales, rents or spreads in another manner works with pornographic content is to be punished with deprivation of liberty up to one year and a fine of 1 000 to 3 000 leva. A person who exposes, shows, offers, sales or rents works with pornographic content to persons under the age of sixteen must be punished with deprivation of liberty up to three years and a fine of up to 5 000 leva. For these kinds of actions there is a sanction of deprivation of liberty of up to six years and a fine of up to 8 000 leva in case the creation of the work involves a person who is underaged, minor or has the appearance of such.

A person who is in position of a pornography work, the production of which has involved a person who is underaged, minor or has the appearance of such is to be punished with deprivation of liberty of up to one year and a fine of up to 2 000 leva.

1.7 PROSTITUTION

Articles 155 and 156 of the Criminal Code arrange the general and specific compositions of crimes related to prostitution. Under article 156 a person who persuades an individual to practice prostitution or acts as procurer or procures for the performance of indecent touching or copulation, shall be punished by deprivation of liberty between one and six years and by a fine of between 5 000 and 15 000 leva.

A person who persuaded or forced another person into using drugs and/or analogues thereof for the purposes of practicing prostitution, acts as procurer or procures for performance of sexual intercourse, homosexual acts or acts of lewdness, shall be punished by deprivation of liberty for five to fifteen years and by a fine from ten thousand up to fifty thousand leva. Where the act has been committed by an individual acting at the orders or in implementation of a decision of an organized criminal group; with regard to a minor, underage or mentally challenged person; with regard to more than two persons; or repeatedly, the punishment is deprivation of liberty for ten to twenty years and a fine from one hundred thousand up to three hundred thousand leva.

Under article 156 a person who abducts another person for the purpose of her being placed at the disposal for acts of debauchery shall be punished by deprivation of liberty from three to ten years and by a fine of up to one thousand leva. The punishment is deprivation of liberty for five to twenty years, if the abducted person is under 18 years of age; the abducted person has been placed at disposal for acts of debauchery; or the abduction has been carried out for the purpose of placing the person at disposal for acts of debauchery beyond the borders of this country. The punishment is deprivation of liberty from five to fifteen years and a fine of five thousand to twenty thousand leva in case the person is acting at the orders or in implementation of a decision of an organized criminal group; the abducted person is placed for debauchery beyond the borders of this country or in case the deed represents a dangerous relapse.

1.8 OBSCENE PHONE CALLS/TELEPHONE SEX

There is no relevant legislation.

1.9 FEMALE GENITAL MUTILATION

Bulgarian legislation does not contain a specific text on this matter but this sort of deeds is covered by the provision of article 128 of the Criminal Code, which reads that a person who inflicts on another severe bodily injury shall be punished by deprivation of liberty for three to ten years. A bodily injury is to be considered severe if it has caused: continuous disturbance of consciousness; permanent blindness of one or both eyes; permanent deafness; loss of speech, reproduction inability; disfigurement which causes permanent disturbance of the speech or of a sensory organ; loss of one kidney, the spleen or a lung lobe; loss or mutilation of a leg or an arm; permanent general health impairment, dangerous to life.

1.10 INTERNATIONAL CONVENTIONS

Bulgaria is party to the International Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of others and to the UN Convention against Transnational Organised Crime and the two Protocols thereto: the Protocol to prevent, suppress and punish Trafficking in Persons, especially women and children, and the Protocol against the smuggling of migrants by land, sea and air.

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

1.11 PROTECTION OF PREGNANCY/PREGNANT WOMEN

Article 126 of the Criminal Code was amended in 2006 and the new text reads that a person who with the consent of a pregnant woman puts to death her fetus outside authorized health establishments or in violation of established medical standards and rules of good medical practice, is to be punished by deprivation of liberty of up to five years.

2.0 SENTENCING

2.1 SENTENCING DOMESTIC VIOLENCE

Under articles 15 and 16 of the Protection against Domestic Violence Act the court shall deliver a ruling at an open session and in case of upholding the petition or of the request, the court shall issue a protective order. By means of the protective order, the court imposes one or more measures of protection. The order must contain a warning of the consequences of the failure to comply with it.

Where the petition or the request contain data on a direct and immediate threat for the victim's life or health, the district court shall issue, at a closed session without summoning the parties, an order for immediate protection within 24 hours of receipt of the petition or of the request. The order for immediate protection shall be valid until the issuance of a protective order or of the rejection by court to do so. The protective order is subject to immediate enforcement. Police bodies shall monitor enforcement of the order, in cases when a measure is imposed by it and in the event of failure to enforce the court order the police body, which has established the violation, shall detain the perpetrator and advise forthwith the services of the prosecutor's office.

3.0 EFFECTIVENESS OF LEGISLATION

No information provided.

4.0 DOMESTIC VIOLENCE

See **Section 2.1** above.

5.0 RAPE AND SEXUAL ASSAULT IN MARRIAGE

Under article 177 of the Criminal Code a person who has induced another in compulsory manner to enter in marriage, and therefore the marriage was proclaimed null and void, shall be punished by deprivation of liberty for up to three years, while A person who abducts a person of the female gender for the purpose of forcing her to enter into marriage, shall be punished by deprivation of liberty for up to three years, and if the victim is underage, the punishment shall be deprivation of liberty for up to five years.

6.0 RAPE AND SEXUAL ASSAULT

See **Section 1.3** above.

7.0 SEXUAL HARASSMENT

See **Section 1.3** above.

8.0 INCEST/SEXUAL ABUSE OF GIRLS

See **Section 1.4** above.

CROATIA

Information provided by the Office for Gender Equality, Government of the Republic of Croatia, in **September 2006**

1.0 LEGISLATION AND SANCTIONS RELATING TO VIOLENCE AGAINST WOMEN

1.1 LETTER OF LAW – DEFINITIONS

The Constitution of the Republic of Croatia¹ provides the basic legislative framework for protection of human rights. The violence against women and children has been regulated by *the Criminal Code, the Family Act and the Law on protection against domestic violence*². Over the past several years the Republic of Croatia has also adopted special strategic documents with the purpose of improvement of the protection of the violence victims, especially domestic violence victims and elimination of all forms of violence against women. In December 2004 the Government of the Republic of Croatia has adopted the *National strategy on protection against domestic violence 2005-2007* as well as *the Protocol on procedures in cases of domestic violence*, and in September 2006 it adopted the *New national policy for gender equality promotion 2006-2010* which clearly defines the measures for prevention of all types of violence against women.

CROATIAN CRIMINAL CODE

In the Republic of Croatia, since the last report submitted to the Council of Europe in February 2003, two new Laws on alterations and amendments of Criminal Code have been adopted in July („The Official Gazette, Issue no.105/04) and in June 2006 (The Official Gazette, Issue No. 71/06). The said laws, in part, changed and amended the provisions of the Criminal Code for the purpose of the extending the increased protection of women and children, including the protection against domestic violence. The important novelty in the Criminal Code is that the statute of limitations for the criminal prosecution for criminal offences affecting the child of the juvenile does not expire until they come of age.³

Chapter 10 of the Criminal Code determines the criminal **offences affecting life and limb** and sanctions a series of **offences which harm the human body**

Article 98 – Bodily Injury

In Article 89, which contains the definition of the particular legal expressions, and Paragraph 30, which defines the members of the family, by erasing the words „and life in the same household“, expanded the incrimination to former marital or extramarital partners who no longer live in the same household, and among which the violence is frequent.

Article 99 – Aggravated Bodily Injury

With regard to previous report, the penalties for the criminal offence “Grievous Bodily Injury” (Article 99) have been increased. Thus, the Paragraph 1 stipulates the prison sentence from six months to three years, while the Paragraph 2 stipulates the prison sentence from one to eight years.

¹ Constitution of the Republic of Croatia (The Official Gazette, Issues no. 56/90, 135/97, 113/00, and 28/01)

² Law on Protection against Domestic Violence, July 2003

³ Law on Alterations and Amendments of Criminal code (The Official Gazette: NN 71/06)

Articles 100 and 101 – Impulsive Bodily Injury and Negligent Bodily Injury

The criminal offence of Impulsive Bodily Injury, in Paragraph 2 now stipulates the prison sentence from three months to three years as well as for the criminal offence of Bodily Injury caused by criminal negligence (Article 101, Paragraph 2).

Article 102 – Institution of Criminal Proceedings for Criminal Offences of Bodily Injury

According to Article 102, during the opening of criminal proceedings for criminal offence of Bodily injury, if the criminal offence has been done against the family member (i.e. the child or the juvenile) the proceedings is opened in the line of duty and not by private by civil action as was the case until recently.

Chapter 11 determines a series of **offences against freedom and rights of man and citizen:**

Article 125 – Kidnapping

In the Article 125 covering the criminal offence of Kidnapping, the new paragraph 3⁴ has been added which reads as follows:

„(3) If the criminal offence from Paragraph 1 of this Article causes the death of the kidnapped person, the perpetrator will be sentenced from one to twelve years term.“

Chapter 13 contains the criminal **offences against values protected by international law:**

The Law on alterations and amendments of the Criminal Code⁵ added the new criminal offence Crime against humanity.

Article 157a – Crimes against Humanity

“Whoever violates the rules of international law within an extensive or systematic attack against the civilian population and, with knowledge of such an attack, orders the killing of another person, orders the infliction of conditions of life so as to bring about the physical destruction in whole or in part of some civilian population which could lead to its complete extermination, orders trafficking in human beings, in particular of women and children, or the enslavement of a person due to sexual exploitation or in any other way so that some or all of the powers originating in property rights are exercised over such person, order that a person is forced to prostitution, orders that a person is deprived of his/her biological reproductive capacity without his/her knowledge or consent and when it is not justified by medical reasons, orders the forceful displacement of persons from areas where they lawfully reside and through expulsion or other measures of coercion, orders that a person deprived of liberty or under supervision be tortured by intentionally inflicting severe bodily or mental harm or suffering, orders that a person be raped or subjected to some other violent sexual act or that a woman who has been impregnated as a result of such violent act be intentionally kept in detention so as to change the ethnic composition of some population, orders the persecution of a person by depriving him or her of the fundamental rights because this person belongs to a particular group or community, orders the arrest, detention or kidnapping of some persons in the name of and with the permission, support or approval of a state or political organisation and subsequently does not admit that these persons have been deprived of their liberty or withholds information about the fate of such persons or the place where they are kept, or orders within an institutionalized regime of systematic oppression and domination of one racial group over another racial group or groups that an inhumane act described in this Article be committed or an act similar to any of these offences so as to maintain such a regime (the crime of apartheid), or whoever commits any of the foregoing offences shall be punished by imprisonment for not less than five years or by a life sentence.“

Furthermore, with the cited alterations of the Law⁶, Article 158 related to the criminal offence War crime against civil population, has been harmonized with the Article 8 of the Roman Statute of the International Criminal Court and the Facultative protocol with the Convention on the Rights of the Children regarding the involvement of the children in armed conflicts where the age limit for recruitment of children has been moved from 15 to 18.

⁴ Law on Alterations and Amendments of Criminal Code, July 2004 („The Official Gazette: NN 105/04).

⁵ Law on Alterations and Amendments of Criminal Code, July 2004 („The Official Gazette: NN 105/04).

⁶ Law on Alterations and Amendments of Criminal Code, July 2004 („The Official Gazette: NN 105/04).

Article 158 – War Crimes against the Civilian Population

(1) „ Whoever violates the rules of international law in time of war, armed conflict or occupation and orders an attack against the civilian population, settlements, individual civilians or those hors de combat resulting in death, severe bodily harm or serious damage to people's health, orders an indiscriminate attack harming the civilian population, orders the killing, torturing or inhuman treatment of civilians, orders civilians to be subjected to biological, medical or other scientific experiments, their tissues or organs taken for transplantation, orders civilians to be subjected to great suffering impairing the integrity of their bodies or health, or orders their resettlement, displacement or forceful loss of ethnic identity or conversion to another religion, orders rape, sexual oppression, forced prostitution, pregnancy or sterilization or other sexual abuse, orders measures of intimidation or terror, hostage taking, collective punishment, unlawful deportations to concentration camps or illegal detention, deprives people of the rights to a just and unbiased trial, forces them to serve in hostile armed forces or in the information services or administration of a hostile power, subjects them to forced labour, starvation, confiscates property, or orders that the population's property be plundered or illegally and wantonly destroyed or its large-scale appropriation where there is no justification by military needs, or imposes illegal and disproportionately large contributions and requisitions, or decreases the value of the domestic currency or unlawfully issues it, or orders an attack against persons, equipment, materials, units or vehicles involved in humanitarian aid or a peace mission pursuant to the Charter of the United Nations, or orders that the rights and actions of the citizens of a hostile country be prohibited, suspended or pronounced unlawful in court proceedings, or injures personal dignity or orders civilians and other protected persons to be used to shield certain places, areas or military forces from military operations, or orders the recruitment of children under fifteen years of age for the national armed forces or their active participation in hostilities, or whoever commits any of the foregoing acts shall be punished by imprisonment for not less than five years or by long-term imprisonment.“

(2) „ The same punishment as referred to in paragraph 1 of this Article shall be imposed on whoever violates the rules of international law in time of war, armed conflict or occupation by ordering an attack against objects protected by international law, against works or powerful installations such as dams, dykes and nuclear power plants, indiscriminate attacks against civilian objects protected by international law, against undefended places and demilitarized zones or orders an attack which results in an extensive and long-lasting damage to the environment and may impair the population's health or survival, or whoever commits any of the foregoing acts.“

(3) „ Whoever, as an occupying power, violates the rules of international law, in time of war, armed conflict or occupation, orders or carries out the resettlement of parts of the civilian population of the occupying power to an occupied territory shall be punished by imprisonment for not less than five years.“

The alterations and amendments of the Criminal Code⁷, also amended the **Article 174** – Racial and other forms of discrimination and **Article 175** – Criminal offence of Trafficking in human beings and slavery, which has been both in title and content harmonized with the provisions of the Protocol on prevention, combat and punishment of Trafficking in human beings, especially women and children which amend the Convention against Transnational Organized Crime.

Article 174 – Racial and Other Discrimination

(1) Whoever, on the basis of a difference in race, religion, language, political or other belief, property, birth, education, social position or other characteristics, or on the basis of gender, colour, national or ethnic origin, violates fundamental human rights and freedoms recognized by the international community shall be punished by imprisonment for six months to five years.

(2) The same punishment as referred to in paragraph 1 of this Article shall be inflicted on whoever persecutes organizations or individuals for promoting equality between people.

(3) Whoever publicly states or disseminates ideas on the superiority or subordination of one race, ethnic or religious community, gender, ethnicity or ideas on superiority or subordination on the basis of colour for the purpose of spreading racial, religious, sexual, national and ethnic hatred or hatred based on colour or sexual orientation or other characteristics, for the purpose of disparagement shall be punished by imprisonment for three months to three years.

⁷ Law on Alterations and Amendments of Criminal Code, July 2004 (he Official Gazette: NN 105/04).

(4) Whoever, pursuing the goals from the Paragraph 3 of this Article, disseminates or in any other way makes available to public the materials which deny, significantly reduces, approves or justifies the criminal offence of genocide or crimes against humanity through the computer systems, shall be punished by imprisonment from six months to three years.

Article 175 of the Criminal Code "Establishment of Slavery and Transport of Slaves" has been replaced by new criminal offence "Trafficking in Human Beings and Slavery"⁸.

Article 175 – Trafficking in Human Beings and Slavery

(1) Whoever, in violation of the rules of international law, uses force or threatens to use force or by fraud, kidnapping, abuse of position or authority solicits purchases, sells, hands over, transports, transfers, encourages or mediates in the buying, selling or handing over of another person or who conceals or receives a person in order to establish slavery or a similar relationship, forced labour or servitude, sexual abuse, prostitution, or illegal transplantation of parts of a human body, or who keeps a person in slavery or in a similar relationship shall be punished by imprisonment for one to ten years.

(2) Whoever, in violation of the rules of international law, solicits purchases, sells, hands over, transports, transfers, encourages or mediates in the buying, selling or handing over, conceals or receives the child or the juvenile in order to establish slavery or a similar relationship, forced labour or servitude, sexual abuse, prostitution or illegal transplantation of parts of a human body, or who keeps the child or the juvenile in slavery or in a similar relationship shall be punished by imprisonment for not less than five years.

(3) If the criminal offence referred to in Paragraphs 1 and 2 of this Article has been committed by the group or criminal organization or in relation to a larger number of persons, or caused the death of one or more persons, the perpetrator shall be punished by imprisonment for at least five years or by long-term imprisonment.

In alterations and amendments of the Criminal Code in 2006 of the mentioned Article 175, after Paragraph 3, the new Paragraph 4 has been added which reads:

(4) Whoever, knowing that the person is the victim of trafficking in human beings, forced labour or servitude, sexual abuse, slavery or a similar relationship, prostitution, or illegal transplantation of parts of a human body, abuses the person's position or enables the abuse of person's position by another person, shall be punished by imprisonment from three months to three years.

The former paragraph 4 of the above Article has become the Paragraph 5.

(5) The circumstance of whether the person was consent to forced labour or servitude, sexual abuse, slavery or a similar relationship, prostitution, or illegal transplantation of parts of a human body will have no influence on the existence of the criminal act from paragraphs 1 and 2 of this Article."

1.2 DOMESTIC VIOLENCE

Domestic violence has been regulated in Croatia by the Criminal Code, the Family Law and the Law on Protection against Domestic Violence.

⁸ Law on Alterations and Amendments of Criminal Code, July 2004 („The Official Gazette: NN 105/04).

CRIMINAL CODE

CRIMINAL OFFENCES AGAINST HONOUR AND REPUTATION

Article 201 – Exposure of Personal or Family Conditions

The amendments of Article 201⁹ particularly incriminate the official person or any other person who, performing his/her duty, commits this criminal offence with regard to the child. Article 201 has been amended by Paragraphs 3 and 4 which read as follows:

(3) Whoever exposes or relays matters from the personal or family life of a child thus exposing the child to mockery of the child's peers or other persons or such act caused severe mental disorders, will be punished by the imprisonment from six months to three years.

(4) Whoever commits the criminal offence from Paragraphs 1 and 2 of this Article against the child as an official person or during performance of professional services will be punished by imprisonment from one to three years.

Chapter 15 contains the group of criminal offences entitled „Criminal Offences against Marriage Family and the Youth“

Article 206 – Bigamy

(1) Whoever contracts a new marriage while being already married shall be punished by a fine or imprisonment not exceeding one year.

(2) The same punishment as referred to in paragraph 1 of this Article shall be inflicted on whoever contracts a marriage with a person while knowing such a person to be married.

Article 207 – Allowing a Contract of an Illicit Marriage

The official person who, performing his/her duty, enables the contraction of the marriage despite the existence of the legal hindrance known to him/her and due to which the marriage is not allowed, will be charged a penalty or sentenced to a term of imprisonment up to three years.

In Chapter 16 of the Criminal Code the punishments have been increased regarding the following criminal offences:

Article 208 – Breach of Family Obligations

The fine or the imprisonment up to three years has been replaced by the imprisonment from three months up to three years.

Article 209 – Failure to Provide Maintenance

The fine or the imprisonment up to three years has been replaced by the imprisonment from three months up to three years.

Article 212 – Child Desertion

Minimal sentence of six months has been replaced by the minimal sentence of one year.

Article 213 – Neglect and Maltreatment of a Child or a Juvenile

In Article 213 the qualification of the committed criminal offence has been extended and the minimal envisaged imprisonment penalty from Paragraph 1 has been increased from minimum three months to six months to three years and in Paragraph 3 from minimum three months to one to five years. The incrimination, according to which the parent, the adoptive parent or any other person exposes the child or the juvenile to danger by perilous activities or in any other way, has also been elaborated.

⁹ Law on Alterations and Amendments of Criminal Code -The Official Gazette: NN 71/06.

Article 215 – Obstruction and Prevention to Perform Measures to Protect a Child or a Juvenile

Pecuniary penalty or imprisonment sentence up to three years has been replaced by the imprisonment sentence from three months up to three.

Article 215a – Violent Conduct within a Family

In Article 215a the minimum and maximum envisaged imprisonment penalties have been increased from three months to three years of imprisonment to six month to five years of imprisonment.

FAMILY LAW

The Family Law abandoned the sanctioning of the domestic violence because it is sanctioned by special Law on Protection against Domestic Violence¹⁰. The Family Law, however, stipulates the number of measures which can be passed by the social welfare centre or the court in order to protect the children from inappropriate actions of the parents and abuse in the family. The Law regulates:

Article 109 – Warnings about mistakes and negligence in care and upbringing

Article 100 – Restrictions or bans of encountering and associating with the parent who does not live with the child in order to protect the child's welfare

Article 110 – Supervision over parental care

Article 111 – Reducing of parental rights to live together with and raise the child

Article 114 – Severance of parental rights

(1) The court shall, in extrajudiciary procedure against the parent who abuses or severely violates the parental obligation, duties and rights, deprive the parent of the parental rights.

(2) The parent abuses or severely violates the parental obligations, duties and rights if:

1. physically or psychically abuses the child, including the exposure to violence among adult members of the family,
2. sexually abuses the child,
3. exploits the child forcing him/her to excessive work or the work unsuitable to his/her age,
4. allows the child to consume the alcoholic beverages, take drugs or other intoxicating matters
5. induces the child to socially unaccepted behaviour
6. abandons the child
7. does not provide for the child living in the same household longer than three months
8. does not create suitable living conditions for the child not living with him/her without any justified reason
9. does not provide for the basic living needs of the child not living with him/her or does not adhere to the measures passed by the relevant body in order to protect the rights and the welfare of the child
10. in any other way severely abuses the rights of the child.

Paragraphs (4), (5), (6), (7), (8) and (9) omitted as unnecessary

Article 116 – Restraining order and harassment of the child

(1) The court can, in extramarital procedure, issue a restraining order to the parent, grandmother or grandfather, sister or brother i.e., half-sister or half-brother who do not live with the child which will prevent the unlawful approach to the child in particular places and distances as well as the harassment of the child.

(2) Procedure from Paragraph 1 of this Article can be initiated by social welfare centre, the parent or the child.

¹⁰ Law on Protection against Domestic Violence (The Official Gazette:NN 116/03)

(3) The court will inform the social welfare centre about the initiation of the procedure from paragraph 1 of this Article and submit the decision on restraining order and harassment of the child.

(4) The court must pass the decision regarding the procedure from Paragraph 1 of this Article without delay, not later than 60 days from the submittal of the proposal.

Within the framework of legislation concerning misdemeanour, The Croatian Parliament passed the Law on Protection against Domestic Violence¹¹ on 18th July 2003 which normatively regulates the domestic violence.

LAW ON PROTECTION AGAINST DOMESTIC VIOLENCE

The Law on Protection against Domestic Violence determines the definition of domestic violence, the group of persons which are considered the family members in terms of this Law and stipulates the manner of protection of the family members as well as the types and purpose of misdemeanour and legal sanctions.

Article 3

In terms of this Law the family members are: husband and wife in marriage and common-law marriage, blood relatives in the direct line without limitations, blood relatives in the collateral line up to the forth degree, in-laws up to the second degree, persons who lived together in marriage or common-law marriage and their children, and persons who have children, adoptive parent and adoptive child, guardian and ward.

Article 4

Domestic violence is:

- any use of force or psychological coercion against the integrity of a person,
- any other behavior of one member of the family that may cause or provoke the dangerous situation when physical or psychical pain may be inflicted,
- causing fear or personal threat or violation of dignity,
- physical assault regardless of the inflicted or non-inflicted bodily injuries,
- verbal abuse, insults, use of profanities, name calling and other forms of severe harassment,
- sexual harassment,
- stalking and other forms of harassment,
- unlawful isolation or restriction of freedom of movement or communication with third persons,
- damage or destruction of property or an attempt to do so.

Article 5

(1) Medical worker, social welfare employee, psychologist, social worker, social educator, and employee of the educational institution must report to police or to relevant municipal public prosecutor's office the cases of domestic violence from Article 4 of this Law about which they learned about when performing their duties.

(2) Persons from Paragraph 1 of this Article which do not act according to the provisions of the Paragraph 1 of this Article commit a misdemeanour.

Article 6 – Forms and Aim of legal sanctions for prevention of domestic violence

(1) Legal sanctions for protection of domestic violence include the fine, the imprisonment and the protective measures.

¹¹ Law on Protection against Domestic vViolence (The Official Gazette: NN broj 116/03).

(2) The purpose of stipulation, passing and application of legal sanctions is the special protection of the family and the family members exposed to domestic violence, realization and promotion of healthy and harmonious family life and the observation of the legal system.

Article 7 – Protective measures

The court can pass the following protective measures against the perpetrator of the violence:

- a) obligatory psycho-social treatment,
- b) restraining order from the approaching the victim,
- c) prohibit the harassment and stalking of the person exposed to violence,
- d) expulsion from the apartment, the house or any other residential area,
- e) ensure the protection of the person exposed to violence,
- f) obligatory drug dependence treatment,
- g) dispossession of the object intended for or used in the offence.

Article 18 – Misdemeanour provisions

(1) The member of the family who commits the violence from Paragraph 4 of this Law will be punished with a fine from 1,000.00 to 10,000.00 HRK or by the imprisonment up to 60 days.

(2) The member of the family who repeats the acts of domestic violence will be punished for this offence with a fine of not less than 5,000.00 HRK or by the imprisonment not less than 15 days.

(3) The adult member of the family who, in the presence of the child or the juvenile, commits the act of domestic violence will be punished with a fine of not less than 6,000.00 HRK or by the imprisonment for not less than 30 days.

(4) The adult member of the family who repeats the acts of domestic violence from Paragraph 3 of this Article will be punished with a fine of not less than 7,000.00 HRK or by imprisonment for not less than 40 days.

(5) If the violence from Paragraph 3 of this Article is committed to the cost of the child or the juvenile the perpetrator will be punished for this offence with a fine of not less than 7,000.00 HRK or by the imprisonment for not less than 40 days.

Article 19

The persons from Article 5 who do not report to the police or the competent municipal public prosecutor's office the commitment of the domestic violence from Article 4 of this Law even though they learned about it performing their professional duty will be fined for the offence from Article 15, paragraph 1 of this Law.

Furthermore, in connection to the issue of domestic violence, it is necessary to point out that, in order to improve the status of the victims of domestic violence, the Ministry of the Family, Veteran's Affairs and Intergenerational Solidarity established the Task Force for improvement of protection against domestic violence. The members of the Task Force are the eminent experts and scientists, representatives of state administration bodies, other bodies and institutions and non-governmental organizations whose programs are aimed at the protection of the domestic violence victims.

One of the key activities of the Task Force, aimed at the improvement of the quality of lives of women and children who are the victims of violence and, generally, at the improvement of protection against domestic violence, represents the making of the National *strategy for protection against domestic violence for the period 2005-2007*¹².

National strategy is based on the provisions of the positive regulations of the Republic of Croatia, Law on Protection against Domestic Violence and Criminal Code and on the international documents, UN Declaration on Elimination of Violence against Women (1993), Beijing Platform (1995) and Recommendation Rec (2002)5 of the Council of Europe on Protection of Women against Violence.

The special value of the National strategy for protection against domestic violence is in introduction of the obligation for all competent bodies to investigate, prevent and prosecute every form of domestic violence; prevention of domestic violence and the assistance and the informing about the issue of domestic violence according to newly adopted Recommendation Rec 1681(2004) of the Committee of

¹² Adopted by the Government of the Republic of Croatia on 9th December 2004 („The Official Gazette: NN 182/04“).

Ministerial Representatives on proclaiming the year 2006 as the Year of the Pan European campaign for combat against domestic violence and the ensuring of systematic and planned combat against domestic violence and the contribution to realization of the gender equality policy as well as the cooperation of the non-governmental organizations whose programs are aimed at the protection of victims of violence and the government bodies during the making of the National strategy.

It is necessary to point out, as one of the important facts, the participation of the representatives of the civil society organizations whose programs are aimed at the improvement of the status of the victims of domestic violence in the making of the National strategy for protection against domestic violence and the Protocol on procedures in cases of domestic violence.

National strategy consists of 17 short-term and 10 long-term measures. Several measures set by the National strategy have been realized, i.e. the following has been made:

- Analysis of the laws sanctioning domestic violence which includes criminal and minor offence legislation in the Republic of Croatia and it is, in order to ensure its availability to the public, published on the web site of the Ministry of the Family, Veteran's Affairs and Intergenerational Solidarity,
- Analysis of the shelters for women and children – the victims of domestic violence in the Republic of Croatia with the proposal of measures for improvement of the present condition of the shelters and the opening of new shelters and the establishment of the shelter network,
- Proposal of alterations and amendments of the Law on Protection against Domestic Violence which refer to elaboration of the definition of domestic violence, introducing stricter penalties by stipulating the legal minimum, obligation of initiating the urgent procedures by the competent bodies in cases of domestic violence,
- Alterations and amendments of Criminal Code adopted at the session of Croatian Parliament on 9th June 2006 and published in the Official Gazette, Issue no. 71/06, related to stricter penalties for criminal acts committed to the detriment of the family, as stated earlier,
- Program of psycho-social treatment for the perpetrator of the domestic violence and the recommendation for the implementation of the treatment which became the constituent part of the Rule Book on alterations and amendments of the Rule Book on the manner and location of realization of psycho-social treatment („the Official Gazette, Issue no. 78/06),
- Program of strengthening and training in order to achieve the economic independence of the victims, and the employment program for the women who are the victims of domestic violence which the Ministry of Economy, Labour and Entrepreneurship make in the form of National Action Plan for Employment for 2006 which anticipates the measure „Cofinancing of employment of the targeted groups with problematic employment factor “ such as unemployed self-supporting parents of the juveniles, unemployed women after maternity leave for the third and fourth child, women who are victims of violence, victims of trafficking in human beings, asylum seekers, unemployed Croatian war veterans who have been registered at the Croatian Employment Bureau in the duration of at least 6 months, children and spouses of killed and missing Croatian veterans and other, while the bearer of this measure is the Croatian Employment Bureau. The measure corresponds to the guideline no. 7 of European Employment Strategy „Promote the Integration and Combat the Discrimination Against People at a Disadvantage in the Labour Market“,
- Analysis of the status and the level of education of the employees of police force, courts, social welfare centers, hospitals, primary health care institutions, preschool institutions, institutions of primary, secondary and university education and media on the issue of domestic violence according to which the Program of systematic education of all persons who work on the implementation of the laws which sanction the domestic violence, as well as all other persons who extend their services and support in cases of domestic violence and the persons authorized for informing and sensibilization of the public with regard to the issue of domestic violence,
- The address book with information (addresses and telephone numbers) about all institutions, organizations and other institutions which offer assistance, support and protection to victims of domestic violence in the Republic of Croatia and where the victims of domestic violence can turn to in case of need, i.e. if violence occurs. The new, amended version of the Address Book is currently in print,
- Informative leaflet intended for the victims of violence showing the mechanisms in the Republic of Croatia which protect the rights of women exposed to violence, i.e. stated the

duties of the police, social welfare centres, health institution and judicial bodies in cases of committed domestic violence,

- Marking all court documents concerning domestic violence as “Urgent” in order to give priority in solving the domestic violence cases and to prompt court proceedings for cases of domestic violence.

The implementation of other measures of National strategy is currently under way:

- Making of a Rule Book on meeting the criteria required for the establishment and the work of shelters for women and children who are victims of domestic violence,
- Making of a Program of free psycho-social and legal assistance for women and children who are victims of domestic violence,
- The Law about Courts anticipates establishment of family departments at regular courts according to reforms of the justice system,
- Stimulation of the establishment and the establishment of family counselling centres in order to prevent the domestic violence and the affirmation of responsible parenthood and qualitative care for the family members which is one of the systematic tasks of the Ministry of the Family, Veteran’s Affairs and Intergenerational Solidarity and in the period from 2004 to 2006 the Family centres were opened in Dubrovnik, Karlovac, Split, Šibenik, Vinkovci, Krapina, Koprivnica and Virovitica,
- Ensuring the availability of information on domestic violence to especially targeted groups by answering the petitions of the citizens, distribution of printed materials (leaflets, address books, publication) and extending the information on possibilities of realization and protection of statutory rights,
- Organization of public activities to mark the dates which are related to promotion of human rights and improvement of the status of the victims of domestic violence, in order to inform and sensitize the public which is also one of the tasks of the Government and the Ministry of the Family, Veteran’s Affairs and Intergenerational Solidarity. In the memory of the tragic event that happened on 22nd September 1999 when three women died on the premises of the Municipal Court in Zagreb the Croatian Parliament has, at the proposal of the Government of the Republic of Croatia, proclaimed the 22nd September to be the National day of combat against the violence against women and which is every year marked with occasional activities, e.g. placing the wreath in the building of the Municipal Court in Zagreb, holding the thematic sessions of the Gender Equality Committee of the Croatian Parliament, etc. The International Day for the Elimination of Violence against Women is also marked in the Republic of Croatia every year on 25th November.

In Croatia the Committee for implementation of the Campaign combating the domestic violence against women has been appointed which prepares the plan of activities for the Campaign on the national level. On the occasion of the marking of 25th November the beginning of the Campaign *combating the domestic violence against women* will be announced in the Republic of Croatia.

On the basis of National strategy for protection against domestic violence the *Protocol on proceedings in cases of domestic violence*¹³ has been made and it is based on the regulations from the area of protection against domestic violence and the National strategy of protection against domestic violence. The Protocol comprises a series of precisely set measures for the procedures of the authorized bodies; forms, contents and manner of cooperation of the bodies which participate in detection and prevention of the violence and which extend the assistance and protection to the person exposed to any form or modality of domestic violence (police, social welfare centres, health institutions, educational institutions, legislation bodies). The Protocol centres the attention to the procedures of the competent bodies towards the children who were the victims of domestic violence or the witnesses of the committed domestic violence.

In consistence with the alterations and amendments of the Family Law¹⁴ and at the proposal of the Ministry of the Family, Veteran’s Affairs and Intergenerational Solidarity the Government of the Republic of Croatia has, on 7th September 2006, adopted the alterations and amendments of the Protocol on procedures in cases of domestic violence, which are related to the procedures of social welfare centres and judicial bodies, i.e. courts in cases of committed domestic violence. In this respect and according to the provisions of Articles 100 -117 of the Family Law the passing of the decisions on

¹³ Adopted by the Government of the Republic of Croatia on September 15th, 2005.

¹⁴ The Official Gazette: NN 116/03, 17/04 and 136/04.

measures of family legal protection is under the competence of the courts, while the social welfare centre submit the proposals to courts for passing the decisions by which the parent that is not living with the child is banned from meetings and associating with the child in order to protect the health and other important interest of the child as well as the unauthorized approach to a child on specified places or approach on the specified distance and harassment of the child.

In connection with the above mentioned the following alterations and amendments of the Protocol have been made:

In Part 1 – Obligations of competent bodies:

- Section B) Social Welfare Centres, subsections 3.1, 4 and 5 have been altered:

Subsection 3.1

„Social welfare centre must, for the protection of the benefit of the child, if involved in domestic violence committed by the parent that does not live with the child, without delay submit the proposal to the court to pass the decision by which the parent that is not living with the child is banned from meetings and associating with the child in order to protect the health and other important interest of the child, i.e. without delay submit the proposal to the court to pass the decision by which that member of the family is banned from the unauthorized approach to a child on specified places or approach on the specified distance and harassment of the child“.

Subsection 4

„If the case is pressing, in order to promptly protect the safety of the victim of domestic violence, the social welfare centre will pass the verbal decision about the care outside of the family and order the execution of the decision without delay. The centre must issue the written decision within 8 days from the submittal of the request for the care outside the family or the information about the urgent reception of the beneficiary which is submitted to the centre by the legal person from Articles 93 and 105 of the Law on Social Welfare. The decision is also submitted to the police.

At the same time, social welfare centre proposes to court the passing of the measure which will resolve the status of the juvenile and prompt protection from further abuse“.

Subsection 5

„In case that the child is a victim of the domestic violence and is directly exposed to violence or witnessed the violence, social welfare centre must without delay propose to court the passing of the adequate measure of family legal protection. The social welfare centre can, at the same time, pass the adequate measure within its own authority, taking into consideration about all circumstances of the case and regularly (at least twice a month) and meticulously monitor the implementation of the measures and the achieved results after which the social workers must issue the adequate report of official note. During the evaluation of the measures the focus must be placed on the living conditions of the child and the assistance of the adequate professional services and the institutions must be required. If necessary, when the measures are not giving any results, the social welfare centre shall propose to the court the passing of another measure, and during the selection of new measures the attention will be paid to specific circumstances and needs“.

- In Section E) Judicial Bodies, new subsection 2 has been added and it reads as follows:

New subsection 2

„The courts must, when passing the decisions from family legal protection, in order to momentary cease the exposure of the child to domestic violence, act without delay and particularly take into consideration the protection of the interests of the child, after obtaining the opinion of the child either directly or through competent social welfare centre“, and former subsections 2, 3, 4, 5, 6, 7 and 8 became the subsections 3, 4, 5, 6, 7, 8 and 9.

Consistent with the mentioned alterations and amendments of the Protocol, in order to momentary protect the victims of domestic violence, the social welfare centres and the courts must act without delay.

1.3 RAPE/SEXUAL ASSAULT

In a number of criminal acts against sexual freedom and sexual morals the penalties have been extended as follows: Rape (Art. 188), Sexual intercourse with a helpless person (Art. 189), Using force to engage another person to a sexual act (Art. 109), Using power of position to engage another person to a sexual act, Sexual intercourse with the child (Art. 192), Satisfying lust in front of the child or the juvenile (Art. 194), Procuring (Art. 195), Child pornography on computer systems or Internet (Art.197a).

Article 188 – Rape

In Paragraph 1 the minimum imprisonment sentence has been increased from one to three years. The Article 188, Paragraph 1 reads: „Anyone who forces another person to sexual intercourse or an act equal to it by using coercion or by threats to attack the life or body of that or some other person, shall be punished by an imprisonment penalty of three to ten years.“

Article 189 – Sexual Intercourse with a Helpless Person

The minimum imprisonment sentence has also been increased from one to three years, and the penalties for the Sexual intercourse with a helpless person have been changed in Paragraph 1 from three to eight years, in Paragraph 2 from three to ten years as well as in the Paragraph 3 of the Article 189 which now reads:

(1) Anyone who performs sexual intercourse or an equal act taking advantage of a person's mental illness, mental retardation or other mental disorder, disability or some other state of that person due to which s/he is not capable of resistance, shall be punished by an imprisonment sentence of three to eight years.

(2) If due to acts referred to in Paragraph 1 of this Article a severe bodily injury is inflicted on a disabled person or if the act is committed by more persons or in a specially cruel or humiliating manner the perpetrator shall be punished by an imprisonment sentence of three to ten years.

(3) If due to an act referred to in Paragraphs 1 of this Article a person suffering the act died or suffered the severe bodily harm or caused serious health deterioration or if the act resulted in a pregnancy, the perpetrator shall be punished by an imprisonment sentence of three to ten years.

(4) If due to an act referred to in paragraph 2 of this Article the consequences as per Paragraph 3 of this Article have been caused, the perpetrator shall be punished by an imprisonment sentence of at least three years.

Article 190 – Sexual Intercourse by Duress

The penalty has been increased from minimum three months to minimum six months up to five years of imprisonment.

Article 191 – Sexual Intercourse by Abuse of Position

In Paragraph 1 the penalty has been increased from minimum three months to minimum six months up to three years of imprisonment, and in Paragraph 2, if the perpetrator was teacher, educator, parent, adoptive parent, guardian, stepfather, stepmother or other person who used its position or relation towards the juvenile who has been entrusted to him/her for tutoring, education, care or custody and performs a sexual intercourse or an equal act with a child the minimum punishment has been increased from six months to one year, while the longest imprisonment sentence of five years remained the same.

1.4 CHILD SEXUAL ABUSE/INCEST

The group of criminal offences against the sexual freedom and sexual morals within the Criminal Code includes also the following criminal offences: sexual act with the child (Art. 192), indecent acts (Art.193), satisfying lust in front of the child or the juvenile (Art. 194), procuring (Art. 195), exploitation of the children or the juveniles for pornography (Art 197), incest (Art. 198).

Article 192 – Sexual Intercourse with a Child

In the Paragraph 1 the penalty of minimum one year of imprisonment has been prolonged to the term of three to twelve years, in Paragraph 2 the penalty has been extended from three years to minimum five years or long-term imprisonment (20 to 40 years), In Paragraph 3 from the minimum one year the penalty has been extended to at least three years (up to 15 years), in Paragraph 4 the penalty remains at least five years of imprisonment or long-term imprisonment, while in Paragraph 5 the minimum penalty has been extended from five years to at least eight years.

Article 194 – Satisfying lust in the Presence of a Child

The penalty of a three months imprisonment has been changed to six months and up to three years.

Article 195 – Procuring

In Paragraph 1 the penalty is the imprisonment from one to five years, in Paragraph 2 from five months to three years, in Paragraph 3 from one to five years, in Paragraph 4 at least three years (up to 15 years), in Paragraph 5 from one to five years, and in Paragraph 6 at least five years (up to 15 years).

Article 196 – Abuse of Children or Juveniles in pornography

In Paragraph 1 of the Article 196 the penalty is the imprisonment from one to eight years.

Article 197 – Introducing Pornography to Children

In Paragraph 1 of the Article 197 the stipulated penalty is the imprisonment from six months to three years. With regard to previous report, in the Chapter 14 of the Criminal Code, by the mentioned alterations of the Code, the new criminal act has been introduced

Article 197a – Child pornography on computer systems or Internet, which reads as follows:

“(1) Whoever, using the computer systems or Internet, offers, distributes, procures for personal usage or for the usage of another person, or whoever in the computer system or on the media for safekeeping the computer data owns the pornographic contents which present the children or the juveniles in sexually explicit behaviour or which are focused on their sexual organs, will be punished with the imprisonment from one to ten years.

(2) Whoever, through computer systems, Internet of media for safekeeping of computer data, makes available to the child to see the photos, audiovisual contents or other subjects of pornographic content to a child will be fined or punished with imprisonment up to three years.

(3) Special devices, means, computer programs or data used or adapted for the commitment of the criminal act from Paragraph and 2 from this Article will be dispossessed.”

The Law on the Ombudsman for Children¹⁵, the Republic of Croatia established the special supervisory body – The Ombudsman for Children, as the institution sui generis, with the task to protect, monitors and promotes the rights and interest of the children on the basis of the Constitution of the Republic of Croatia, international agreements and laws.

The Ombudsman for Children monitors the harmonization of the laws and other regulations in the Republic of Croatia which are related to protection of rights and interests of the children with the provisions of the Constitution of the Republic of Croatia, Convention on the Rights of the Children and other international documents related to the protection of rights and the interests of the children; execution of the obligations of the Republic of Croatia arising from the Convention on the Rights of Children and other international documents; implementation of all regulations related to the protection of the rights and the interests of the children; violations of individual rights of children and reviews the general phenomena and manners of violation of rights and interests of the children.

If informed about the physical or psychical violence against the child, sexual abuse, maltreatment or exploitation, neglect or negligent treatment the Ombudsman for Children must at once report such cases to the competent public prosecutor's office and inform the relevant social welfare centre and suggest the measures for the protection of rights and interest of the child.

¹⁵ Enacted on 18th June 2003 (The Official Gazette: NN 96/03)

1.5 SEXUAL HARASSMENT

Sexual harassment is regulated by the Article 4. of Labour Law¹⁶ and Article 8. of Gender Equality Act¹⁷ which determines the general basis for protection and promotion of gender equality as the fundamental value of the constitutional order of the Republic of Croatia; it defines and regulates the manner of protection against the gender-based discrimination and creation of equal opportunities both for men and women.

Article 4 of the Labour Law - Harassment and sexual harassment

(1) Harassment and sexual harassment constitute discrimination within the meaning of Article 2. of this Law.

(2) Harassment is any unwanted behaviour caused by some of the prohibited discriminatory grounds from Article 2. paragraph 1. of Labour Law, which has as its goal or de facto represents violation of the dignity of a person seeking employment and of a worker, and which causes a fear or hostile, degrading or offensive environment.

(3) Sexual Harassment is every verbal, non-verbal or physical behaviour of a sexual nature which has as a goal or de facto represents violation of the dignity of a person (seeking employment and of a worker), and which causes a fear or hostile, degrading or offensive environment.

Article 8 of the Gender Equality Act

(1) Harassment and sexual harassment present the discrimination in terms of this Law.

(2) Harassment is any unintended behaviour caused by the person's gender, which aims at or represents the violation of personal dignity and creates disagreeable, hostile, humiliating or insulting environment.

(3) Sexual harassment is every unintended verbal or non-verbal, i.e. physical behaviour of sexual nature which aims at or represents the violation of personal dignity and creates disagreeable, hostile, humiliating or insulting environment.

In order to ensure the implementation of the Gender Equality Act the Government of the Republic of Croatia has established in April 2004 the Office for Gender Equality as the professional service for the activities connected with the realization of the gender equality. The Office performs all professional and other tasks by coordinating all activities which has a common goal of realisation the gender equality, which includes the extending the professional assistance in application and implementation of this Act and other regulations related to the gender equality, proposes to the Government of the Republic of Croatia and its bodies the enactment or the alterations of the law and other regulations as well as the adoption of other measures, prepares the national policy for gender equality promotion and supervises its implementation, makes the analysis and every two years reports to the Government of the Republic of Croatia on the implementation of national policy, monitors the harmonization and the implementation of the laws and other regulations related to gender equality with regard to international documents, prepares the national reports on fulfilling the international commitments in the gender equality area, cooperates with the non-governmental organizations which are active in this area and ensured the partial funding of their projects of activities, promotes the knowledge and awareness on gender equality, receives the petitions of the parties on violation of the provisions of this Act and other regulations, submits report to the Government of the Republic of Croatia about its activities every year, but not later than April of the current year for the activities of the past year.

The provisions of this Act introduced the institute of Ombudsman for Gender Equality as the special body (Article 19– 25) who examines the cases of the violation of the gender equality principles, cases of discrimination against the individuals or groups of individuals by the bodies of state administration, units of local and regional self-government and other bodies with public authorization, employees of those bodies and other legal and natural persons. The Ombudsman works independently, monitors the implementation of the Gender Equality Act and, at least once a year, reports to Croatian Parliament.

¹⁶ Labour Law (the Official Gazette: NN 137/04)

¹⁷ Gender Equality Act has been adopted in July 2003 (The Official Gazette: NN 116/03)

1.6 PORNOGRAPHY

No information provided.

1.7 PROSTITUTION

Article 178 – International prostitution

With regard to the previous report, in Paragraph 1 of the Article 178, the prison sentence has been increased to prison terms from six months to five years, in Paragraph 2 from one to eight years, and in Paragraph 3 not less than three years (up to 15 years).

1.8 OBSCENE PHONE CALLS/TELEPHONE SEX

No information provided.

1.9 FEMALE GENITAL MUTILATION

At the beginning of 2006, Croatia joined the new Network against Harmful Traditions – NAHT. NAHT is an international platform for representatives of non-governmental and European community based organisations, associations with expertise in working to stop harmful traditions, and governmental and political departments which are responsible for gender and health issues. Its aim is to link existing networks, as well as new organisations, in order to combat harmful tradition practices against women. In order to achieve this aim the Network defines itself by exchanging information, sharing acquired experience on the subject, and promoting good practices on the community level, as well as to prepare possible and necessary legal steps and measures for the European Union and responsible member states.

1.10 INTERNATIONAL CONVENTIONS

During the mentioned alterations, the legislator has harmonized the provisions with the relevant international conventions and the protocols from that area, such as: the United Nations Convention against Transnational Organized Crime, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and Protocol against the Smuggling the Migrants by Land, Sea and Air which supplement the mentioned Convention; CE Convention on Prevention of Trafficking in human beings; Convention on the Rights of the Child; Facultative Protocol related to the Selling of the Children, Child Prostitution and Use of Children in Pornography and the Facultative Protocol related to the Participation of Children in Armed Conflicts supplementing the Convention on the Rights of the Child.

By accepting the Beijing Declaration and Platform for Action, adopted in 1995 in Beijing on Fourth World Conference on Women and its amendments adopted on 23rd Special Session of the UN General Assembly in 2000 in New York as well as the final Declaration of the UN Commission on the Status of Women from 2005, Croatian has pledged to undertake further actions to ensure their complete and fast implementation, including the passing of the national strategy and action plan for improvement of the status of the women and ascertaining of gender equality.

The Republic of Croatia, as the party of the UN Convention on the Elimination of All Forms of Discrimination against Women, by notification on succession of 8th October 1991, condemned the discrimination against women and pledged to implement the principles and standards from the Convention by taking adequate special measures in social, political, legislative, economic and cultural spheres, in order to achieve the gender equality. According to the provisions of the Convention on regular submittal of reports to UN Commission for Elimination of Discrimination against Women covering the progress realized during its implementation, the Republic of Croatia, after the initial Report submitted to the Committee in 1994 for the period 1990-1994 which was reviewed in 1998, submitted in October 2003 the second and the third periodical Report for the period 1995-2003 (<http://www.ured-ravnopravnost.hr/page.php?id=59>).

Since the Convention on the Elimination of All Forms of Discrimination against Women is the basic international legal document from the area of protection and promotion of human rights of women, the Republic of Croatia, as the member state of the United Nations, also pledged to implement the goals from the Millennium Declaration – the political document of the United Nations for the 21st century adopted on the 55th Session of the UN General Assembly in September 2000.

National policy for gender equality promotion for the period 2006-2010¹⁸ integrates the goals and measures of the UN Convention on the Elimination of All Forms of Discrimination against Women, including the Final comments of the UN Commission for Elimination of Discrimination against Women Beijing Platform for Action and Millennium Development Goals, which confirms the principles of the Declaration of the UN Commission for the Elimination of All Discrimination against Women from July 2005 on inclusion of gender perspective through complete and efficient implementation of the provisions of the Convention as the prerequisites for the achievement of Millennium Development Goals in gender equality strategy in the Republic of Croatia.

Recognising the complexity of the Trafficking in human beings problem which presents one of the most serious forms of the human rights infringements, the problem of migrations, illegal wars, money laundering and other criminal activities, the Republic of Croatia signed the United Nations Convention against Transnational Organized Crime and its Protocols, as well as two relevant protocols: Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and Protocol against the Smuggling the Migrants by Land, Sea and Air.

As the member state of the Council of Europe since 6th November 1996 the Republic of Croatia accepted numerous international legal instruments in the sphere of human rights enacted within the framework of this organisation and it regularly participates in the work of its Steering Committee for Equality between Men and Women. Antidiscrimination framework has been set up by the Convention for the Protection of Human Rights and Fundamental Freedoms in 1950 (EHCR) as well as by the number of relevant protocols. Apart from the acceptance of the Protocol no. 12 to the European Convention on Human Rights from 2000, which was enacted in 2005 and is related to the ban of discrimination based on gender, the activities related with the realization of gender equality are determined with the series of other recommendations and resolutions.

The Republic of Croatia, in consistence with the goal for strengthening the security of European citizens from the Action plan adopted on the Third Summit of the Heads of State and Government in Warsaw (16th/17th May 2005), joined the CE Violence Against Women Task Force in order to prepare the common Pan European campaign 2006-2007 and pledged to ratify the European Convention against Trafficking in human beings. By participating in 6th European Ministerial Conference on Equality between Women and Men (Stockholm, 8th/9th June 2006) the government of the Republic of Croatia accepted the Resolution of the Conference „Achieving gender equality: a challenge for human rights and a prerequisite for economic development“ as well as the Action plan „Achieving gender equality in all spheres of society“, confirming , thus, our consent for implementation of included strategic goals and activities as common European standards in strengthening the implementation of the policy of equal opportunities.

1.11 PROTECTION OF PREGNANCY/PREGNANT WOMEN

Article 97 of Criminal Code – Unlawful Pregnancy Termination has not been changed:

- (1) Whoever, in violation of regulations on termination of pregnancy, assists a pregnant woman, with her consent, to start performing an abortion, performs an abortion on her or assists her in performing an abortion, shall be sentenced to imprisonment from six months to three years.
- (2) Whoever starts performing or performs an abortion on a pregnant women without her consent, shall be sentenced to imprisonment from one to eight years.
- (3) Whoever commits an offence referred to in Paragraph 1 above after the tenth week from conception, shall be sentenced to imprisonment from six months to five years.
- (4) Whoever commits an offence referred to in Paragraph 2 above after the tenth week from conception, shall be sentenced to imprisonment from three to ten years.
- (5) If the offences referred to in Paragraphs 1 and 2 above resulted in the death or in severe damage to the health of the women concerned, the perpetrator shall be sentenced to imprisonment from one to eight years.

¹⁸ National policy for gender equality promotion 2006 – 2010 adopted at the session of the Government of the Republic of Croatia on 14th September 2006

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

2.0 SENTENCING

2.1 SENTENCING DOMESTIC VIOLENCE

See Section 1.2 above.

3.0 EFFECTIVENESS OF LEGISLATION

Since the above mentioned Laws came into force and various governmental and non-governmental institutions jointly became even more active in rising public awareness about the problem, the number of reports about domestic violence increased with regard to previous years and it is still in constant increase.

4.0 DOMESTIC VIOLENCE

The victims of domestic violence are mostly women, and the number of police interventions due to domestic violence with regard to previous years is in constant increase. According to the data obtained from the Ministry of the Interior during 2005 the police intervened in 15,696 cases of domestic violence which is 6.2 % more than in 2004 when 14,785 interventions were demanded. The required police intervention has been carried out in 15,696 cases (i.e. all required interventions). During carrying out of authorized measures 5,998 persons were brought in, which is 36.2% more than in 2004 when 4,404 persons were brought in. In order to protect the victim due to the justified suspicions that the violence might be continued 4, 454 persons were held in police custody which is 30.6% of the cases more than in 2004 when 2,840 persons were held in the custody.

Due to offences through domestic violence or in relation to the domestic violence (breach of public order, breach of weapon regulation, etc.) 14,795 persons were charged with misdemeanour which is for 20.0% more than in 2004 when 12,333 persons were charged with misdemeanour. Due to criminal offence through domestic violence the criminal charges were filed against 3,324 persons, which is 16.1% more than in 2004 when criminal charges were filed against 2,864 persons. Domestic violence affected 22,207 persons or 14.0% more than in 2004 (19,475 persons). In 2005, due to domestic violence the police suggested to Magistrates' courts the issuing of 4,916 precautionary measures. By the mentioned violent offences 3,155 children were affected (17.53%) out of which 2,237 were under 14.

The Office of Gender Equality Ombudsman received in 2005 77 reports of domestic violence, and, since its establishment¹⁹, the Office of the Ombudsman for Children the total of 168 reports of infringement of rights regarding the domestic violence and neglect. During 2005 the Office of the Ombudsman for Children received 87 reports which 153 children were included. With regard to frequency of the violence only 5% of the infringement was related to one-time violence while in the remaining 95% the domestic violence was recurring, i.e. continuous.

From the total number of reports received by the Ombudsman for Children, 32 reports informed about the psychical violence (37%), 20 reports were related to physical violence and neglect of the juveniles (23%), while 15 reports (17%) dealt with sexual violence. With regard to gender of children exposed to domestic violence, 58% of the cases of violence referred to the girls, in 38% of the cases the victims of the violence were boys while in 4% of the cases the gender of the child was not identified.

Speaking of domestic sexual violence in family in 46% of the cases the perpetrator of the sexual violence was the father, in 27% of the cases other members of the family, in 13% of the cases the stepfather, in 7% of the cases the grandfather and in 7% of the cases the grandmother.

5.0 RAPE AND SEXUAL ASSAULT IN MARRIAGE

No information provided.

¹⁹ September 2003.

6.0 RAPE AND SEXUAL ASSAULT

See Section 1.3 above.

7.0 SEXUAL HARASSMENT

No information provided.

8.0 INCEST/SEXUAL ABUSE OF GIRLS

The Office of the Ombudsman for Children registered 46 cases which, in wider or narrower terms, represent the cases of child abuse of 84 children. These cases represent 5% of the total number of the cases registered in the Office

Apart from individual cases in which it is quite easy to determine the number, age and gender of the endangered children some cases were recorded in which the individuals endangered or could potentially endanger the unidentified group of children and as the perpetrators were reported: the teacher, the "exhibitionist", the advertising agency. In the first example, where the teacher is the perpetrator, we are dealing with a larger number of secondary school students (about 20 children). In two other examples we are talking about the potential endangerment of unidentified number of children connected with the behaviour of reported perpetrator in public places (satisfying lust in front of children and/or exploitation of children for marketing purposes which may encourage child abuse).

Child abuse in the narrow sense of its meaning (according to DSM IV) is considered to be the sexual disorder which includes the sexual activity with prepuberty child in which the perpetrator is at least 16 years old and 5 years older than the child. Even though the child is considered to be a person not older than 14 we presented the cases of sexual activities with the juveniles from 14 up to 18.

Child abuse crime includes: sexual intercourse, sexual misconduct, satisfying lust in front of a child (exhibitionism, masturbation), filming the child, exposure of children to pornographic materials, exploitation of children for pornographic purposes, child abuse over Internet, etc.

From 84 abused children (46 reported cases) the majority of cases include sexual intercourse (28% of the total number of children), sexual misconduct (27%) and satisfying lust in front of the children (22%). We are dealing here with 43 sexually abused children whose development has been hindered and the experience of the world changed while they are, at the same time, obstructed in long-term satisfying of basic human needs for safety, love, respect and self-respect.

The following behaviours have been recorded in the occurrence range from 2 to 7%: filming of the child (one child), exposure to pornographic contents (two children), exposure to sexual scenes (two children), using the children for pornographic purposes (two children), distribution of photos of a naked child through Internet (1 child) and other: sexual allusions in communication with the child, using the photos of naked children for marketing purposes.

Child abuse in wider sense of its meaning includes the acts which represent the creation of conditions for realization of child abuse crime and the existence of potential victims (e.g., the availability of child abuse content on Internet of electronic media – without information about individual endangerment of the child or, for example, the painted exteriors of the vans covered with photos of naked bodies of small children for advertising purposes).

In u 61% of the reported cases the victims were girls, in 33% the abused children were boys, and for 6% of the children it was impossible to determine the gender on the basis of the available documentation.

The youngest sexually abused child (according to the report) was only three years old. If we set the age limit of 14 years in definition of child abuse (according to DSM-IV) the Office recorded 48 abused children. Sixteen children belong to the age group of 15-18 years, and twenty children are of unknown age.

In the majority of cases the perpetrators are the parents (32%). In 7% of the cases the perpetrators are the relatives of the child (grandfather, brother, uncle, cousin), and in 61% of the cases the perpetrators are: stepfather, family friend, neighbour, godfather, godmother, subtenant in parental house, «benefactor» of the family, «fiancée», teacher or coach, employee of the centre, bus driver, or a person completely unknown to a child.

CYPRUS

Information provided by the Ministry of Justice and Public Order in **November 2000, March 2003 and September 2006.**

1.0 LEGISLATION AND SANCTIONS RELATING TO VIOLENCE AGAINST WOMEN

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

In Cyprus women enjoy equal protection of the law and have equal rights with men at work. (Equal Pay between Men and Women for Work of Equal Value, Law No. 177(I) of 2002, Equal Treatment in Employment and Professional Trainings, Law No. 205 (I) of 2002, Equal Treatment in Social Security, Law No. 133 (I) of 2002). Women also have the same rights as men to property, inheritance and family income. (Spouses Property Relation, Law 232 of 1991). Moreover, men and women alike have the same rights regarding causes for divorce.

1.1 LETTER OF LAW – DEFINITIONS

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

In 2000, a new law on Violence in the Family (Prevention and Protection of the Victims) was adopted¹

1.2 DOMESTIC VIOLENCE

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

The new law has been completely restructured. Briefly, part II deals with the meaning and the scope of violence and part III with the appointment of family counsellors and committees. Part IV introduces new provisions regarding the taking of statements by the use of audiovisual electronic means. Statements obtained by the use of these means may be produced in evidence without any need to re-examine the witness in chief, which, however, is available for the other side for cross-examination. Part V contains provisions for speedy trial and for the protection of the witness from harassment or intimidation.

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

Under section 18, the court is empowered to provide protection to victims and witnesses of violence by taking their evidence as to avoid direct confrontation with the accused, but without depriving the

¹ Law No. 119(1)/2000

accused of his right to examine the witness. The use of screens, close circuit television links and other means producing the same effect may achieve this.

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

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

Sections 21 to 24 deal with the issue of restraining orders. These provisions were carried forward from the old law.

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

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

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

It is important to note that there has been an amendment of Law No.119(I) /2000 made by Law No.212(I) /2004.

1.3 RAPE/SEXUAL ABUSE

No information provided.

1.4 CHILD SEXUAL ABUSE/INCEST

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

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

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

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

1.5 SEXUAL HARASSMENT

No information provided.

1.6 PORNOGRAPHY

No information available.

1.7 PROSTITUTION

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

1.8 OBSCENE PHONE CALLS/TELEPHONE SEX

No information provided.

1.9 FEMALE GENITAL MUTILATION

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

1.10 INTERNATIONAL CONVENTIONS

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

1.11 PROTECTION OF PREGNANCY/PREGNANT WOMEN

No information provided.

2.0 SENTENCING

2.1 SENTENCING DOMESTIC VIOLENCE

The Violence in the Family Law 2000 lists offences stating that when they are committed within the family, they are treated as particularly aggravated and consequently the penalty contained in the penal code may be increased to reflect this. The table below indicates this change in (presumably) the maximum sentence (This table provides limited information regarding sentencing regarding violence against women in other contexts).

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

SUSPENDED SENTENCES AND PROBATION

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

The court also has the power, with the request of the accused, place him on probation "*with the requirement that he shall submit himself to treatment for self control by specialists to such behaviour or with other requirements as the court may consider necessary for preventing the repetition of such acts of violence*" s25.

3.0 EFFECTIVENESS OF LEGISLATION

3.1 SUPPORT/PROTECTION

RESTRAINING ORDERS

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

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

The conditions of a restraining order may be varied at an enquiry hearing in which all parties affected by it may make representation, the accused may apply for its revision or revocation. If the accused owns more than half the property, the court inquires into accommodation for the accused. If he owns less than half, this is delegated to a family counsellor.

CORROBORATION

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

CRIMINAL PROCESS

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

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

COURT ORDER FOR THE REMOVAL OF A MINOR

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

WITNESS PROTECTION

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

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

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

Family Counsellors, are appointed:

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

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

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

ADVISORY COMMITTEE FOR THE PREVENTION AND HANDLING OF VIOLENCE IN THE FAMILY

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

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

The committee members have knowledge and experience in matters relating to violence in the family and are selected from public and private sectors. Ministry of Health, Justice and Public Order, Social Welfare, Legal Service and Police select appointees from the public sector. Private sector appointees are selected by associations/organisations involved in combating family violence. In cases where the victim is under 18, the committee will include a child psychologist, a pediatrician, a clinical psychologist, a welfare officer and any other persons possessing qualification considered necessary.

MANDATORY REPORTING

The reporting of family violence cases is not compulsory by law. However, public officers of the Ministries of Health, Education, Justice and Public Order (Police) and Labour and Social Insurance (Social Welfare Services) have a mandatory duty to report to the Attorney's General's Office any referrals regarding concerns, suspicions or evidence of family violence including domestic violence. Additionally, according to the article 35A, any person who omits to report a case of violence against a minor or a person having severe mental or psychological deficiencies, which came to his or her knowledge, commits an offence.

MANUAL OF INTERDEPARTMENTAL PROCEDURES

A manual of interdepartmental procedures concerning family violence was approved by the Council of Ministers. This document provides a national framework within which statutory departments and professionals draw up and agree upon detailed procedures and ways of working together.

The manual of interdepartmental procedures will be updated according to Council of Ministers' decision.

RESPONDING TO VICTIMS

Response to victims of domestic violence is undertaken by Family Counsellors whose role, as specified by the law, includes carrying out investigations, making arrangements for the medical examination, the safety and well-being of the victim, providing advice, counselling and mediation and taking steps for the commencement of proceedings against the perpetrator. Social Welfare Services provide counselling, financial and practical assistance, as well as information on existing services. They also undertake to make referrals with the victim's consent.

TRAINING OF THE POLICE

Members of the police undergo specific training on the subject of Domestic Violence so that they can deal with such cases, to understand and respond to them appropriately and adequately. Given the fact that most complaints are filed by women, special training emphasis is given to women police officers to whom most cases are referred.

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

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

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

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

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

The investment in Police training in the field of Domestic Violence has over the past few years continued and intensified. Training at the level of cadet, sergeant and inspector continues and specialised week long seminars are organised annually for officers who investigate cases of Domestic Violence. Professionals from European countries and the United States are occasionally involved in our training and members of our Police attend Domestic Violence training programs delivered in the UK or in the United States.

A series of specialized Domestic Violence training programs are scheduled for Spring 2003 (17-21/3/03 and 07-11/4/03) so that all shifts of Crime Investigation Departments and more shifts of Police Stations are staffed with especially trained personnel. Other trainings on the subject of interviewing techniques with the assistance of videotaping equipment are being reviewed and they will take place in the first half of 2003. Aiming at better interdepartmental co-operation a number of meetings of representatives of the various agencies that are involved on the issue are to take place during 2003, with the first such meeting scheduled for February 20th.

Police personnel attend local and international meetings and conventions on the issue and Police spokespersons regularly raise the issue during media presentations (TV, radio, newspapers, magazines) and at special meetings/ gatherings of various associations.

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

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

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

The most recent circular was issued by the Chief of Police in January 2003. The circular established the Bureau for Handling issues of preventing and combating Domestic Violence and Child Abuse and stated its duties as mentioned in the Manual of Inter-departmental procedures which was adopted by the Council of Ministers of the Republic in May 2002. The Bureau operates at Police Headquarters and its personnel include a staff lawyer and a staff psychologist. The manual for Interdepartmental cooperation in its chapter on Police incorporated previous Police notes which highlighted the basic and the most important element 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 of the privacy of the victim, and extreme sensitivity concerning confidentiality
- Provisions for medical support and examination
- Collection of corroborating testimony and other evidence
- Cooperation with victim support services to arrange temporary shelter for the victim if necessary
- Objectivity and neutrality. Avoidance of 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 alleged triggering event (excuse)
- Refer the victim to the Social Welfare Department, to a telephone helpline operated by the Association for Prevention and Response to Domestic Violence, and to other agencies or specialists.
- Refrain from acting as family counselor, psychologist, social worker, or mediator
- Informing the victim about rights and give options and alternative routes of action
- Respect for the victim's decision to file or not charges

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".

In accordance with Police directions, on the issue of specially designed premises, where necessary and possible special rooms have been established and furnished to be used for hosting and handling victims of Domestic Violence. At this point several of these rooms are being renovated to accommodate specialised statement videotaping equipment, which is planned to be installed in February 2003. As soon as the systems are installed and operating and the affected staff are adequately trained for this purpose we will be videotaping statements of domestic violence victims as well as of other witnesses who are considered in need of protection under the Law 95(1)2001.

SUPPORT SERVICES

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

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

4.0 DOMESTIC VIOLENCE

See **Section 1.2** above.

5.0 RAPE AND SEXUAL ASSAULT IN MARRIAGE

No information provided.

6.0 RAPE AND SEXUAL ASSAULT

No information provided.

7.0 SEXUAL HARASSMENT

No information available.

8.0 INCEST/SEXUAL ABUSE OF GIRLS

See **Section 1.4** above.

CZECH REPUBLIC

Information provided by the Ministry of Foreign Affairs in **November 2000, February 2003 and September 2006**.

1.0 LEGISLATION AND SANCTIONS RELATING TO VIOLENCE AGAINST WOMEN

In the Czech Republic, the elimination of violence against women forms part the Czech Government's programming document "Government Priorities and Approach to Gender Equality Promotion" since 1998, within the framework of implementation of the Convention on the All Forms of Discrimination Against Women.

Protection of personal integrity against violent attacks is laid down in law. The protection of women is an integral part of criminal law, social and family law, and the civil code.

The relevant provisions of the Criminal Code (Act No. 140/1961 Coll., as amended) are, inter alia, bodily harm, restriction of personal liberty, deprivation of personal liberty, extortion, oppression, violence against a group of persons and against an individual, rape, sexual abuse, abandonment of a child, neglect of compulsory maintenance, maltreatment of person entrusted to one's care, maltreatment of person living in a shared apartment or house.

Changes have occurred in between the two periods and they concern the following sections of the Criminal Code:

Section 241 of the Criminal Code (statutory rape) was amended by Act No. 134/2001 effective from 30 April 2001. The amendment is based on a new definition of sexual assault. The original definition covering only vaginal penetration was broadened to include oral and anal sexual intercourse because these types of intercourse tend to have an equally or even more adverse effect on the victim. On the basis of this broader definition of rape, the protection accorded to rape victims under Section 241 was broadened accordingly to include not only female but male victims. An amendment introduced by Act No. 320/2006 tightened the sanctions for rape.

Sections 219 (murder), para 2(g) and 235 (extortion), para 2(f) of the Criminal Code were amended by Act No. 134/2002 and Act No. 320/2006. Another amendment, introduced by Act No. 91/2004, inserted in the Criminal Code new Section 215a (Maltreatment of a Person Living in a Jointly Occupied Flat or House). "Maltreatment" is understood to mean bad treatment of person that is marked by higher degree of roughness and ruthlessness and certain duration, which the person feels as grave wrong. Duration must be considered in relation to intensity of maltreatment. It is not required that bad treatment is systematic or lasting for a long period of time. Maltreatment may be both physical and psychical. No injury to health is required.

1.1 LETTER OF LAW – DEFINITIONS

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

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

Act No. 135/2006 amending certain acts relevant to protection against domestic violence (Protection against Domestic Violence Act) was passed by the Czech Parliament on 14 March 2006 and took effect on 1 July 2007. It fundamentally changes the approach to the protection of persons at risk of domestic violence, placing emphasis on prevention – the need to act before the abusive behaviour escalates into a crime, causing the victim severe mental or physical harm. The Protection against Domestic Violence Act inserts in the Czech Republic Police Act new Sections 21a-21d and 42n, permitting the police to temporarily exclude (by an administrative order) the abusive partner from the shared home and deny him/her access to a certain area. To help abused persons, the police is allowed to enter the otherwise protected private sphere. Section 21b(2) requires the police to deliver to

the local Intervention Centre a copy of the exclusion order, together with a copy of a police record concerning entry in a private home (Section 21(5) of the Czech Republic Police Act). If there are minor children in the home, the police must deliver another set of copies to the local child welfare authority.

The Intervention Centre takes the next steps necessary to accomplish the purpose of the Protection against Domestic Violence Act: the abuser is temporarily separated from the abused partner, the victim is given expert assistance, including time to recover and decide on his/her next step, and offered other services; the Intervention Centre also coordinates the action of bodies involved in the protection of abuse victims.

The Protection against Domestic Violence Act amended the Code of Civil Procedure to include a special interim order protecting persons whose life, health, personal liberty or dignity are seriously endangered by domestic violence. At the request of the threatened person, the court may order the abusive partner to stay away from the shared home and refrain from contacting the victim for one month.

Section 171 of the Criminal Code (obstructing the execution of an official order) is amended to include a specific reference to the act of obstructing the execution of exclusion orders issued by the police or courts.

The Protection against Domestic Violence Act establishes an integrated system for the protection of domestic violence victims. To avert the immediate danger, the police excludes the abusive partner from the family home and continues to check his/her compliance with the order. Following the exclusion order, the Intervention Centre offers assistance to the victim (time for recovery and next steps according to the victim's individual requirements).

The role of the Intervention Centres is described in the new Social Services Act (Act No. 108/2006), which is to take effect on 1 July 2007 together with the Protection against Domestic Violence Act. Section 60 (Emergency assistance), paragraph (1), second sentence:

Following an exclusion order issued under special regulations, the person threatened by the violent conduct of the excluded person shall be offered assistance within 48 hours from the service of a copy of the order. In such case, the service includes coordination of the assistance provided to the threatened person by public authorities and other legal entities and natural persons.

1.2 DOMESTIC VIOLENCE

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

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

An amendment introduced by Act No. 91/2004 effective from 1 June 2004 inserted in the Criminal Code new Section 251a:

Section 215a

Maltreatment of a Person Living in a Jointly Occupied Flat or House

- 1) Whoever maltreats a next of kin or other person, that lives with him/her in jointly occupied flat or a house shall be liable to imprisonment for a term not exceeding three years.
- 2) The offender shall be liable to imprisonment for a term of two to eight years,
 - a. if he commits the act defined in paragraph 1 in especially cruel manner or on more than one person, or
 - b. if the contravention has continued for a prolonged period of time.

Next of kin is a relation of a direct line of descent, adoptive child, adoptive parent, sibling and spouse; other persons related by blood or marriage are considered next of kin only if a damage sustained by one of them would be rightly felt by another as damage sustained by himself.

Section 215

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

“*Maltreatment*” is defined as a prolonged period of rough and cruel treatment. The necessary condition is that the victim feels wronged by such treatment. For adjudication purposes, the “prolonged period” is a flexible criterion applied with regard to the severity of the victim’s suffering. In any case, maltreatment causing or intended to cause severe suffering or serious injury is classified as particularly dangerous to society and carries stricter penalties.

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

Section 219

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

Paragraph 2 enumerates aggravating circumstances that justify tighter sanctions:

- (2) “The offender shall be liable to imprisonment for a term of twelve to fifteen years or to an exceptional penalty if he commits the act defined in paragraph 1”
 - (a) against two or more persons,
 - (b) in a particularly cruel or torturous manner,
 - (c) repeatedly,
 - (d) against a pregnant woman,
 - (e) against a person below the age of fifteen years,
 - (f) against a public official in the course of the execution of his official duties or for reasons connected with the execution of his official duties,
 - (g) against another person for reasons of race, ethnic origin, nationality, political opinion, religion or because the person has no religion, or
 - (h) with the intention to obtain considerable gain or to conceal or facilitate another crime, or for any other particularly condemnable reason.”

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

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

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

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

Section 221

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

Section 222

- (1) A person who intentionally causes grievous bodily harm to another person, shall be liable to imprisonment for a term of two to eight years.
[...]
- (3) The offender shall be liable to imprisonment for a term of five to twelve years if by the act defined in paragraph 1 [...] he causes death.

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

Section 231

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

Section 232

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

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

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

Section 230

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

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

1.3 RAPE/SEXUAL ASSAULT

Section 241, paragraph 1 of the Criminal Code, Act No. 140/1961 Coll. As amended (hereinafter referred to as the "Criminal Code") contains the following definition of rape:

Section 241

- (1) A person who through violence or threat of immediate violence forces another person to genital-genital or analogous sexual intercourse, or a person who commits the act taking

advantage of another person's defencelessness, shall be liable to imprisonment for a term of two to eight years.

- (2) The offender shall be liable to imprisonment for a term of three to ten years if he commits the act defined in paragraph 1 against a person under eighteen years old.
- (3) The offender shall be liable to imprisonment for a term of five to twelve years
 - (a) if by the act defined in paragraph 1 he causes grievous bodily harm, or
 - (b) if he commits the act against a person under fifteen years old.
- (4) The offender shall be liable to imprisonment for a term of ten to fifteen years or to extraordinary sentence if by the act defined in paragraph 1 he causes death.

The rape legislation provides for situations when the offender through force or threat of force makes a person perform sexual intercourse with another person. The offender's gender is regarded as immaterial.

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

Section 235

- (1) A person who through force, the threat of force or the threat of any other serious harm makes another person perform, omit or tolerate any actions, shall be liable to imprisonment for a term not exceeding three years;
- (2) The offender shall be liable to imprisonment for a term of two to eight years,
 - a) if he commits the act defined in paragraph 1 as a member of an organised group,
 - b) if he commits the act together with two or more persons,
 - c) if he commits the act with a weapon,
 - d) if by the act he causes grievous bodily harm or considerable damage" (i.e. minimum monthly wage multiplied by 100),
 - e) if he commits the act against a witness or expert witness or interpreter for any reason relating to the discharge of their official duties, or
 - f) if he commits the act against another person for reasons of race, ethnic origin, nationality, political opinion, religion or because the person has no religion.
- (3) The offender shall be liable to imprisonment for a term of five to twelve years if by the act defined in paragraph 1 he causes damage of a large extent;
- 4) The offender shall be liable to imprisonment for a term of ten to fifteen years or to extraordinary sentence if by the act defined in paragraph 1 he causes death.

Considerable damage – more than 500.000 CZK, damage of a large extent – more than 5.000.000 CZK.

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

1.4 CHILD SEXUAL ABUSE/INCEST

SEXUAL ABUSE

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

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

Section 242

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

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

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

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

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

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

INCEST

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

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

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

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

TRAFFIC IN CHILDREN

A person who entrusts another person with the custody of a child-girl in return for money or other compensation commits traffic in children under Section 216a of the Criminal Code (Act No. 537/2004 effective from 22 October 2004 introduced in the Criminal Code new Section 216a:

Section 216a

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

- (3) The offender shall be liable to imprisonment for a term of three to ten years if by the act defined in paragraph 1 he causes grievous bodily harm, death or any other serious consequence.

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

LIMITED CRIMINAL LIABILITY

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

Section 79

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

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

Section 31

Deprivation of liberty

- (1) In sentencing juveniles, the prison terms provided in the Criminal Code shall be reduced to a half. The prison term shall not be longer than five years and shorter than one year.
- (2) A Court for Juveniles may sentence a juvenile to an unconditional deprivation of liberty only if, in respect to conditions of the case, the person of the juvenile or previously used measures, different criminal measures are clearly not deemed sufficient to achieve the purpose of this Act.
- (3) A juvenile who commits a wrongdoing which carries an exceptional penalty under the Criminal Code and due to the extremely condemnable method of commission or extremely condemnable motive or extremely grave and irredeemable consequences, is classified as a crime particularly dangerous to society, shall be liable to imprisonment for a term of five to ten years if the penalties laid down in paragraph 1 are not deemed sufficient to achieve the purpose of punishment.

1.5 SEXUAL HARASSMENT

SEXUAL HARASSMENT AT WORK

The operative labour legislation says that sexual harassment is unacceptable:

The Labour Code (Act No. 65/1965 as amended) always contained clauses requiring proper behaviour in the workplace. Breaches of this duty were classified as workplace violence or sexual harassment although the Labour Code did not expressly define them as such.

An amendment to the Labour Code, introduced by Act No. 155/2000 effective from 1 January 2001, expressly prohibits sexual discrimination and establishes the victim's entitlement to compensation, including compensation for other than proprietary harm (moral harm). The amendment also bans sexual harassment, defined as "undesirable conduct of a sexual nature". Section 7 (2) says that "nobody shall misuse the rights and obligations arising from the employment relationship to harm another party to the employment relationship or to degrade his/her human dignity".

Actions "degrading human dignity" include undesirable workplace conduct of a sexual nature, which is unwelcome, improper or offensive, or which can well be regarded by another party to the employment relationship as a condition for decisions that affect the exercise of the rights and obligations arising from the employment relationship.

An amendment to the Labour Code introduced by Act No. 46/2004 effective from 1 March 2004 provides additional details on the anti-discriminatory measures ensuring the equality of men and women, in order to improve their enforceability. In the context of sexual harassment, this amendment:

1. Introduces more detailed definitions of direct and indirect discrimination, harassment, sexual harassment, in order to enhance legal certainty and facilitate law enforcement,
2. Broadens the definition of discrimination to include the act of inciting discrimination or causing pressures that result in discrimination,
3. Requires employers to inform employees about steps taken by the employer to ensure equal treatment and prevent discrimination.

Similar provisions are included in the Employment Act (Act No. 435/2004), i.a. in connection with recruitment.

SEXUAL HARASSMENT OUTSIDE THE WORKPLACE

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

Section 49 – Breaches of good civil relations

- (1) An offender commits a misdemeanor if he
 - a) harms the reputation of other by insult or by ridicule,
 - b) inflicts negligent damage to the health of other person,
 - c) intentionally violates good civil relations through threats of bodily harm, minor injury, false accusation of a misdemeanor, willful and wanton acts, or other gross misconduct,
 - d) limits or denies exercise of rights of a national minority to a member of such a minority,
 - e) causes damage to another for his membership to national minority or for his ethnical origin, for his race, color, sex, sexual orientation, language, faith or religion, political or another opinion, membership or activity in political parties or political movements, union organizations or other societies, for his social origin, wealth, family, health or for his marriage or family status.
- (2) The penalty for misdemeanor under paragraph 1(a) shall be a fine not exceeding 1.000 CZK, the penalty for misdemeanors under paragraph 1 (b) and (c) shall be a fine not exceeding 3.000 CZK and the penalty for misdemeanors under paragraph 1 (d) and (e) shall be a fine not exceeding 5.000 CZK.

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

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

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

1.6 PORNOGRAPHY

No information provided.

1.7 PROSTITUTION

No information provided.

1.8 OBSCENE PHONE CALLS/TELEPHONE SEX

No information provided.

1.9 FEMALE GENITAL MUTILATION

The Criminal Code does not contain any special provisions on genital mutilation. Depending on the circumstances, such cases would be classified as grievous bodily harm under Section 222 of the Criminal Code or murder under Section 219 of the Criminal Code.

1.10 INTERNATIONAL CONVENTIONS

The UN Convention on the Elimination of All Forms of Discrimination against Women was signed on 17 July 1980 and entered into force in respect of the Czech Republic on 18 March 1982. The Czech Republic became a party to the Convention upon its establishment on 1 January 1993, when it succeeded to all international obligations of the former Czech and Slovak Federal Republic.

The Optional Protocol to the Convention was signed on 10 December 1999 and entered into force in respect of the Czech Republic on 26 May 2001.

1.11 PROTECTION OF PREGNANCY/PREGNANT WOMEN

Protection of pregnancy is covered by Chapter VII of the Criminal Code, Sections 227-229:

Section 227 - Unauthorised Abortion

- (1) A person who assists a pregnant woman or induces her to:
 - a) Interrupt her pregnancy by herself; or
 - b) Ask or allow someone else to interrupt her pregnancy in a manner other than that admissible under the statutory provisions on abortion;shall be liable to imprisonment for a term not exceeding one year.
- (2) An offender shall be liable to imprisonment for a term of one to five years if by an act defined under paragraph 1 he causes severe injury or death.

Section 228

- (1) A person who, acting with the consent of a pregnant woman, terminates her pregnancy in a manner other than that admissible under the statutory provisions on abortion shall be liable to imprisonment for a term of one to five years.
- (2) An offender shall be liable to imprisonment for a term of two to eight years if:
 - a) he acquires substantial benefit by an act defined under paragraph 1;
 - b) he regularly commits an act defined under paragraph 1; or
 - c) he causes grievous bodily harm or death by an act defined under paragraph 1.
- (3) The same punishment (sentence) as that under paragraph 2 shall be imposed on any person who terminates a woman's pregnancy without her consent.
- (4) An offender shall be liable to imprisonment for a term of five to twelve years if he causes death by an act defined by paragraph 3.

Section 229

A pregnant woman who terminates her pregnancy herself, or who asks another person or allows another person to terminate it, shall not be liable to punishment for such act, not even under the provisions on instigators and assistants.

Murder of a pregnant woman is an aggravated crime under Section 219(2)(d) punished by 12-15 years in prison.

2.0 SENTENCING

2.1 SENTENCING DOMESTIC VIOLENCE

Court statistics – crimes falling under Section 215a – maltreatment of a person living in a shared home:

2005:

Crimes, total	150
Sentenced offenders, total	134
- including women	3
- intoxicated with alcohol	4
- intoxicated with drugs	1
- habitual offenders	23
- aged 18-19	1
- aged 20-24	9
- aged 25-29	29
- aged 30-39	51
- aged 40-49	38
- aged 50 and over	23
Unconditional sentence	26
- including prison sentence of less than one year	17
- 1-5 years	9
Conditional sentence	90
Fine	2
Community service	8
Absolute discharge	8
Concurrent sentences	3
Hospital orders, total	16
- alcohol treatment	12
- drug treatment	1
- other	3
Acquitted	10
Discontinued	4
Transferred	13

2004 (effective from 1 June 2004):

Crimes, total	1
Sentenced offenders, total	1
- intoxicated with alcohol	1
- aged 40-49	1
Conditional sentence	1

3.0 EFFECTIVENESS OF LEGISLATION

3.1 SUPPORT/PROTECTION

FINANCIAL ASSISTANCE BY THE STATE TO CRIME VICTIMS

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

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

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

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

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

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

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

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

“The state shall not provide assistance, if the victim

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

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

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

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

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

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

WITNESS PROTECTION

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

“Criminal prosecution for crimes...of bodily harm under Section 221, 223 and 224,...restriction of personal liberty under Section 231, paragraph 1, extortion under Section 235, paragraph 1 of the

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

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

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

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

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

OTHER SERVICES

Asylum houses in the Czech Republic are operated by the communities and non-governmental organisations. The founders are mostly non-profit organisations, (civic association, churches), aided and advised by the Ministry of Labour and Social Affairs.

In 2006 the Ministry of Labour and Social Affairs has supported 32 projects (20 non-profit NGOs) assisting victims of violence against women and domestic violence, in particular shelters for abused women and mothers with children. Overall, the Ministry has provided more than CZK 21 million to support such shelters.

In 2005, the Labour Ministry launched a grant sub-programme “Support of activities to suppress domestic violence against women”. Among the selected projects were projects focused on counselling services for victims of domestic violence and the prevention of domestic violence in the society. Grants went also entities operating safe houses for victims of domestic violence.

The Labour Ministry also draft the Social Services Act, establishing a register of social services providers; this should lead to the improvement of quality of all social services, including those intended for victims of domestic violence. An implementing regulation to this act should specify the status of a “safe house with a secret address for victims of domestic violence”, which would greatly contribute to the protection of victims directly endangered by aggressors. The Social Services Act (Act No. 108/2006) will enter into force on the 1. January 2007.

4.0 DOMESTIC VIOLENCE

See Section 1.2 above.

5.0 RAPE AND SEXUAL ASSAULT IN MARRIAGE

See Section 1.3 above.

6.0 RAPE AND SEXUAL ASSAULT

See Section 1.3 above.

7.0 SEXUAL HARASSMENT

See **Section 1.5** above.

8.0 INCEST/SEXUAL ABUSE OF GIRLS

See **Section 1.4** above.

DENMARK

Information provided by the Department of Gender Equality in **November 2000** and in **May 2003** and updated by the Ministry of Justice, Law Department, in **October 2006**.

1.0 LEGISLATION AND SANCTIONS RELATING TO VIOLENCE AGAINST WOMEN

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

1.1 LETTER OF LAW – DEFINITIONS

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

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

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

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

1.2 DOMESTIC VIOLENCE

DANISH LEGISLATION ON VIOLENCE– THE DANISH PENAL CODE:

CHAPTER 23 - OFFENCES AGAINST FAMILY RELATIONSHIPS

Article 213

"1) Any person who, by neglect or degrading treatment, insults his spouse, his child or any of his dependants under the age of 18 or any person to whom he is related by blood or marriage in lineal descent, or who by deliberately evading his duties to maintain or contribute to the maintenance of any such persons, exposes them to distress, shall be liable to imprisonment for any term not exceeding two years".

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

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

There are no specific laws in place to deal with domestic violence; domestic violence is classified with other offences of violence in the Criminal Code. Women are critical of legal response to domestic violence; the burden of proof is too hard and there is no system of compensation for women.

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

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

CHAPTER 25 - OFFENCES OF VIOLENCE AGAINST THE PERSON

Article 244

"Any person who commits an act of violence against, or otherwise attacks the person of others, shall be liable to a fine or to imprisonment for any term not exceeding three years".

Article 245

"1) Any person who commits an assault of a particularly heinous or brutal or dangerous character or who is guilty of cruelty shall be liable to imprisonment for any term not exceeding six years. If such an assault has caused significant damage to another person, or to the health of another person, it shall be considered a particular aggravating circumstance.

2) Any person who, in circumstances other than those covered by Subsection (1) above causes damage to another person or to the health of another person shall be liable to imprisonment for any term not exceeding six years".

Article 246

"If an assault as indicated in Section 245 of this Act has been of such a gross character or has caused such serious consequences that the circumstances are particularly aggravating, the penalty may be increased to imprisonment for any term not exceeding ten years".

Articles 244-249 of the Criminal Code, punishing acts of violence, cover acts of violence irrespective of the gender of the victim (except for section 245a, which deals with female genital mutilation only, see Section 1.9 below). In determining the sentence, account shall be taken, inter alia, of the seriousness of the offence, according to section 80 of the Criminal Code. This assessment includes information regarding the victim, including any elements that may be specific to female victims.

Article 262 a.

- "(1) Any person who recruits, transports, transfers, harbours or subsequently receives a person by means, whether present or past, of
- (i) unlawful coercion pursuant to section 260;
 - (ii) deprivation of liberty pursuant to section 261;
 - (iii) threats pursuant to section 266;
 - (iv) the unlawful creation, confirmation or exploitation of a mistake; or
 - (v) any other undue method, for the purpose of exploitation of that person by sexual immorality, forced labour or services, slavery or practices similar to slavery, or the removal of organs, shall be liable to imprisonment for any term not exceeding 8 years for trafficking in persons.
- (2) The same penalty shall apply to any person who, for the purpose of exploitation of the victim by sexual immorality, forced labour or services, slavery or practices similar to slavery,
- (i) recruits, transports, transfers, harbours or subsequently receives a person under 18; or
 - (ii) gives payment or other benefit to achieve the consent to such exploitation from a person having control over the victim, and to the person receiving such payment or benefit".

ACT ON EXPLUSION AND RESTRAINING ORDER

In July 2004 a new act on expulsion and restraining order came into force. The act provides the Danish Police with the authority to – under certain conditions – to expel a person that is displaying violent or threatening behaviour from the shared home for a period of time in order to prevent (further) violence against other members of the household.

1.3 RAPE/SEXUAL ASSAULT

DANISH LEGISLATION ON VIOLENCE – THE DANISH PENAL CODE:

CHAPTER 24 - SEXUAL OFFENCES

Article 216

“1) Any person, who enforces sexual intercourse by violence or under threat of violence, shall be guilty of rape and liable to imprisonment for any term not exceeding eight years. The placing of a person in such a position that that person is unable to resist the act shall be equivalent to violence.

2) If the rape has been of a particularly dangerous nature, or in particularly aggravating circumstances, the penalty may be increased to imprisonment for any term not exceeding 12 years”.

Article 217

“Any person who by other unlawful coercion (according to Section 260 of this Act) than violence or threat of violence, procures for himself sexual intercourse, shall be liable to imprisonment for any term not exceeding four years”.

DENMARK'S STATISTICS SHOW:

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

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

LEGAL DEFINITIONS

The Danish Criminal Code criminalises:

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

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

- The right to close the doors during interrogation of the injured party in proceedings relating to rape and sexual assault;
- The injured party's right to legal representation in all sexual crimes has been extended to include the investigation, trial and claims for compensation with legal fees being paid by the State.

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

Other initiatives include:

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

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

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

1.4 CHILD SEXUAL ABUSE/INCEST

LEGAL DEFINITIONS

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

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

In recent years, added attention has been given to incest. Material, including videos, has been produced for schools and social workers, but so far has not been evaluated. Support services: shelters, self help groups, counselling groups exist for women and girls victimised by sexual abuse.

In March 2003, the Danish Parliament adopted an amendment to the Criminal Code. The amendment broadened the scope of section 223 a, criminalising any person who, as a client, has sexual intercourse with a person under the age of 18, based on payment or promise of payment. The maximum sentence for this offence is two years' imprisonment.

1.5 SEXUAL HARASSMENT

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

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

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

1.6 PORNOGRAPHY

No information provided.

1.7 PROSTITUTION

No information provided.

1.8 OBSCENE PHONE CALLS/TELEPHONE SEX

No information provided.

1.9 FEMALE GENITAL MUTILATION

In May 2003, the Danish Parliament amended the Criminal Code concerning female genital mutilation.

The performance of female genital mutilation was illegal in Denmark already before the amendment. However, the new amendment includes the insertion of a new, separate provision – section 245 a – on female genital mutilation in order to make it clear that such practices are unacceptable. It has also been expressly stated in the Criminal Code that consent to female genital mutilation, be it from the girl or from the parents, can under no circumstances lead to exemption from punishment for the perpetrators.

Furthermore, the requirement of so-called dual criminality in relation to female genital mutilation was abolished. Thus, it is now possible to punish Danish nationals as well as persons resident in Denmark who perform or who assist in performing female genital mutilation abroad, even when female genital mutilation is not a crime in the country in which it is performed.

Section 245 a provides for a maximum penalty of six years' imprisonment.

1.10 INTERNATIONAL CONVENTIONS

No information provided.

1.11 PROTECTION OF PREGNANCY/PREGNANT WOMEN

No information provided.

2.0 SENTENCING

2.1 SENTENCING DOMESTIC VIOLENCE

See **Section 1.2** above.

3.0 EFFECTIVENESS OF LEGISLATION

No information provided.

4.0 DOMESTIC VIOLENCE

See **Section 1.2** above.

5.0 RAPE AND SEXUAL ASSAULT IN MARRIAGE

No information provided.

6.0 RAPE AND SEXUAL ASSAULT

See **Section 1.3** above.

7.0 SEXUAL HARASSMENT

See **Section 1.5** above.

8.0 INCEST/SEXUAL ABUSE OF GIRLS

See **Section 1.5** above.

ESTONIA

Information provided by the Department of Gender Equality, Ministry of Social Affairs, in **October 2006**.

1.0 LEGISLATION AND SANCTIONS

1.1 LETTER OF LAW - DEFINITIONS

Violence against women is a relatively new topic for Estonia. Wider public debate on the issues of violence against women started in 2001, when first representative sociological study was carried out. The study drew attention to phenomenon that had been invisible and justified for a long period of time. Also a 400-page book "Silenced Voices", containing interviews with victims, officials and specialists as well as articles by outstanding scientists, was published both in Estonian and in Russian.

The awareness about violence against women has increased rapidly during past 5 years. Campaigns such as "Don't hit a child!", "If love hurts", presentations and articles from specialists, etc have also been important in activating media discussions and raising awareness.

First shelter for victims of domestic violence was established in Tartu in 2002. In 2005, women's shelter was also established in Tallinn and in 2006 in Eastern part of Estonia.

In 2003 nationwide network of women's support groups was initiated. Currently there are 9 support groups working on a weekly basis, one group is also for Russian speaking women. Support groups give psychological and legal advice, and encourage women to change the violent situation they are in.

Estonia is at present lacking effective services for perpetrators. In 2005 pilot group for perpetrators was launched by Estonian Social Programmes' Centre. In 2006 one support group for perpetrators is working.

NGOs have conducted several trainings for different target groups on violence against women (police, judges, medical staff, prosecutors, teachers, etc). Further trainings for specialists and other relevant parties are planned.

In 2006 Estonia will develop its first national action plan on domestic violence for years 2008-2011. The aim of the action plan is to divide responsibilities between different institutions (both governmental and non-governmental) and develop solid approach towards prevention and combating domestic violence. The co-ordinating body of the development of the action plan is Ministry of Social Affairs.

Family violence and violence against women as an area of concern is not regularly measured and statistically covered in Estonia. The official statistics does not fully reflect the scope of the problem and the real incidence of violence against women. One of the goals of national action plan is to improve the collection of data in order to provide comparable data.

NGO Victim Support, who started its work in 1994, is providing support services for victims with the help of approximately 100 voluntary support persons. According to the Victim Assistance Act (passed 2003), a victim assistance service is a public service aiming at maintaining or enhancing the ability to cope of persons who have fallen victim to negligence, mistreatment or physical, mental or sexual abuse. 35 victim assistance coordinators started work in 2005. The current priority of victim assistance service is domestic violence.

In May 2002 the first joint Nordic-Baltic information campaign against trafficking in women was launched. The aim of the campaign was to raise the awareness about the problem and stimulate discussions with all relevant institutions on how to combat with the trafficking in women. The campaign continued in 2003. In 2003-2004 several seminars, lectures were organised, both quantitative and qualitative research was conducted. An essay competition for youth was organised. Special training course was developed and multiple trainings were carried out for different target groups. In 2004, 5 seminars were arranged by the Ministry of Social Affairs in cooperation with local partners in St Petersburg, Narva, Liepaja, Klaipeda and Kaliningrad on drugs, prostitution and trafficking in human beings. These events brought together several experts, police officials, social workers, local

government officials, and social scientists from Baltic and Nordic countries, and from NW Russia. The speeches were collected, translated into English and published in 2005 together with recommendations as a 130p Conference Report. Campaign and projects were dominantly financed by Nordic Council of Ministers.

In 2005 lectures on trafficking in human beings were held, altogether 24 (target groups: teachers, policemen, journalists, students, peace keepers etc). Trainings on the prevention of trafficking were held, some of them in cooperation with IOM, Living for Tomorrow, NGO Marta (LV), Estonian Women's Studies and Resource Centre. A conference "Co-operation of NGOs and governmental agencies in the fight against trafficking in human beings" was held in Riga in March in cooperation with NCM and Latvian NGO "Marta". Representatives of all three Baltic States participated, altogether 80 people, among them police officials, prosecutors, NGOs, women's shelters, psychologists, governmental officials. Speakers were from Baltic States and Nordic countries. The main problems and obstacles in cooperation were discussed, and contacts were made between NGOs and governmental bodies. Also, problems in cooperation and possible solutions for them were discussed.

In 2005 an EQUAL project (January 2005 – July 2008) "Helping prostituted women and trafficking victims to integrate into working life" started. Counterparts are NGO Eluliin (Crisis hotline), NGO Sigmund, Health Development Institute, Estonian Open Society Institute (researchers), Estonian Women's Studies and Resource Centre. Support centre ATOLL has been opened under the project. The project is supposed to provide everything for women, starting with medical help, psychological counselling, until being able to write CV and going to a job interview.

In 2006 translation of the article collection "Who's Buying? The Clients of Prostitution" (previously published in Finland, consists of articles written by Finnish, Swedish, Norwegian researchers) in order to raise awareness of one of the root causes of trafficking in women, demand.

1.2 DOMESTIC VIOLENCE

Estonian Penal Code does not make any distinction between domestic and other types of violence.

Causing of health damage, which results in a danger to life, a severe physical illness, a severe mental disorder, miscarriage, a permanent mutilating facial injury, or the loss or cessation of functioning of an organ, is punishable by 4 to 12 years' imprisonment.

Continuous physical abuse or abuse which causes great pain is punishable by a pecuniary punishment or up to 5 years' imprisonment.

Causing damage to the health of another person, or beating, battery or other physical abuse which causes pain, is punishable by a pecuniary punishment or up to 3 years' imprisonment. A regulation creating special procedure demanding the victim to request the commencement of criminal proceedings in these cases was abolished some years ago.

Estonia has not enacted any special legislation on domestic violence. Domestic violence falls into the category of ordinary violence, *i.e.* crimes against the person.

With regard to domestic violence it is worth mentioning also that a threat to kill, cause health damage or cause significant damage to or destroy property, if there is reason to fear the realisation of such threat, is punishable by a pecuniary punishment or up to one year of imprisonment.

If a woman kills her abusive husband or partner, the provisions on manslaughter in a provoked state may be applied. The punishment for manslaughter is 6 to 15 years' imprisonment. Manslaughter, if committed in a state of sudden extreme emotional disturbance caused by violence or insult inflicted on the killer or a person close to him or her by the victim, is punishable by 1 to 5 years' imprisonment. Sudden extreme emotional disturbance article can be used only when the expertise of forensic psychiatry has affirmed that the woman was in that kind of state and also it has to be proved that this emotional state was caused by violence or insult from the victim. Otherwise the articles of manslaughter and murder will be applied.

Commission of the offence in a highly provoked state caused by unlawful behaviour or commission of the offence by a pregnant woman or a person in an advanced age or commission of the offence in excess of the limits of self-defence are considered to be mitigating circumstances. The maximum rate of a mitigated punishment shall not exceed two-thirds of the maximum rate of the punishment provided by law. The minimum rate of a mitigated punishment shall be the minimum rate of the corresponding type of punishment provided for in the General Part of the Penal Code. Taking into consideration

special circumstances, a court or an extra-judicial body may impose a less onerous punishment than the minimum term or rate provided by law. But in case the minimum term of imprisonment provided for in the Special Part of the Penal Code is at least five years, imprisonment shall not be imposed for a term of less than one year.

From the beginning of 2006 there are new paragraphs in the Code of Civil Procedure that can be used in cases of domestic violence.

Paragraph 544 – Application of restriction order and other measures for protection of personality rights

(1) In order to protect the personal life of a person or other personality rights, the court may apply a restriction order or other measures based on § 1055 of the Law of Obligations Act. Such measures may be applied with a term of up to three years.

(2) If the court conducts proceedings in the matter of application of measures in order to protect a personality right in connection with a family relationship, the provisions regulating family matters on petition additionally apply, unless otherwise provided by this Chapter.

Paragraph 545. Hearing and conciliation of participants

Before applying a restriction order or another measure for protection of personality rights, the court shall hear the person with respect to whom application of such measure is requested and the person in the interests of whom proceedings are conducted for application of such measure. Where necessary, the court shall also hear the persons close to the persons specified above, and the rural municipality or city government or police authority of the residence of the persons.

Paragraph 546. Application of provisional legal protection

Where necessary, the court may secure a petition for application of a restriction order or another measure for protection of personality rights or apply provisional legal protection by a ruling. As a measure of provisional legal protection, measures for securing the action may be applied pursuant to the procedure for securing an action.

Paragraph 547. Service and entry into force of ruling

A ruling on application of a restriction order or another measure for protection of personality rights shall be served on the persons with regard to and in the interests of whom such measures are applied. The ruling enters into force upon service thereof on the persons obligated to comply therewith.

Paragraph 548. Recall and amendment of measures for protection of personality rights

If circumstances change, the court may recall or amend a restriction order or another measure for protection of personality rights. Before recalling or amending a measure, the court must hear the participants.

Paragraph 549. Filing of appeal against ruling

(1) A ruling on application of a restriction order or another measure for protection of personality rights is subject to appeal by the persons obligated to comply therewith.

(2) A ruling whereby the court refuses to satisfy a petition for application of a restriction order or another measure for protection of personality rights, or recalls or amends such measure is subject to appeal by the person who requested application of the measure or in whose interests the measure was applied.

Also, from July 2006 there is a possibility under the Code of Criminal Procedure for a court, in order to protect the personal life of a person or other personality rights, in cases of offences against the person or against the minor to forbid temporarily the suspect or the accused to be in places or to approach or communicate with the persons designated by the court. Such a temporary restriction order can be applied only with the consent from the victim. By the request from the victim or the prosecuting authority the conditions of the temporary restriction order can be changed or it can be annulled. After the perpetrator has been sentenced, the court may, under the Law of Obligations Act and if requested by the victim, for the protection of the personal life of a person or other personality rights, to impose on the convicted offender a restriction order with the term of maximum 3 years. For cases when the breach of this latter restriction order has caused danger to the life of a person or his/her health or

possessions or when the breach is repeated, the Penal Code establishes a pecuniary punishment or imprisonment for up to 1 year.

1.3 RAPE/ SEXUAL ASSAULT

Sexual crime is a crime against the person. The Penal Code considers rape to be one of the forms of offences against sexual self-determination. There are different types of sexual assaults: 'ordinary' rape, rape under aggravating circumstances, the satisfaction of sexual desire by violence and compelling person to engage in sexual intercourse.

Rape

Rape is defined in the Penal Code as sexual intercourse with a person against his or her will by using force or taking advantage of a situation in which the person is not capable of initiating resistance or comprehending the situation. The definition of sexual intercourse includes also oral and anal sexual intercourse. Person is considered to be guilty in rape also when s/he is forcing the victim into sexual intercourse with another victim or an animal. Rapist can be both male and female. Rape is punishable by 1 to 5 years' imprisonment..

RAPE UNDER AGGRAVATING CIRCUMSTANCES

Rape is punishable by 6 to 15 years' imprisonment if it is committed against a person of less than 18 years of age, committed by two or more persons, serious damage is thereby caused to the health of the victim, it causes the death of the victim, it leads the victim to suicide or a suicide attempt, or it is committed by a person who has previously committed offences against sexual self-determination.

SATISFACTION OF SEXUAL DESIRE BY VIOLENCE

Involving a person against his or her will in satisfaction of sexual desire in a manner other than sexual intercourse by using force or taking advantage of a situation in which the person is not capable of initiating resistance or comprehending the situation is punishable by up to 3 years' imprisonment. The same act, if committed against a person of less than 18 years of age or by a person who has previously committed offences against sexual self-determination, is punishable by up to 5 years' imprisonment. This article refers to all kinds of actions the aim of which is meant to arouse or increase sexual excitement until final satisfaction. "Involving" means in this case forcing to take part.

SEXUAL INTERCOURSE WITH A PERSON AGAINST HIS OR HER WILL BY TAKING ADVANTAGE OF THE DEPENDENCY OF THE VICTIM FROM THE OFFENDER

A new offence is sexual intercourse with a person against his or her will by taking advantage of the dependency of the victim from the offender but without using force or outside a situation where the person was not capable of initiating resistance or comprehending the situation as provided for in the article concerning rape, is punishable by up to 3 years' imprisonment. The same act, if committed against a person of less than 18 years of age or by a person who has previously committed offences against sexual self-determination, is punishable by up to 5 years' imprisonment. Victim is considered to be dependent on the offender if the latter has some kind of legal power over the victim, for example in case of superior and subordinate, teacher and student, psychiatrist and the patient, creditor and debtor etc. Taking advantages is wider concept than direct threat or demanding of sexual intercourse. It involves also suggestions, allusions.

COERCING A PERSON TO SATISFY THE SEXUAL DESIRE

Involving a person against his or her will in satisfaction of sexual desire in a manner other than sexual intercourse, by taking advantage of the dependency of the victim from the offender (in the absence of using force or taking advantage of a situation in which the person is not capable of initiating resistance or comprehending the situation), is punishable by up to 2 years' imprisonment. The same act, if committed against a person of less than 18 years of age, or by a person who has previously committed offences against sexual self-determination, is punishable by up to 5 years' imprisonment.

Rape in Marriage

The Penal Code's rape provision encompasses marital rape as well as rape between non-married people.

1.4 CHILD SEXUAL ABUSE/ INCEST

The age of consent under Estonian law is 14 years. An adult person who engages in sexual intercourse with a person of less than 14 years of age shall be punished by up to 5 years' imprisonment. An adult person who involves a person of less than 14 years of age in satisfaction of sexual desire in a manner other than sexual intercourse shall be punished by up to 5 years' imprisonment.

A parent, a person with the rights of a parent, or a grandparent, who engages in sexual intercourse with his or her child or grandchild shall be punished by up to 5 years' imprisonment.

As the law states that person who is under ten years of age is absolutely unable to understand sexual acts, in the case when a person has engaged in sexual intercourse with a child of that age (0-10) or has involved a child of that age in satisfaction of sexual desire in a manner other than sexual intercourse is always guilty of rape or satisfaction of sexual desire by violence (see 1.3).

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

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

The network of social institutions and non-governmental organisations dealing with abuse of children has developed rapidly in recent years, but the legal measures have lagged behind.

1.5 SEXUAL HARASSMENT

Sexual harassment is defined and prohibited in the Gender Equality Act. The activities of an employer are deemed to be discriminating if the employer harasses sexually or fails to ensure that employees are protected from sexual harassment in the working environment perform. An employer is responsible for failure to perform the duty of care if the employer is aware or should reasonably be aware that sexual harassment has occurred and fails to apply the necessary measures to terminate such harassment. Estonian law does not criminalize sexual harassment as such. In the Penal Code an article of compelling person to engage in sexual intercourse (more precisely in 1.3 under relevant heading) can be used in relevant cases.

1.6 PORNOGRAPHY

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

According to the Penal Code use of a person of less than 18 years as a model or actor in the manufacture of a pornographic picture, film or other work; and use of a person less than 14 years of age as a model or actor in the manufacture of a pornographic or erotic picture, film or other work is punishable by a pecuniary punishment or up to five years of imprisonment. The same act is also punishable when committed by a legal person. In that case it is punishable by a pecuniary punishment. Act to Regulate Dissemination of Works, which Contain Pornography or Promote Violence or Cruelty defines pornography as a manner of representation in which sexual acts are brought to the foreground in a vulgar and intrusive manner and other human relations are disregarded or relegated to the background.

It is enacted in Penal Code that a person who manufactures, stores, hands over, displays or makes available in any other manner pictures, writings or other works or reproductions of works depicting a person of less than 18 years of age in pornographic situations and a person of less than 14 years of age in erotic or pornographic situations shall be punished by a pecuniary punishment or up to 3 years

of imprisonment. The same act, if committed by a legal person, is punishable by a pecuniary punishment.

Also, a person who hands over, displays or makes otherwise knowingly available pornographic works or reproductions thereof to a person of less than 14 years of age, engages in sexual intercourse in the presence of such person or knowingly sexually entices such person in any other manner is punished by a pecuniary punishment or up to one year of imprisonment. The same act, if committed by a legal person, is punishable by a pecuniary punishment.

According to the Act to Regulate Dissemination of Works which Contain Pornography or Promote Violence or Cruelty the presence of minors in shops, cinemas, video theatres or on the premises of other places of business (specialised places of business) which are licensed to disseminate or exhibit works which contain pornography is prohibited. Specialized places of business should display a sign "prohibited to minors." Works which contain pornography or promote violence or cruelty may only be exhibited in specialized places of business. Upon dissemination outside of specialized places of business of works which contain pornography these shall be offered in a manner which prevents examination of the works by minors or the works shall not be displayed in a visible place. Violation of the requirements for dissemination or exhibition of works which contain pornography or promote violence or cruelty is punishable by a fine of up to 200 fine units. The same act, if committed by a legal person, is punishable by a fine of up to 50 000 kroons.

1.7 PROSTITUTION

Aiding prostitution by pimping (procuration), providing premises for the purposes of prostitution or aiding prostitution in any other manner, is punishable by a pecuniary punishment or up to 5 years' imprisonment. If committed by a legal person, the punishment is pecuniary. The same act, if committed by group or criminal organisation, or by a person who has committed the same crime or aiding minor prostitution before, is punishable by 3-12 years' imprisonment or in case of legal person by pecuniary punishment or **compulsory dissolution**.

Penal Code enacts that a person who by inducement, threat or any other act influences a person of less than 18 years of age in order to cause him or her to commence or continue prostitution, but the act does not have the necessary elements of an offence of enslaving or compelling person to engage in sexual intercourse, shall be punished by a pecuniary punishment or up to 5 years' imprisonment. The person being accused of this offence can also be under 18. Prostitution refers here to offering a service that includes either sexual intercourse or satisfaction of sexual desire in a manner other than sexual intercourse (also striptease). In latter case only when there is a personal contact between prostituting person and client. It is important to mention that if underage person, being afraid of the threat starts prostituting him/herself or continues such acts because of being afraid, the offence turns into enslaving. (see next chapter)

Aiding prostitution involving a person of less than 18 years of age by mediation, provision of premises or in any other manner is punishable by a pecuniary punishment or up to 5 years' imprisonment. If committed by a legal person, the punishment is pecuniary. The same act, if committed by group or criminal organisation, or by a person who has committed the same crime, or the crime of aiding prostitution, is punishable 3-15 years' imprisonment or in case of legal person by pecuniary punishment or **compulsory dissolution**. Mediation here means procuration. "In any other manners" refers to pimping but also to advice, monetary support etc.

TRAFFICKING IN HUMAN BEINGS

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

According to the Penal Code the sale or purchase of children is punishable by 1 to 5 years' imprisonment. The same act, if committed by a legal person, is punishable by a pecuniary punishment.

Enslaving is considered to be an offence against liberty. Penal Code states that placing a human being, through violence or deceit, in a situation where he or she is forced to work or perform other duties against his or her will for the benefit of another person, or keeping a person in such situation, is punishable by 1 to 5 years' imprisonment. The same act, if committed against two or more persons, or

against a person of less than 18 years of age, is punishable by 3 to 12 years' imprisonment. The commentaries to that article show clearly that it can also be used in cases of trafficking in women.

Abduction is taking or leaving a person, through violence or deceit, in a state where it is possible to persecute or humiliate him or her on grounds of race or gender or for other reasons, and where he or she lacks legal protection against such treatment and does not have the possibility to leave the state. Abduction is punishable by a pecuniary punishment or up to 5 years' imprisonment. The same act, if committed against two or more persons, or against a person of less than 18 years of age, is punishable by 2 to 10 years' imprisonment.

An article of unlawful deprivation of liberty of another person could also be used when trafficked person is being restricted from leaving the premises where she is forced to work. Unlawful deprivation of the liberty of another person is punishable by a pecuniary punishment or up to 5 years' imprisonment. The same act, if committed against a person of less than 18 years of age, is punishable by 1 to 5 years' imprisonment.

1.8 OBSCENE PHONE CALLS/ TELEPHONE SEX

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

1.9 FEMALE GENITAL MUTILATION

Female genital mutilation could be punished under the Penal Code as an act of causing damage to the health of another person.

1.10 INTERNATIONAL CONVENTIONS

The Republic of Estonia is a party to European Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocols Nos. 3, 5, 8 and as completed by Protocol No. 2 and its protocols Nos. 1, 4, 6, 7, 9, 10, 11, the International Covenant on Civil and Political Rights, Optional Protocol to the Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Estonia is also party to the Convention on the Elimination of All Forms of Discrimination against Women. Estonia has ratified also European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and its protocols Nos. 1, 2, Convention against Torture and Cruel, Inhuman or Degrading Treatment or Punishment, International Convention on the Elimination of All Forms of Racial Discrimination, Convention on the Rights of the Child, Convention relating to the Status of Refugees and Protocol relating to the Status of Refugees, International Agreement for the Suppression of the "White Slave Traffic", International Convention for the Suppression of the Traffic in Women and Children, International Convention for the Suppression of the Circulation of and Traffic in Obscene Publications (older redaction). Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime was ratified by Estonian parliament in 2004.

1.11 PROTECTION OF PREGNANCY/PREGNANT WOMEN

Termination of a pregnancy against the will of the pregnant woman is punishable by 3 to 12 years' imprisonment.

Termination of a pregnancy at the request of the pregnant woman by a person without the right arising from law to terminate pregnancy is punishable by a pecuniary punishment or up to 3 years' imprisonment. The same act is punishable by up to 5 years' imprisonment if the pregnancy has lasted for more than twenty-one weeks.

A person with the right to terminate pregnancy who terminates the pregnancy of a woman at the request of the pregnant woman later than permitted by law shall be punished by a pecuniary punishment or up to one year of imprisonment.

A woman who consents to termination of her pregnancy by a person without the right arising from law to terminate pregnancy or termination of pregnancy later than permitted by law shall be punished by a pecuniary punishment.

Transfer of a foreign ovum, or an embryo or foetus created there from to a woman whose intention to give away the child after birth is known is punishable by a pecuniary punishment.

In accordance with Artificial Insemination and Embryo Protection Act the following acts are forbidden:

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

According to the Penal Code damaging an embryo or foetus by injuring, administering a substance to or performing any other act with regard to the embryo or foetus while it is in the uterus of a woman if such act results in miscarriage or the death of the embryo or foetus is punishable by a pecuniary punishment or up to 5 years' imprisonment.

Human cloning or creating a human hybrid or human chimera is punishable by a pecuniary punishment or up to 3 years' imprisonment.

A person who creates a human embryo or foetus in vitro without the intention to transfer the embryo or foetus to a woman, or outside an institution duly authorised by law or without the corresponding lawful right, or preserves a human embryo or foetus in vitro in an unfrozen form for longer than the term provided by law or performs unauthorised transactions with an embryo or foetus, shall be punished by a pecuniary punishment.

2.0 SENTENCING

2.1 SENTENCING DOMESTIC VIOLENCE

See **Section 1.2** above.

3.0 EFFECTIVENESS OF LEGISLATION

3.1 MAIN PROBLEMS

The main problem is the persistence of traditional stereotypes regarding the role of men and women in the family, in employment, in political and public life and in society at large.

The awareness on violence against women has increased during past 5 years, but remains still quite low.

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

There are no specialist police units to deal with violence against women. However, a large number of Estonian police officers have received training on violence against women.

3.2 GENDER PERSECUTION AS GROUNDS FOR GRANTING REFUGEE STATUS?

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

4.0 DOMESTIC VIOLENCE

See **Section 1.2** above.

5.0 RAPE AND SEXUAL ASSAULT IN MARRIAGE

See Section 1.3 above.

6.0 RAPE AND SEXUAL ASSAULT

See Section 1.3 above

7.0 SEXUAL HARASSMENT

See Section 1.5 above.

8.0 INCEST/SEXUAL ABUSE OF GIRLS

See Section 1.4 above.

FINLAND

The report on Finland is based on information received from the Office of the Ombudsman for Equality, the Ministry of Justice and the Gender Equality Unit in the Ministry of Social Affairs and Health in **November 2000, 2003 and 2006**.

1.0 LEGISLATION AND SANCTIONS RELATING TO VIOLENCE AGAINST WOMEN

1.1 LETTER OF LAW – DEFINITIONS

STATISTICS OF VIOLENCE AGAINST WOMEN

The Prevalence on Violence

The Council for Gender Equality and Statistics of Finland carried out 1997 an extensive statistical survey of men's violence against women¹. The data of this study "Faith, Hope and Battering" is presently being updated and a new report is going to be published in 2006, but so far the latest detailed data on violence against women is based from year 1997. The questionnaire was mailed to 7100 women aged between 18 and 74, of whom 5000 returned an answer (the response rate was 70.3). The survey showed that violence is common in partner relationships and even after a relationship has ended.

According to the survey:

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

In Finland, on average 23 women per year die as a consequence of domestic violence during the years 2000-2004 (the total population was about 5,2 million in 2004). The number of women died as a consequence of domestic violence has decreased during the 1990's. In the beginning of the 1990's the average number of women victims was 27 per year. In 1997, altogether 2178 cases of domestic violence against women were reported to the police. Of these cases 1556 were perpetrated by current male partner. In 2005, the total number of domestic violence cases against women was 3195 (2153 were done by partner). Domestic violence has increased 47 % from 1997 to 2005 and partner violence 38 %. The increase in domestic violence cases reported to police is not explained only by increase in the prevalence of domestic violence. It is probable that part of the increase is explained by an increase in citizens' willingness to report domestic violence to police more often than before.

Another survey, Gender Equality Barometer (repeated in 1998, 2001, 2004 ; available in www.stm.fi), showed that the level of sexual harassment has not decreased during the survey period. About 13 percent of women have experienced physical advances in an undesired manner and ten percent have gotten proposals for sexual relations in an improper context.

¹ Markku Heiskanen, Minna Piispa: Faith, Hope, Battering, Statistics of Finland, and Council for Equality. Justice 1998:12, Helsinki; the publication is available in Finnish and English

The Cost of Violence

The Council for Gender Equality and Statistics of Finland carried out in 1998 a study of the costs of violence against women in Finland². It showed that violence against women causes annually direct costs of at least 300 million Finnish marks (about 54 million euros). When taking into account indirect costs, the costs were estimated to rise to at least one billion marks. These costs were studied in regard to health care, social services and the judicial system. According to the studies made, nowhere near all cases of violence come to the knowledge of the authorities. Only one third of the women who had experienced violence had sought help from the authorities or bodies specialised in helping victims, and thus a part of the problem and its costs still remain hidden.

1.2 DOMESTIC VIOLENCE

MARITAL RAPE

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

RESTRAINING ORDER

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

The law on within-the-family restraining order has been in force since 1 Jan 2005.

1.3 RAPE/SEXUAL ABUSE

Chapter 20 of the Finnish Penal Code concerns Sex Offences and Chapter 17 offences against public order. New legislation on sex offences came into force in 2004.

CHAPTER 20 - SEX OFFENCES

Section 1 – Rape

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

Section 2 – Aggravated rape

- “(1) If, in the rape,
 - (1) grievous bodily injury, serious illness or a state of mortal danger is inflicted on another;
 - (2) the offence is committed by several people, or especially hard mental or physical suffering is caused;

² Minna Piispa, Markku Heiskanen: The Price of Violence – The costs of violence against women in Finland. Statistics Finland, Justice 2000:14, Council for Equality, Equality Publications 2000:6, Helsinki; the publication is available in Finnish and is being translated into English.

- (3) the offence is committed in a particularly brutal, cruel or humiliating manner, or
 - (4) a firearm, edged weapon or other lethal instrument is used or a threat of other serious violence is made, and the rape is aggravated also when assessed as a whole; the offender shall be sentenced for aggravated rape to imprisonment for at least two and at most ten years.
- (2) An attempt is also punishable.”

Section 3 – Coercion into sexual intercourse

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

Section 4 – Coercion into a sexual act

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

Section 5 – Sexual abuse

- “(1) A person who abuses his/her position and entices one of the following into sexual intercourse, into another sexual act essentially violating his/her right of sexual self-determination, or into submission to such an act,
- (1) a person younger than eighteen years of age, who in a school or other institution is subject to the authority or supervision of the offender or in another comparable manner subordinate to the offender;
 - (2) a person younger than eighteen years of age, whose capacity to autonomously decide on his/her sexual behaviour is because of his/her immaturity and the age difference of the parties essentially weaker than that of the offender, where the offender blatantly takes advantage of the immaturity;
 - (3) a patient in a hospital or other institution, whose capacity to defend himself/herself is essentially impaired owing to illness, handicap or other infirmity; or
 - (4) a person who is especially dependent on the offender, where the offender blatantly takes advantage of the dependence, shall be sentenced for sexual abuse to a fine or to imprisonment for at most four years.
- (2) A person shall also be punished for sexual abuse if he/she takes advantage of the incapacity of another to defend himself/herself or to make or express a decision, owing to unconsciousness, illness, handicap or other helplessness, and has sexual intercourse with him/her, or gets him/her to perform a sexual act essentially violating his/her right of sexual self-determination or to submit such an act.
- (3) An attempt is punishable.”

1.4 CHILD SEXUAL ABUSE/INCEST

CHAPTER 17 - OFFENCES AGAINST PUBLIC ORDER

Section 22 – Incest

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

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

CHAPTER 20 - SEX OFFENCES

Section 6 – Sexual abuse of a child

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

Section 7 – Aggravated sexual abuse of a child

- “(1) If, in the sexual abuse of a child,
- (1) the victim is a child whose age or stage of development are such that the offence is conducive to causing special injury to him/her;
 - (2) the offence is committed in an especially humiliating manner; or
 - (3) the offence is conducive to causing special injury to the child owing to the special trust he/she has put in the offender or the special dependence of the child on the offender,
- and the offence is aggravated also when assessed as a whole, the offender shall be sentenced for aggravated sexual abuse of a child to imprisonment for at least one and at most ten years.
- (2) An attempt is punishable.”

Section 8 – Buying sexual services from a young person (650/2004)

- “(1) A person who, by promising or giving remuneration, engages a person younger than 18 years of age to have sexual intercourse or to perform other sexual acts shall be sentenced for buying sexual services from a young person to a fine or imprisonment for a maximum of one year.
- (2) An attempt shall be punished.”

Section 9 – Pandering (563/1998)

- “(1) A person who, in order to seek financial gain to himself/herself or to another person,
- (1) supplies a room or other facilities where sexual intercourse or a comparable sexual act or a sexually obscene act performed by a child younger than 18 years of age are offered for remuneration,
 - (2) as an established part of his/her business harbours a person engaging in such an act and thereby substantially promotes such an act,
 - (3) provides contact information of or otherwise markets another person engaging in such an act knowing that his/her actions substantially promote the occurrence of such an act,
 - (4) otherwise takes advantage of such an act performed by another person or
 - (5) tempts or coerces another person to perform such an act, shall be sentenced for pandering to a fine or imprisonment for a maximum of three years. (650/2004)
- (2) An attempt shall be punished.”

Section 9a – Aggravated pandering (650/2004)

- “(1) If, in pandering,
- (1) considerable financial gain is pursued,
 - (2) the offence is committed in a particularly methodical manner,
 - (3) grievous bodily harm, a serious illness or a state of mortal danger or comparable particularly grave suffering is deliberately or through gross negligence inflicted on another person or
- (3) the object is a child younger than 18 years of age
- and the offence is aggravated also when assessed as a whole, the offender shall be sentenced for aggravated pandering to imprisonment for a minimum of four months and a maximum of six years.
- (2) An attempt shall be punished.”

Section 10 – Definitions (563/1998)

- “(1) For the purposes of this chapter, sexual intercourse means the sexual penetration, by a sex organ or directed at a sex organ, of the body of another.
- (2) For the purposes of this chapter, a sexual act means an act whose purpose is sexual arousal or satisfaction and which is sexually significant in view of the circumstances and the persons involved.”

1.5 SEXUAL HARASSMENT

The Reform of the Act on Equality between Women and Men (609/1986; amendments up to 232/2005 included) in 2005 further strengthened the definition of sexual harassment. In the Act the prohibition of discrimination also covers sexual harassment and gender-based harassment. Harassment is a violation of an individual's right to personal liberty and self-determination. Sexual harassment can occur in different forms, at least such as:

- sexually insinuating gestures or expressions,
- obscene language, suggestive jokes, and remarks or questions concerning the body, clothing or private life,
- pornographic material, or sexually slanted letters or phone calls,
- touching,
- suggestions or demands concerning sexual intercourse or other sexual contact, and
- rape or attempted rape.

Sexual attention becomes harassment if it continues despite the person having clearly stated that it is insulting or offensive. Gender-based discrimination is unwanted behaviour that is based on gender but not sexual in nature. It may occur in different forms, for example such as:

- disparaging remarks about the opposite sex,
- humiliation of the opposite sex, or
- bullying at the workplace or at school, if based on the victim's gender.

Failure on the part of the relevant employer, educational institution or organization representing labour market interests to stop the harassment of the employee, student or member in question is also considered discrimination.

The employer must ensure that employees do not become the target of sexual or other gender based harassment in the workplace. It is the duty of the employee in question to respond to such harassment without delay by, for example, notifying a representative of the employer or a union representative, occupational safety delegate or colleague. While the responsibility for harassment lies first and foremost with the perpetrator, elimination of the problem becomes the employer's responsibility once notification has been given to the employer.

When there are reasons to suspect sexual or other gender-based harassment, the employer must take the necessary measures to eliminate it. These can involve the rearrangement of work tasks or jobs, but must not weaken the position of the harassment victim. Only the employer has sufficient authority and means to deal with the harasser: the person concerned can be cautioned or given a warning, or may be laid off or, ultimately, given notice or the employment relationship terminated with immediate effect. If the harassment involves an intentional violation of bodily integrity, the provisions on assault and sex offences in the Finnish Penal Code may also apply.

The Act on Equality between Women and Men.

Section 7

Prohibition of discrimination (232/2005)

« (1) Direct and indirect discrimination based on gender is prohibited.

(2) In this Act, direct discrimination means:

- 1) treating women and men differently on the basis of gender; or
- 2) treating someone differently for reasons of pregnancy or childbirth.

(3) In this Act, indirect discrimination means:

- 1) treating someone differently by virtue of a provision, justification or practice that appears to be gender-neutral but where the effect of the action is such that the person may actually find herself/himself in a less favourable position on the basis of gender, or
- 2) treating someone differently on the basis of parenthood or family responsibilities.

(4) The action referred to in subsection 3(1-2) above shall not, however, be deemed to constitute discrimination if it is aimed at achieving an acceptable objective and if the chosen means must be deemed appropriate and necessary in view of this objective.

(5) Sexual harassment, gender-based harassment and any order or instruction to engage in discrimination based on gender shall be deemed to constitute discrimination under this Act. »

Also Occupational Safety and Health Act (No. 738/2002) contains paragraph about harassment.

Occupational Safety and Health Act (No. 738/2002):

Section 28 – Harassment

“If harassment or other inappropriate treatment of an employee occurs at work and causes hazards or risks to the employee’s health, the employer, after becoming aware of the matter, shall by available means take measures for remedying this situation.”

According to the justification of the law harassment is defined so that it covers also sexual harassment.

1.6 PORNOGRAPHY

The following provisions of the Penal Code (Chapter 17) may be applicable:

Section 18 – Distribution of sexually obscene pictures (650/2004)

« (1) A person who manufactures, offers for sale or for rent, exports, imports to or through Finland or otherwise distributes sexually obscene pictures or visual recordings depicting

- (1) children,
- (2) sexual violence or
- (3) bestiality

shall be sentenced for distribution of sexually obscene pictures to a fine or imprisonment for a maximum of two years.

(2) An attempt shall be punished.

(3) The provisions laid down in section 17(2) apply also to the pictures and visual recordings referred to in this section.

(4) A person under 18 years of age and a person whose age cannot be determined but who can be justifiably assumed to be under 18 years of age is regarded as a child. »

Section 18a – Aggravated distribution of sexually obscene pictures depicting children (650/2004)

- « (1) If, in the distribution of a sexually obscene picture depicting children
- (1) the child is particularly young,
 - (2) the picture also depicts severe violence or particularly humiliating treatment of the child,
 - (3) the offence is committed in a particularly methodical manner or
 - (4) the offence has been committed within the framework of a criminal organisation referred to in section 1a(4)

and the offence is aggravated also when assessed as whole, the offender shall be sentenced for aggravated distribution of sexually obscene pictures depicting children to imprisonment for a minimum of four months and a maximum of six years.

- (2) An attempt shall be punished. »

Section 18b – Illegal exhibition or distribution of audiovisual programmes to a minor (650/2004)

- « A person who publicly exhibits or distributes
- (1) audiovisual programmes which have not been classified for exhibition or distribution under section 8 of the Act on the Classification of Audiovisual Programmes to a person younger than 18 years of age,
 - (2) audiovisual programmes in breach of the age classification imposed under section 8 of the said Act, or
 - (3) unclassified audiovisual programmes to a person younger than 18 years of age which, had the programme been classified, should have been banned under section 8 of the said Act or imposed a higher age classification for exhibition and distribution than the age of the person in question

shall be sentenced for illegal exhibition or distribution of audiovisual programmes to a minor to a fine or imprisonment for a maximum of six months. »

Section 19 – Possession of sexually obscene pictures depicting children (650/2004)

« A person who has in his/her possession an illegal photograph, video tape, film or other realistic visual recordings depicting a child referred to in section 18(4) having sexual intercourse or participating in a comparable sexual act or depicting a child in another obviously obscene manner shall be sentenced for possession of sexually obscene pictures depicting children to a fine or imprisonment for a maximum of one year. »

Section 20 – Unlawful marketing of obscene material (563/1998)

« (1) A person who, for gain, markets an obscene picture, visual recording or object which is conducive to causing public offence, by

- (1) giving it to a person under 15 years of age;
- (2) putting it on public display;
- (3) delivering it unsolicited to another; or
- (4) openly offering it for sale or promoting it by advertisement, brochure or poster or by other means causing public offence,

shall be sentenced for unlawful marketing of obscene material to a fine or to imprisonment for at most six months.

(2) A sentence for unlawful marketing of obscene material shall also be passed on person who, in the manner referred to in paragraph (1)(4), offers for sale or promotes an obscene text or sound recording which is conducive to causing public offence. »

1.7 PROSTITUTION

CHAPTER 20, SECTION 9 – PANDERING

Section 9 – Pandering (563/1998)

- “(1) A person who, in order to seek financial gain to himself/herself or to another person,
- (1) supplies a room or other facilities where sexual intercourse or a comparable sexual act or a sexually obscene act performed by a child younger than 18 years of age are offered for remuneration,
 - (2) as an established part of his/her business harbours a person engaging in such an act and thereby substantially promotes such an act,
 - (3) provides contact information of or otherwise markets another person engaging in such an act knowing that his/her actions substantially promote the occurrence of such an act,
 - (4) otherwise takes advantage of such an act performed by another person or
 - (5) tempts or coerces another person to perform such an act, shall be sentenced for pandering to a fine or imprisonment for a maximum of three years. (650/2004)
- (2) An attempt shall be punished.”

Section 9a – Aggravated pandering (650/2004)

- “(1) If, in pandering,
- (1) considerable financial gain is pursued,
 - (2) the offence is committed in a particularly methodical manner,
 - (3) grievous bodily harm, a serious illness or a state of mortal danger or comparable particularly grave suffering is deliberately or through gross negligence inflicted on another person or
 - (4) the object is a child younger than 18 years of age
- and the offence is aggravated also when assessed as a whole, the offender shall be sentenced for aggravated pandering to imprisonment for a minimum of four months and a maximum of six years.
- (2) An attempt shall be punished.”

1.8 OBSCENE PHONE CALLS/TELEPHONE SEX

No information provided.

1.9 FEMALE GENITAL MUTILATION

No information provided.

1.10 INTERNATIONAL CONVENTIONS

No information available.

1.11 PROTECTION OF PREGNANCY/PREGNANT WOMEN

No information provided.

2.0 SENTENCING

2.1 SENTENCING DOMESTIC VIOLENCE

See **Section 1.2** above.

3.0 EFFECTIVENESS OF LEGISLATION

3.1 SUPPORT/PROTECTION

MEASURES TO PREVENT AND ADDRESS VIOLENCE AGAINST WOMEN

In the Government Programme intimate partner violence, violence against women and prostitution are raised as both a gender equality issue and a phenomenon weakening citizens' security. One target of the Government Action Plan for Gender Equality (2004-2007) is to reduce violence against women. Ministries have prepared to reduce violence or to promote security, in which violence against women and domestic violence is included.

The Ministry of the Interior is responsible for coordinating the extensive Internal Security Programme, which is a joint programme of the ministries and in which a sub-area is violence at home. This programme is steered by the ministerial group for internal security. The National Council for Crime Prevention under the Ministry of Justice has drawn up an extensive cross-sectional National Programme for Reducing Violence, one objective of which is to reduce violence against women. The police administration has prepared an action programme for reducing violence.

The Ministry of Social Affairs and Health drafted an action programme (for years 2004-2007) with the main focus on preventing intimate partner violence and domestic violence. The objectives of the programme are: to improve the basic, supportive and specialised services network for victims and perpetrators of violence; to increase assistance for children and young people experiencing violence; to develop professional aid. Together with regional authorities multiprofessional basis for sub-regional service chains for victims and perpetrators of violence as well as for children and young people exposed to violence are being developed.

Many measures have been targeted at improving coordination and cooperation between ministries and different professions. The ministerial group for internal security has decided that the Council for Crime Prevention will set up a violence sub-committee to coordinate the interministerial cooperation on reducing violence, as well as to define joint priority areas. During 2006 the ministerial group has made several decisions that have promoted the work to prevent domestic violence. The Ministry of Social Affairs and Health has been assigned to investigate if a separate unit is needed to coordinate the skills and knowledge related to the prevention of intimate partner and domestic violence and their development at the national level. It is question of a similar proposal that was already made ten years ago. Decisions have also been made to develop the statistics on violence.

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

4.0 DOMESTIC VIOLENCE

See Section 1.2 above.

5.0 RAPE AND SEXUAL ASSAULT IN MARRIAGE

See Section 1.2 and 1.3 above.

6.0 RAPE AND SEXUAL ASSAULT

See Section 1.3 above.

7.0 SEXUAL HARASSMENT

See Section 1.5 above.

8.0 INCEST/SEXUAL ABUSE OF GIRLS

See **Section 1.4** above.

FRANCE

This information was updated by the Ministry of Employment, Social Cohesion and Housing (Ministry Delegate for Social Cohesion and Parity - Department of Women's Rights and Equality and Directorate General for Social Action) in **September 2006**.

INTRODUCTION

A nation-wide survey of violence against women (known as the ENVEFF), conducted in 2000 among 7,000 women, and national statistics on violent deaths linked to domestic violence in 2003 and 2004 have revealed the scale of such violence and the varied forms it takes. Combating violence against women is a priority policy area for the government.

The involvement of the authorities is reflected *inter alia* in:

- information campaigns;
- measures to strengthen national and local networks;
- the development of preventive measures and support schemes for women victims of violence, based on:
 - o institutional partnerships implemented by the Minister Delegate for Social Cohesion and Parity with the Ministries of Justice, the Interior, Defence, Housing, Education and Health;
 - o partnerships with national voluntary-sector organisations, two of which run telephone help lines (the National Federation for Solidarity among Women (*Fédération nationale solidarité femmes*) and the Feminist Collective against Rape (*Collectif féministe contre le viol*)), as well as with local associations providing support and counselling services for women victims of violence; there are 300 such centres, spread throughout the country.

The measures to combat all forms of violence against women also entail:

- with respect to intimate partner violence, raising awareness in society as a whole and among all those working in this field – social workers, the voluntary sector, the police and the legal professions, stepping up efforts to ensure that all the networks concerned work in partnership and facilitating the eviction of violent spouses from the family home;
- with respect to sexist discrimination, preventing any incitement to discrimination on grounds of sex or sexual orientation (the legislation¹ makes it an offence to incite sex-based discrimination, hatred or violence or to defame or publicly insult someone by reason of their gender);
- with respect to violence against immigrant girls and women, improving their access to rights and undertaking pilot projects in the neighbourhoods most concerned;
- with respect to prostitution, promoting measures designed *inter alia* to provide prostitutes with securing assistance;
- with respect to violence at work, ensuring that provisions on sexual and psychological harassment are respected and combating the various contemporary forms of slavery, including domestic slavery, and illegal workshops.

1.0 LEGISLATION AND SANCTIONS RELATING TO VIOLENCE AGAINST WOMEN

1.1 LETTER OF THE LAW – DEFINITIONS

Since 1992, France has passed various laws specifically aimed at preventing violence against women. It has been acknowledged that such legislation is of great symbolic significance in expressing society's abhorrence of this kind of violence. Previously, apart from certain provisions relating to public morals, there was no legislation specifically dealing with violence against women, and offenders were

¹ Law No. 2004-1486 of 30 December 2004 establishing the High Authority to Fight Discrimination and Promote Equality (*Haute autorité de lutte contre les discriminations et pour l'égalité*)

prosecuted within the scope of the general law relating to assault and unlawful wounding. There was no legislation expressly prohibiting sexual harassment or domestic violence. This has now been remedied by law.

The protection of victims has been developed in three ways:

- Simplification of procedures for claiming compensation;
- The banning of certain types of behaviour, such as sexual harassment and domestic violence;
- Changes in the legislation and in case-law.

Since 1994 the Criminal Code has recognised the particular seriousness of intimate partner violence and defines a series of offences involving violence which will be subject to heavier sentencing where they are committed by a spouse or cohabiting partner. In 1994, too, the penalty for the offence of rape, first defined by an Act of 23 December 1980, was aggravated.

Substantial amendments to the Criminal Code have also been introduced by a number of recent laws:

- The Act of 12 December 2005 relating to the handling of recidivism has made it easier to ban the perpetrator of the violence (spouse or cohabiting partner) from the victim's home at all stages in proceedings before the criminal courts, while providing for the possibility of medical, social or psychological treatment where necessary.
- The Act of 4 April 2006 reinforcing the prevention and punishment of intimate partner violence and violence against minors extends this measure to victims living in an unmarried partnership (under a Civil Solidarity Pact (*Pacte civil de solidarité*) or PACS). It can also concern a former spouse, cohabiting partner or partner under a PACS who resorts to violence as a result of the relationship with the victim.

1.2 DOMESTIC VIOLENCE

IN CRIMINAL LAW

The above-mentioned Act of 4 April 2006 introduces in the Criminal Code a general definition of an aggravating circumstance for all offences committed by spouses and partners. For certain offences, this aggravating circumstance already applied to spouses or cohabiting partners. The law now extends it to partners living with a victim under a Civil Solidarity Pact and to former spouses, cohabiting partners or partners under a PACS, provided that the offence, perpetrated either while the couple are still together or after their separation, is committed as a result of the relationship between the offender and the victim.

The relevant offences are first and foremost acts of violence - torture and brutality, violence having unintentionally caused death, violence resulting in a mutilation or permanent impairment and violence having caused total unfitness for work lasting more than eight days, total unfitness for work lasting less than eight days or without resulting in any unfitness for work.

The aggravating circumstance generally applicable by law to cases of intimate partner violence is extended to cases of rape, sexual assault other than rape and murder. The law has thus confirmed a legal precedent established by the Court of Cassation recognising marital rape.

Sentences for these offences range from three years' imprisonment and a fine of € 45,000 to life imprisonment.

Furthermore, pre- and post-sentencing measures enable the offender to be removed from the home. Before trial, court supervision of the offender makes it possible to put an end to cohabitation and prohibit any contact with the victim (Article 138-9° of the Code of Criminal Procedure). An offender who fails to comply with these measures can be placed in pre-trial detention. It should also be noted that, in the event of a serious or repeat offence, pre-trial detention may be applied for and granted ex officio.

The courts may ban offenders from their victim's home at any stage in criminal proceedings. This measure may be ordered as soon as the offence is reported and may be accompanied by a medical, social or psychological treatment obligation.

In the event of a conviction, the main or supplementary sentence may be a suspended sentence with probation accompanied by other measures, in particular a restraining order banning the offender from the family home.

Lastly, the new legislation defines an offence of theft within marriage, concerning particularly important personal objects or documents. The list laid down by law is not restrictive. For unmarried couples, the ordinary offence of theft (Articles 311-1 to 311-16 of the Criminal Code) normally applies.

IN CIVIL LAW

A number of recent Acts (15 June 2000, 15 November 2001 and 9 September 2002) have improved victims' rights with respect to the provision of information and the way victims are received and dealt with in police stations and during legal proceedings.

In the context of divorce, since an Act of 26 May 2004 the Family Affairs Judge has been empowered to give an urgent ruling on occupancy of the family home and issue a restraining order banning a violent spouse from the home upon commission of the very first acts of violence and before divorce proceedings are instituted, provided that the divorce application is made within the next four months.

Whether divorce proceedings are instituted or not, Article 220-1 of the Civil Code provides that, where "one of the spouses seriously neglects his or her duties in such a way as to threaten the interests of the family", the Family Affairs Judge may order any emergency measure.

INTER-MINISTERIAL MEASURES

- A specific public policy guide on action to combat violence perpetrated by spouses and partners, principally intended for justice system professionals, was published and distributed by the Ministry of Justice in September 2004
- A circular issued by the Minister for Justice on 19 April 2006 presents to justice system officials, notably members of the public prosecution service, the provisions of criminal law and procedure contained in the Act of 4 April 2006 reinforcing the prevention and punishment of intimate partner violence and violence against minors. This document illustrates the government's determination to guarantee firmer handling of this kind of violence by prompting all justice system officials to adopt a strict attitude to such offences. Victim support measures may be reinforced by entrusting assistance and counselling to a number of voluntary-sector organisations, which must co-ordinate their activities. The public prosecution service can thus have systematic recourse to the competent victim support association.

French policy to combat intimate partner violence is based on a three-year global action plan (2005-2007) entitled "Ten measures for women's autonomy", which is implemented by the minister responsible for women's rights. Its main focus is provision of support, accommodation, protection, financial assistance, vocational guidance and renewed autonomy for victims of violence, and preference is given to a multidisciplinary partnership-based approach. This policy is currently being reinforced in a number of ways:

- To facilitate **access to housing** for women victims of violence, a circular was sent to the Prefects at *département* level on 24 March 2005 asking them to:
 - appoint a *département* level "domestic violence/accommodation expert" who can obtain up-to-date information on the places available in refuges for women lodging domestic violence complaints;
 - draw up a joint diagnosis of the existing demand/supply situation enabling them to set up a *département* level support and accommodation scheme for women victims of violence in the longer term;
 - take stock of the organisations within their *département* currently offering victims daytime support services;
 - include women victims of violence among the priority groups to be granted access to the new places in the Accommodation and Social Rehabilitation Centres (*Centre d'Hébergement et de Réinsertion Sociale* - CHRS) and give them priority for the allocation of housing under the *département* level plans for underprivileged persons' access (*plans départementaux d'accès au logement des personnes défavorisées* - PDALPD).

In addition the range of accommodation on offer to women victims of violence is to be broadened; an experiment is currently under way in the *départements* of Drôme, Ardèche and la Réunion to have foster families take in such women in return for payment.

Under one of the provisions of the agreement on unemployment insurance signed by the employers' organisations and the trade unions in early 2006 the National Union for Industrial and Commercial Employment (UNEDIC - *Union Nationale pour l'Emploi dans l'industrie et le Commerce*) will consider that women who resign from their jobs as a result of domestic violence have a legitimate reason for terminating their employment contract and are therefore entitled to unemployment benefit.

- As regards **awareness-raising**, the launch of the communication campaign "Stop violence - no action without words" in November 2004 saw a reinforcement of the measures taken in this field.
 - The national campaign leaflet had a print-run of 100,000 copies. This leaflet describes the financial support currently available and provides specific information on the minimum welfare allowances. 100,000 " Stop violence" cards were also printed.

These communication materials were reprinted the following year.

The Prefects were asked to bring out a *département* level leaflet, conveying the same information as the national one, but providing women victims with information on the local facilities available.

- The pamphlets for people working in the field were updated in July 2006. These pamphlets, drafted and distributed in partnership with the ministries concerned, are designed for police officers, health workers and social workers who have to deal with domestic violence. The objective is to:
 - explain the mechanism and gravity of acts of violence;
 - enable women to exercise their rights by encouraging professionals to pass on information and help women to establish evidence of the offences committed;
 - instil preventive attitudes in professionals, particularly in relation to re-offending.

1.3 RAPE/SEXUAL ASSAULT

Article 222-22 of the Criminal Code defines sexual assault as "*a sexual attack involving violence, coercion, threat or surprise*".

Rape was already punishable under the Act of 23 December 1980 but became a considerably more serious offence under the terms of the New Criminal Code issued in 1994, which increased the maximum sentence from 10 to 15 years' imprisonment.

Article 222-23 of the Criminal Code defines rape as "*any act of sexual penetration, of whatever nature, perpetrated against the person of another, using violence, coercion, threat or surprise*".

RAPE WITHIN MARRIAGE

The Criminal Division of the Court of Cassation has twice recognised the existence of rape within marriage.

The Act of 4 April 2006 reinforcing the prevention and punishment of violence perpetrated by spouses and partners and violence against minors recognises that the offence of **rape** is applicable **within marriage**. The presumption that the spouses have consented to sexual acts within the intimacy of married life is now valid only failing evidence to the contrary. In other words there is merely a refutable presumption of consent. A person committing rape is liable to punishment, even where the person they rape is their spouse.

EXHIBITIONISM/GROSS INDECENCY

Sexual exhibitionism is covered by the section of the Criminal Code relating to sexual assault.

It is punishable with one year's imprisonment and a fine of €15,000, plus various additional penalties.

Sexual exhibitionism in the presence of minors is punishable with five years' imprisonment and a fine of €75,000 (seven years' imprisonment and a fine of €100,000 francs if it involves a minor under the age of fifteen).

1.4 CHILD SEXUAL ABUSE/INCEST

Sexual assault of a minor aged under fifteen by an adult, without violence, coercion, threat or surprise, is punishable with two years' imprisonment and a fine of 200,000 francs. Since 1 February 1994 this offence, if accompanied by payment of a sum of money, has been punishable in France even when committed abroad, irrespective of whether it constitutes an offence in the country concerned or whether the victim has reported the offence to the prosecuting authorities (repression of "sex tourism").

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

Under the reform of the Criminal Code adopted in 1992, which entered into force in 1994, the relationship between the victim and the perpetrator of a sexual assault remains an aggravating circumstance "when the assault is committed by a lawful, natural or adoptive ascendant" in cases of sexual assault other than rape or sexual abuse of a child under the age of fifteen, without coercion, threat or surprise, or of a minor over the age of fifteen.

REVISIONS

The most significant innovation is the adoption of the Act of 17 June 1998 on the prevention and punishment of sexual offences and the protection of minors.

The law introduces (a) a new additional penalty for the perpetrators of sexual offences, (b) a status of under-age victim and (c) aggravated penalties in cases of sexual assault of a minor.

a) Introduction of a new additional penalty: treatment and supervision of perpetrators of sexual offences by the social services and the courts

On being released from prison sex offenders can now be made the subject of a supervision and care order together with a mandatory treatment order, if the court expert's report so recommends.

This supplementary sentence may not be served in prison, whatever the reason for imprisonment. The law, however, requires the convicted person to begin treatment as soon as he or she is admitted to prison. Refusal to follow a course of treatment as from the beginning of the sentence renders the prisoner ineligible for remission in respect of supplementary sentences.

Detention must take place in a specialised establishment that allows suitable medical and psychological supervision.

The law confers responsibility for supervising the execution of a treatment order on a doctor, who is responsible for co-ordinating treatment.

Convicted persons must satisfy the judge responsible for the enforcement of sentences that they have fulfilled their obligations and followed the course of treatment. Should they fail to comply, the same judge can sentence them to a term of imprisonment.

In order to facilitate the identification and tracing of sex offenders, a national data base containing the genetic fingerprints of convicted persons has been established.

b) Introduction of a status of under-age victim: main points

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

Evidence given by minors may be taped or video-recorded so as to spare them the trauma of having to repeat over and over again the details of the abuse.

Certain voluntary-sector organisations may apply to join proceedings as civil parties in order to defend or assist abused children.

When under-age victims are giving evidence a third party – a psychologist, doctor, family member or guardian *ad litem* – may be present in order to assist them.

In the case of certain offences committed against a minor a decision to discontinue proceedings must be supported by reasons and notified in writing.

A medical/psychological report on a minor may be prepared in order to assess the nature and extent of the harm suffered.

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

This series of measures enables France to honour its international undertakings, such as those given under the United Nations Convention of 2 December 1949 for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others, the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, Articles 34 and 36 of the United Nations Convention on the Rights of the Child of 20 November 1989, which concern protection from sexual exploitation, abduction, sale or trafficking in children and any other form of exploitation and, more recently, the declaration and the action plan adopted by numerous states, including France, at the Stockholm Congress.

c) Harsher punishment for sexual abuse of minors: the establishment of new offences

It is an offence to make certain pornographic materials available to minors, in particular on video and in digital form (video cassettes, DVDs and computer games). The penalties are one year's imprisonment and a fine of 100,000 francs, and two years' imprisonment and a fine of 200,000 francs where deception is involved.

A specific offence of initiatory ragging has been introduced: "causing a person, with or without his or her consent, to submit to or commit humiliating or degrading acts at events or meetings taking place in an educational or socio-educational context" (6 months' imprisonment and a fine of 50,000 francs). Legal entities (associations of former pupils, educational establishments, travel agencies, etc) can be held criminally liable for an offence of initiatory ragging.

Measures to combat sex tourism have been strengthened, in particular by the possibility of holding legal entities liable – for example, travel agencies, which can be prosecuted for procuring or sex tourism.

The penalty for rape is 15 to 30 years' imprisonment, depending on the circumstances. The statutory time-limit for lodging a complaint has been increased to 10 years as from the age of majority in the case of the rape of a minor by an ascendant or person in a position of authority.

1.5 SEXUAL HARASSMENT

Parliament passed two Acts, on 22 July and 2 November 1992, in order to provide an appropriate response to the particular problems presented by sexual harassment. The first incorporated the offence of sexual harassment into the Criminal Code, while the second went further and extended it to the work environment, introducing provisions whereby the repercussions of sexual harassment at work are punishable under the Employment Code and the statutes of the three branches of the civil service.

Under the terms of the two Acts, three factors had to be present for there to be sexual harassment:

- abuse of authority: sexual harassment was punishable only if perpetrated by an employer, his or her representative or any other person who had abused the authority conferred upon him or her by his or her duties.
- wrongful acts whereby the individual had "issued orders, made threats, used coercion or exercised pressure that were in any way sexual in nature".
- the objective of obtaining sexual favours.

Two recent Acts have amended these provisions:

The Act of 9 May 2001 on equality between women and men at work:

- extended the classes of persons protected by the law: in addition to employees who have been disciplined or dismissed, candidates for recruitment, internships or training periods are now also covered.
- also prohibited "all forms of direct or indirect discrimination, in particular with respect to remuneration, training, upgrading, posting, status, staff category, promotion, transfer and renewal of contract", against an employee who has been subjected to or refused to be subjected

to sexual harassment or has testified to or reported such behaviour (Article 8 of the Act of 9 May 2001, amending Article L. 122-46 of the Employment Code).

The “Social Modernisation” Act of 17 January 2002, as supplemented by the Act of 3 January 2003 on the re-introduction of collective bargaining with respect to redundancies:

- deleted the reference to abuse of authority from the Criminal Code, the Employment Code and the statutes of the three branches of the civil service, with the result that sexual harassment by a colleague is now covered;
- deleted the reference to the characteristics of sexual harassment (orders, threats, coercion and pressure) from the Employment Code, the statutes of the three branches of the civil service and the Criminal Code;
- adjusted the burden of proof: the employee concerned “establishes” the facts; it is for the employer to prove that the behaviour did not constitute sexual harassment or that a decision was justified by objective factors which had nothing to do with sexual harassment.

Act 2003-6 of 3 January 2003 abolished the mediation procedure for sexual harassment.

Article L. 122-46 of the Employment Code is now worded as follows:

“No employee or candidate for recruitment, an internship or an in-house training period shall be disciplined, dismissed or subjected to any direct or indirect discriminatory measure, in particular with respect to remuneration, training, upgrading, posting, status, staff category, promotion, transfer and renewal of contract, for having been subjected to or refused to be subjected to harassment by an employer, a representative of an employer or any other person, for the purposes of obtaining sexual favours for himself or herself or for a third party.

No employee may be disciplined or dismissed because he or she has testified to or reported behaviour such as is defined in the preceding paragraph.

Any provision or act to the contrary shall be null and void.”

Protection is provided for salaried employees and for civil service staff who have been victims of, or have testified to or reported, cases of sexual harassment.

As regards the penalties, disciplinary measures to be taken by an employer against a person who has harassed another are provided for, along with criminal penalties:

- An employer who has discriminated against an employee who has been the victim of or testified to or reported sexual harassment is liable to one year’s imprisonment and/or a fine of € 3,750 (Article L. 152-1-1 of the Employment Code).
- A person who has committed the offence of sexual harassment is liable to one year’s imprisonment and/or a fine of € 15,000 (Article 222-33 of the Criminal Code).

1.6 PORNOGRAPHY

USE OF AN IMAGE OR A DEPICTION OF A MINOR

Under Article R 624-2 of the Criminal Code, the dissemination in public places of indecent messages as well as the sending or distribution of such messages to homes other than at the request of the addressee is punishable with a category 4 fine.

Similarly, transferring on to a medium, recording or transmitting an image or depiction of a minor with a view to its distribution where that image or depiction is pornographic in nature has, since the Act of 17 June 1998 on the prevention and suppression of sexual offences and the protection of minors, been punishable with three years’ imprisonment and a fine of € 45,000.

These sentences are increased to five years’ imprisonment and a fine of € 75,000 where the image has been distributed through a telecommunications network.

Similarly, since the Act of 4 March 2002 on parental authority, the mere fact of possessing such an image or depiction has been punishable with a sentence of up to two years’ imprisonment and a fine of € 30,000.

ACCESS BY MINORS TO PORNOGRAPHIC DEPICTIONS

Article 227-24 of the Criminal Code makes it an offence to manufacture, transport or disseminate a pornographic message likely to be seen or perceived by a minor. The sentence is up to three years' imprisonment and a fine of € 75,000.

The Ministry of Justice presides over a commission responsible for supervising and inspecting publications intended for children and young people.

The Ministry of the Interior is empowered to prohibit:

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

Furthermore, under an Act of 30 July 1987, no sales outlet having as its principal activity the sale of publications prohibited from being sold to minors may be situated within 100 metres of a nursery, primary or secondary school. The offence is punishable with two years' imprisonment and a fine of € 30,000.

In addition to these traditional media, attention has been drawn to the role of the new information and communication technologies as purveyors of pornography. For example, on 14 November 2002, Ms Blandine Kriegel submitted a report on violence on television to Mr Jean-Jacques Aillagon, Minister of Culture and Communication. The recommendations of the group of experts chaired by Ms Kriegel included preventing children's access to pornography by a system of double encryption or pay-per-view, separating pornography channels from other packages offered, prohibiting trailers containing pornographic images during so-called "protected" periods, and prohibiting the broadcasting of pornographic programmes at times when children might see them, i.e. between 7 am and 10.30 pm.

1.7 PROSTITUTION

FRENCH LAW

French policy with regard to prostitution is founded on respect for ethical and societal values in connection with an abolitionist approach and is consistent with the international legal context.

In concrete terms it is procuring which is punishable under the French legal system, that is to say the exploitation of the prostitution of others even with their consent. There is no ban on prostitution, which is considered to be a private matter. However, manifestly prostitutorial behaviour in a public place can result in a prosecution. Social and medical support is provided to prostitutes and those at risk of prostitution, and aid is available for victims of trafficking in human beings and forced prostitution who cooperate with the authorities.

The legislation confirms the two fundamental principles underlying French policy in this field: human dignity and individual and collective security. The provisions of the Criminal Code, as amended by the Act of 18 March 2003 on internal security, and of the Social Action and Families Code take into account the three agents involved in prostitution: the procurer, the prostitute and the client. Punishment of traffickers, procurers and clients of under-age or otherwise vulnerable prostitutes is thus combined with assistance for prostitutes and those at risk of prostitution, protection and social support for victims and prevention of prostitutorial situations.

At the same time, a strengthening of partnerships with all the parties involved, at all levels, is essential to deal with the complexity of the problem: protection for victims, prostitutes' social difficulties and risk of exclusion, the public health risks, assistance with social and vocational rehabilitation, access to rights (resources, health, accommodation, housing, etc.).

The legal tools

1) *Punishment of procuring*

Under Article 225-5 of the Criminal Code ordinary procuring, that is aiding and abetting the prostitution of another for purposes of gain or corrupting a person for purposes of prostitution, is punishable with seven years' imprisonment and a fine of € 150,000.

Identical penalties are laid down for behaviour which, under Article 225-6, is considered as tantamount to procuring (habitual relations with prostitutes without being able to justify one's lifestyle, acting as a go-between between prostitute and pimp, obstruction of measures to combat prostitution). The mere fact of cohabiting with a prostitute is, in this context, considered to be tantamount to procuring.

Hotel-based procuring - organising prostitution at a hotel - as defined in Article 225-10 of the Criminal Code is punishable with ten years' imprisonment and a fine of € 750,000.

Article 225-7 of the Criminal Code sets out ten aggravating circumstances that make ordinary procuring a more serious offence subject to ten years' imprisonment and a fine of € 1,500,000. These include, in particular, cases involving minors under fifteen, cases in which the offence is habitual, cases in which the offender abuses the authority conferred on him or her by his or her position, and cases in which a minor has been put in contact with the offender through an Internet-type communications network.

Articles 225-8 and 225-9 of the Criminal Code respectively make procuring as part of an organised ring punishable with 20 years' imprisonment and a fine of € 3,000,000, and procuring using torture and acts of brutality punishable with life imprisonment and a fine of € 4,500,000.

Lastly, additional penalties of temporary or permanent deportation are laid down in Article 225-21.

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

2) *Punishment of soliciting*

Until March 2003 only active soliciting was an offence because it disturbed public order.

The Act of 18 March 2003 on internal security, which *inter alia* enabled France to bring its law more into line with the European Union's recommendations in certain matters, inserted an Article 225-10-1 in the Criminal Code under which "Soliciting another person in any way, even by a passive attitude, with a view to sexual relations in exchange for remuneration or a promise of remuneration shall be punishable with two months' imprisonment and a fine of € 3,750."

As a result of this wording, the law no longer makes any distinction between active soliciting and passive soliciting, which are brought together into a single offence.

The Act also provides that the residence permit of a foreigner convicted of soliciting may be withdrawn.

3) *Assistance for victims of trafficking in human beings and procuring*

- *For those co-operating with the authorities:*

A temporary residence permit, bearing the endorsement "private and family life", can be issued to foreigners who lodge complaints against their pimps or exploiters or who give evidence in criminal proceedings concerning them. This temporary residence permit entitles the holder to work. If the accused person is finally convicted a long-term residence permit can be issued to a victim who lodged a complaint or gave evidence (Articles L316-1 and 2 of the Code governing Foreigners' Conditions of Entry and Residence).

Holders of the above-mentioned residence permit can be granted a temporary allowance.

- *For all trafficking victims, whether or not co-operating :*

Victims of trafficking (most of whom are forced into prostitution) can be assigned places in accommodation and social rehabilitation centres where their security is ensured.

4) *Assistance for prostitutes*

In addition, section 42 of the Act of 18 March 2003 clarified the assistance to be provided to persons victims of prostitutional exploitation: "Any person who is a victim of prostitutional exploitation shall benefit from a system of protection and assistance established and co-ordinated by the authorities in active co-operation with the various welfare services."

5) *Punishment of clients*

Clients are also liable to punishment, not just where the victim is under 18 but also where the prostitute is particularly vulnerable.

6) *Report to parliament on the situation of prostitutes*

Under section 52 of the Act of 18 March 2003 on internal security the government is required to submit an annual report to the National Assembly and the Senate, on the occasion of the opening of their ordinary sessions, setting out the trend in the number of prostitutes, their health and social situation and the means available to voluntary-sector organisations and other bodies providing them with assistance.

Resources

Pursuant to the 1949 United Nations Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, France established a Central Office for the Repression of Trafficking in Human Beings (OCRTEH) under an inter-ministerial decree dated 31 October 1958. The OCRTEH comes under the authority of the Central Director of the Police and is managed by a Chief Superintendent of the national police force, assisted by a Chief Inspector.

The fight against trafficking in human beings is entrusted to four investigation teams, comprising 21 police constables or higher-ranking officers headed by a Chief Inspector.

At the same time, two police officers, two constables and an administrative assistant process, analyse and centralise information received from local police forces and the international police organisations (Interpol, Europol and Schengen). This team should be reinforced in the near future.

In performing its duties, the OCRTEH relies on the backing of local police forces, particularly their specialist departments: the Anti-Procuring Brigade in Marseille (comprising 17 officers of all ranks performing management, administrative and investigation duties, whose number should be increased to 20 in the near future) and the "procuring squads" in Nice, Lyon, Strasbourg and Toulouse.

In Paris and the surrounding *départements* procuring is dealt with by the Anti-Procuring Brigade of the Paris Regional Crime Investigation Directorate (54 officials of all ranks performing management, administrative and investigation duties). Elsewhere, it is generally the criminal divisions of the local police forces which counter this form of crime.

The Central Directorate for Public Security also plays a role via the security forces attached to its *département* level directorates, particularly through the Social Protection and Prevention Units.

Lastly, the border police contributes to the efforts via a number of mobile squads at *département* level, as does the *Gendarmerie Nationale* within its territorial jurisdiction.

According to the information in the OCRTEH's possession, some 700 people per year are charged with procuring by the French police.

Social assistance for prostitutes

The social assistance to be provided to prostitutes or persons at risk of prostitution is defined in Article L.121-9 of the Social Action and Families Code, which reiterates the provisions of the decree of 1960 establishing the principle of social support for prostitutes:

"in each *département*, the state shall be responsible for:

1° seeking out and receiving persons at risk of prostitution and providing them with any assistance they might need, notably by arranging for their admission to an accommodation and social rehabilitation centre.

2° taking any medical or social initiative for the benefit of persons prostituting themselves."

Today, as in most welfare-related fields, the authorities fulfil their social action obligations through the intermediary of voluntary-sector organisations which they subsidise, possibly under the terms of an agreement setting multi-annual objectives. They develop partnerships with all the associations active at national level, some of which have local branches supported by local government agencies. The authorities attempt to utilise the complementary nature of the various organisations. This has enabled the implementation of measures such as the development and co-ordination of a nation-wide scheme to provide prostitutes with assistance while ensuring their security.

The field operators belong to a variety of organisations:

- specialised associations with qualified, paid employees performing activities in keeping with the responsibilities defined in the Social Action and Families Code. Some of them manage a range of services in the more general sphere of social inclusion and the fight against exclusion, which gives them a strong base from which to operate, *inter alia* in satisfying accommodation needs;
- specialised associations managing accommodation and social rehabilitation centres catering specifically for prostitutes or those at risk of prostitution or vocational rehabilitation workshops. Some of these associations have extended their activities to assistance in the community;
- what are termed "community health" associations, some of which have broadened their field of action to social support and access to rights;
- specialised associations carrying on activities on a permanent basis primarily with a staff of voluntary workers, but which sometimes employ one or more permanent paid members of staff, who may be qualified professionals (these are mainly branches or local delegations of a national association);
- associations active in a more general field (health, women's rights, the fight against exclusion, etc.), which regularly carry on activities in support of prostitutes or for the prevention of prostitution.

1.8 OBSCENE PHONE CALLS/TELEPHONE SEX

Such calls fall into the more general category of "repeated malicious telephone calls designed to disturb the peace of others".

Penalties: one year's imprisonment and a fine of €15,000.

1.9 FEMALE GENITAL MUTILATION

In accordance with the principle of human dignity, which encompasses freedom from physical harm, all forms of violence must be countered without exception. Under an anti-violence policy there can be no tolerating any form of violence. Grounds of tradition or custom cannot justify a situation where human beings are no longer regarded as subjects of law having rights and duties and can be deprived of their fundamental rights.

In France female genital mutilation is considered an intolerable form of violence which must be eradicated. These practices indeed constitute serious bodily harm with psychological repercussions and have serious health and social consequences.

THE FRENCH COURTS' APPROACH TO FEMALE GENITAL MUTILATION

Since 1979 there have been more than twenty court cases in France against parents whose children died, while in France, as a result of an excision and also against excision practitioners. Excision was tried as a less serious offence in the *tribunal correctionnel* until 1983, when in a leading decision against a French woman who had performed an excision on her daughter the Court of Cassation ruled that excision of the clitoris indeed qualified as a mutilation under the French Criminal Code. The case concerned was one of ill-treatment having nothing to do with traditional practices.

In cases of "traditional excision" brought before the French courts the prison sentences imposed were suspended until 1991 in the case of excision practitioners and until 1993 in the case of parents.

LEGISLATION IN FORCE (THE LEGISLATIVE PART OF THE CRIMINAL CODE)

In French law there is no specific offence of excision or, more broadly, sexual mutilation. Such practices can currently be prosecuted and sanctioned in criminal law as:

- violence resulting in a mutilation or permanent impairment, which is punishable with ten years' imprisonment and a fine of € 150,000 (Article 222-9 of the Criminal Code) or 15 years' imprisonment where the violence is perpetrated against a person under the age of 15 (Article 222-10 of the Criminal Code);
- violence having unintentionally caused death, which is punishable with 15 years' imprisonment (Article 222-7 of the Criminal Code) and 20 years' imprisonment where the victim is a minor under the age of 15 (Article 222-8 of the Criminal Code).

The perpetrator can also be charged with violence such as to cause total unfitness for work lasting more than eight days under Article 222-12 of the Criminal Code, which establishes a penalty of five years' imprisonment and a fine of € 75,000 where the victim is a minor under the age of 15.

The Act of 4 April 2006 reinforcing the prevention and punishment of domestic violence and violence against minors seeks to enhance the effectiveness of the repressive measures but without introducing a specific definition of an offence.

EXTENSION OF THE TIME-LIMIT FOR BRINGING A PROSECUTION

As was already the case with incest, the time-limit for bringing a prosecution has been extended to twenty years from the date when the victim comes of age for the offences of:

- violence resulting in a mutilation or permanent impairment committed against a minor (Article 222-10 of the Criminal Code);
- and violence such as to cause total unfitness for work lasting more than eight days committed against a minor (Article 222-12 of the Criminal Code).

REINFORCED MEASURES AGAINST GENITAL MUTILATIONS PERFORMED ABROAD

A new Article 222-16-2 included in the Criminal Code is designed to broaden the scope of French law punishing these practices so that it applies to minors of foreign nationality habitually resident in France who are the victims of genital mutilations performed abroad.

Article 222-16-2 provides "*where the offences provided for in Articles 222-8, 222-10 or 222-12*" - respectively violence having unintentionally caused death, resulted in a mutilation or caused total unfitness for work lasting more than eight days (which are the offences with which the perpetrators of genital mutilations can be charged) - "*are committed abroad against a minor habitually resident in French territory, French law shall apply as a departure from the provisions of Article 113-7*", whereby the victim must normally be of French nationality.

The general rules laid down in Article 113-8 of the Criminal Code, which provides that before an offence committed abroad can be prosecuted a complaint must be lodged by either the victim or his or her successors in law or the offence must be reported by a foreign state, do not apply to the offence covered by Article 222-12, namely violence such as to cause total unfitness for work lasting more than eight days.

- The Criminal Code expressly provides for *waiver of the duty of professional secrecy* in cases of genital mutilation of minors.

1.10 INTERNATIONAL CONVENTIONS

On 12 March 1984 France ratified the United Nations Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), adopted on 18 December 1979.

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

Furthermore, on the occasion of the 10th anniversary of the United Nations' Fourth World Conference on Women, celebrated by the Commission on the Status of Women in New York in March 2005, France

stated its commitment to the principles regarding violence against women asserted in the Beijing Declaration and Platform for Action.

In 1960 France ratified the United Nations Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others of 2 December 1949, while the Protocol to the United Nations Convention against Transnational Organised Crime to prevent, suppress and punish trafficking in persons, particularly women and children, signed on 12 December 2000, was the subject of a Ratification Act passed on 6 August 2002.

On 22 May 2006 France signed the Council of Europe Convention on Action against Trafficking in Human Beings.

1.11 PROTECTION OF PREGNANCY/PREGNANT WOMEN

No information provided.

2.0 SENTENCING

2.1 SENTENCING DOMESTIC VIOLENCE

See **Section 1.2** above.

3.0 EFFECTIVENESS OF THE LEGISLATION

COMPENSATION

If the criminal or assize courts have awarded damages in compensation for physical, pecuniary or psychological harm and the person liable is unable to pay them, the law provides that a Commission for the Compensation of Victims (CIVI) may pay compensation to the victim instead.

These commissions, which were introduced by an Act of 3 January 1977, are fully-fledged courts responsible for the compensation of victims. The trial court has a duty to inform the victim of the existence of the CIVI. It is not compulsory to have a lawyer.

An application for compensation may be made at any stage in proceedings instituted against an identified offender or against persons unknown within three years of commission of the offence or within a year of the last judgment. Application to the CIVI may be made simply by means of a letter accompanied by an attestation of the harm resulting from the offence. When the file has been examined, the CIVI sets the compensation according to the damage suffered. In some cases, an advance on compensation may be granted.

3.1 ROLE OF NON-GOVERNMENTAL ORGANISATIONS (NGOs) IN JUDICIAL PROCEEDINGS

DOMESTIC VIOLENCE, INCEST, RAPE, PROSTITUTES, SEXUAL HARASSMENT

The State provides financial assistance to national telephone help lines managed by voluntary-sector bodies – the National Federation for Solidarity among Women (which deals with domestic violence), the Feminist Collective against Rape, and the European Association against Violence to Women at Work – as well as to 158 voluntary-sector local reception and counselling centres for women victims of violence, which are spread throughout the country.

The grants made to voluntary-sector organisations specifically concerned with violence against women were increased by nearly 20% in 2005, and this effort has continued in 2006.

To ensure that the victims are better informed, the addresses and telephone numbers of these bodies have been made available on-line on the Ministry of Employment, Social Cohesion and Housing website. Furthermore, efforts are now being made to improve the quality of the reception, advice and assistance given to the women who turn to these bodies.

These local bodies provide various services: guidance, counselling, legal advice, discussion groups, etc. Some are attached to refuges.

In addition, associations against violence towards women may act as complainants in legal proceedings under certain conditions, which include having been registered for at least five years at the time the offence was committed.

Furthermore, the Act of 15 June 2000 strengthening the protection of the presumption of innocence and victims' rights enshrines the role of the approved associations, to which the Public Prosecutor may turn to see that the victim of an offence is given assistance.

With respect to sexual harassment, the law enables victims to be assisted by trade unions and associations that have been duly registered for at least five years, whose articles of association state that one of their objectives is to combat sexual violence. These bodies may initiate court proceedings, provided they are able to produce proof of the consent of the person concerned.

Proceedings may be held in private at the request of one of the parties.

3.2 MAIN PROBLEMS AND NEW SOLUTIONS

INSTITUTIONAL PARTNERSHIPS

The institutional partnerships with the Ministries of Justice (see Section 1.2), the Interior, Defence, Housing, Education and Health constitute a veritable chain of initiatives and skills used in connection with the prevention and judicial treatment of violence and assistance for the women who are its victims.

- The priority focus of the partnership with the Ministry of the Interior, in the case of the police, and the Ministry of Defence, in the case of the *gendarmerie*, is the improvement of:
 - the reception and counselling of victims in police stations; the holding of surgeries by victim support associations or social workers on police or *gendarmerie* premises (an agreement has been signed with the National Institute for Assistance to Victims and Mediation, the National Federation for Solidarity among Women and the National Centre for Information on Women's and Family Rights). A victim support agency (*Délégation aux Victimes*) was set up at national police headquarters in October 2005.
 - the initial and in-service training of police officers and gendarmes, in particular through the joint production and distribution of booklets to raise their awareness.
- Among the practical measures which have been taken, mention can be made of the following:
 - officers specially trained to receive victims are able to deal with persons who come to report problems relating to their private lives;
 - social workers are present in a number of police stations;
 - most police stations have a private place, which may be an office, where victims may be received away from other members of the public;
 - a computer programme including *inter alia* the addresses and telephone numbers of support bodies, refuges and relevant associations is available to help those responsible for receiving the public.
- The partnership with the Ministry of Housing led to the joint publication of the circular to the Prefects dated 8 March 2000, requiring that, when *département* level plans for underprivileged persons' access to housing were drawn up, priority should be given to the specific needs of women in serious difficulty, including one-parent families and women victims of domestic violence and their children. The co-operation is continuing within two working groups focussing on enhanced knowledge of the demand and supply situation concerning accommodation and housing for women victims of violence and on the legal difficulties encountered by such women in their search for housing.
- An agreement was signed with the Ministries of Education and Agriculture on 25 February 2000 for the promotion of equality of opportunity for girls and boys and women and men in the education system in order to develop a policy to prevent certain behaviour patterns often acquired in childhood. Under this agreement measures have been taken to promote mutual respect between the genders from the age of five, and programmes targeting secondary school pupils have been implemented with the aim of preventing violence in boyfriend-girlfriend relationships. These programmes are part of the sex and relationship education dispensed in schools, which encompasses the study of limits and taboos and aims to promote mutual respect, in accordance with a circular of 17 February 2003.

- A circular of 16 August 2006 on prevention of violence in schools redefines the instruments that can be utilised in this field:
 - a computer program (SIGNA) for compiling a data base of acts of violence in school, notably those of a sexual nature;
 - anti-violence campaigns defined at the level of local education authorities and by each school;
 - training for education system staff;
 - a national website providing access to documents and information on good practices in violence prevention;
 - background documents drawn up by the School Education Directorate, such as the "Guidelines for the prevention of sexual violence".
- In co-operation with the Ministry of Health and Solidarity co-ordination among the various health professionals dealing with women victims of violence is being enhanced with the establishment, on a trial basis, of support networks in this field.

Other partnerships, in the form of inter-ministerial working groups, are continuing their work to evaluate the progress made so far and the effectiveness of existing provision for and supervision of male perpetrators of violence.

RESEARCH

The nation-wide survey of violence against women in metropolitan France (ENVEFF) performed in 2000 was the first large-scale academic survey conducted on the subject in France. Its objective was to analyse the scale and nature of the (verbal, physical, sexual and psychological) violence to which women are subjected in various areas of life (at work, in the home, in public places). A sample of 6,970 women aged 20 to 59 was consulted. This brought to light the following:

1. Violence against women is a social phenomenon which concerns all social classes and cultural groups and all age-groups.
2. In the previous twelve months almost one in ten of the women surveyed had been subjected to verbal, psychological, physical or sexual violence by her spouse or former spouse. Thus, extrapolating from this, one million three hundred and fifty thousand women had been subjected to violence on the part of their spouse – in what is the most private, and also the most secret, area of their lives.
3. 0.5% of the women surveyed said they had suffered at least one attempted or actual rape over the previous twelve months. For actual rape alone, the rate was 0.3% and therefore, by extrapolation, 48,000 women aged 20-59 were concerned in one year.
4. With respect to violence at work, 17% of the women said they had been subjected to psychological pressure, 8.5% to verbal abuse and 0.6% to a physical attack, while 2.2% had had their work or work tools destroyed in the previous year. Aggression (fondling, attempted rape and actual rape) and sexual harassment (sexual advances, fondling, men exposing themselves, etc) were reported by 2% of the women.
5. In public places (the street as well as a whole range of other public places: department stores, public transport, restaurants, the beach, etc), the women were subjected mainly to insults, men exposing themselves, sexual importuning or stalking. During the year, one in five women was the victim of at least one of these, which demonstrates the gendered structure of public space and the fact that it is appropriated by men.

The women surveyed were also asked about the violence they had suffered throughout their lives, as both children and adults: 17.8% said they had been subjected to a physical attack in their adult lives, and 8% that they had been raped or the victim of attempted rape in the course of their lives.

The survey gave a number of women their first opportunity to talk about the aggression, of whatever kind, they had suffered. While women are more open about physical aggression at work and in public places and domestic violence, sexual harassment and sexual violence perpetrated by a spouse or partner remain taboo.

In November 2005 a first set of national statistics on violent deaths linked to cases of intimate partner violence in 2003 and 2004 were published by the Minister responsible for Parity, in co-operation with the Ministry of the Interior. These statistics now need to be refined. The same Minister has accordingly launched numerous studies on the subject.

The National Statistics and Economic Surveys Institute (INSEE) and the National Institute for Security Studies (INHES) are preparing to launch a genuine victimisation survey in 2007, along the lines of those carried out at national level in English-speaking countries. The initial results should be available the same year. Lastly, the Minister responsible for Parity has asked that gender be mainstreamed in the analysis of the results of the "life events and health" survey launched by the Directorate for Research, Studies, Evaluation and Statistics (DREES) in 2005. The Centre for Economic, Sociological and Management Research has also been asked to examine the feasibility of a study of the economic cost of domestic violence in France.

4.0 DOMESTIC VIOLENCE

See **Section 1.2** above.

5.0 RAPE AND SEXUAL ASSAULT IN MARRIAGE

See **Section 1.3** above.

6.0 RAPE AND SEXUAL ASSAULT

See **Section 1.3** above.

7.0 SEXUAL HARASSMENT

See **Section 1.5** above.

8.0 INCEST/SEXUAL ABUSE OF GIRLS

See **Section 1.4** above.

GEORGIA

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

1.0 LEGISLATION AND SANCTIONS RELATING TO VIOLENCE AGAINST WOMEN

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

1.1 LETTER OF LAW – DEFINITIONS

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

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

- Improvement of research into the nature, character and results of violence against women, analysis of the application of legislation against violence;
- Obtaining information on domestic violence, making the information a subject of public discussion. Prevention of domestic violence and decrease of such kinds of cases;
- Elaboration of special programmes for potential perpetrators;
- Development of legislation, execution of laws and court decisions;
- Assistance to and protection of victims of violence;
- Obtaining information on professional violence and making it the subject of public discussions. Studying causes and results, their prevention and reduction;
- Combating ethnic violence, support of victims of ethnic conflicts, deportation, internal displacement or exile;

- Obtaining information on ecologic violence (i.e. the alteration of genofund through destruction of living environment and ecological changes, violation of the right to live in harmless environment) and making it a subject of public discussion;
- Obtaining information on cases of violence against girls, coordinating study of causes and results, making them a subject of public discussion, analysing the application of legislation available in the field of violence against girls;
- Prevention and elimination of trafficking in women for the purpose of sexual exploitation;
- Special strategies were worked out in order to achieve the objectives listed above. The executors of the Action Plan are to be both legislative and executive bodies, as well as NGOs, trade unions and mass media.

1.2 DOMESTIC VIOLENCE

Georgia's criminal legislation makes no distinction among violent or other crimes, based on the environment where the crime is committed. That is, violent crime whether committed indoors or outdoors, by a person known or unknown to a victim, shall be punished equally. The Criminal Code of Georgia contains no notion of "domestic violence". Neither does the Criminal Procedure Code.

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

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

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

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

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

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

1.3 RAPE/SEXUAL ASSAULT

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

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

"Sexual intercourse by use of violence, threat of violence, or by making use of the victim's helpless state".

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

- If the crime was committed several times;
- If the crime was committed by a person who had committed crimes against sexual liberty/sexual inviolability before;
- If the crime was committed by a group of individuals;

- If the crime was committed against a pregnant woman, or against minor;
- If the crime was committed with particular cruelty against a victim or other persons;
- If the crime was committed by use of the perpetrator's official position;
- If the crime committed has entailed the victim's death (by negligence);
- If the crime committed has infected the victim with AIDS (by negligence), bodily injuries or other grave consequences.

The Criminal Code envisages also the following crimes:

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

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

- Rape is punished with 3 to 7 years of imprisonment, under aggravating circumstances 5 to 20 years;
- Coercive actions of sexual nature are punished with 3 to 7 years of imprisonment, under aggravating circumstances 5 to 20 years;
- Compulsion to sexual intercourse is punished with a fine, or correctional labour up to 1 year, or up to 2 years of imprisonment;
- Sexual intercourse or other sexual assault against a person under the age of 16 years is punished with restriction of liberty up to 3 years, or arrest up to 3 months, or up to 3 years of imprisonment;
- Lecherous actions against a person under the age of 16 years are punished with a fine, correctional labour up to 1 year, or up to 2 years of imprisonment.

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

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

1.4 CHILD SEXUAL ABUSE/INCEST

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

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

1.5 SEXUAL HARASSMENT

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

1.6 PORNOGRAPHY

The Criminal Code of Georgia contains the following article:

"Illegal production, distribution of advertising of pornographic works, books, pictures or other items of a pornographic nature, as well as trading in such items, or storing of these items with the purpose of

selling or distributing, shall be punished with fine, or correctional labour up to 2 years, or imprisonment for the same term”.

1.7 PROSTITUTION

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

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

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

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

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

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

1.8 OBSCENE PHONE CALLS/TELEPHONE SEX

No practices of such kind have been reported.

1.9 FEMALE GENITAL MUTILATION

Practices of such kind have never been known in Georgia.

1.10 INTERNATIONAL CONVENTIONS

Georgia is a State party to all main international human rights instruments. There were no reservations concerning the Convention on the Elimination of All Forms of Discrimination against Women, as well as other human rights instruments. In April 1999, Georgia became a member of the Council of Europe and acceded to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). In May 1999, the Georgian party signed Protocols 1, 4, 6 and 7 of the ECHR.

1.11 PROTECTION OF PREGNANCY/PREGNANT WOMEN

No information provided.

2.0 SENTENCING

2.1 SENTENCING DOMESTIC VIOLENCE

For some information see **Section 1.2** above.

3.0 EFFECTIVENESS OF LEGISLATION

No information provided.

4.0 DOMESTIC VIOLENCE

See **Section 1.2** above.

5.0 RAPE AND SEXUAL ASSAULT IN MARRIAGE

See **Section 1.3** above.

6.0 RAPE AND SEXUAL ASSAULT

See **Section 1.3** above.

7.0 SEXUAL HARASSMENT

See **Section 1.5** above.

8.0 INCEST/SEXUAL ABUSE OF GIRLS

See **Section 1.4** above.

GERMANY

Information provided by the German Federal Ministry for Family Affairs, Senior Citizens, Women and Youth in **November 2000**, **February 2003** and **September 2006**.

1.0 LEGISLATION AND SANCTIONS RELATING TO VIOLENCE AGAINST WOMEN

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

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

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

The Action Plan of 1999 is fully implemented by now. However, the Federal Government intends to decree a follow-up Action Plan in 2007.

1.1 LETTER OF LAW – DEFINITIONS

CONSTITUTIONAL LAW

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

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

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

Section 2(1) of the constitution:

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

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

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

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

PENAL LAW

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

1.2 DOMESTIC VIOLENCE

The first periodic safety report of the Federal Government 2001 deals with the protection of women from violence. The report contains a current description of the development in criminality in the field of violent crimes with a special regard to sexual offences, sexual violence against children and trafficking in human beings. Following the statement of facts the report reflects the conclusions of the Federal Government in the field of criminal and justice policies.

CRIMINAL LAW

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

These laws have broad application and provide protection from matrimonial and domestic violence.

As part of the objective of ensuring that cases of domestic violence are not treated as "private" matters and dismissed by the police and the public prosecution office, the "Guidelines for Criminal Proceedings" contain provision to ensure that the public authorities deal with domestic violence, i.e. that the police and the public prosecution office institute legal proceedings when they become aware of ill treatment. In 2002 the Guidelines were amended. In addition to the Protection against violent act a public interest in prosecuting bodily harm is assumed in those cases where the victim cannot be expected to make an application for prosecution because of the personal relationship between victim and offender".

SEPARATE RIGHT OF RESIDENCE FOR WIVES OF FOREIGN NATIONALS

In 1997, the regulation concerning an independent right of residence for foreign spouses was amended in the Alien's Act. In cases of special hardship (including domestic violence), the wife can obtain an independent right of residence without having to comply with a time limit. In the past, a conjugal community had to have existed for at least 4 years in Germany. This regulation resulted in that a foreign woman who wished to separate from her violent husband within this period had to count of expulsion. This year's (2000) amendment to the same regulation lowered the general period a marriage had to exist to 2 years.

1.3 RAPE/SEXUAL ASSAULT

German Law regards "violation of a person's right to sexual self-determination" as a serious offence. Its guiding principle is that a woman's right to sexual self-determination is inviolable and cannot be either abolished or restricted when a woman gets married.

RAPE

Rape (section 177(2)) and Sexual Coercion (section 177) are punishable offences if:

"A person by force, or threat of violence which constitutes an actual danger to life or limb, compels a person to have intercourse or engage in other sexual acts".

"Whoever coerces another person by exploiting a situation in which the victim is unprotected and at the mercy of the perpetrator's influence, is also punishable (since July 1997)". Section 179 covers sexual abuse of persons either physically or psychologically unable to resist the offence.

In 1997, all forms of penetration were placed on the same level in the amendment, whereas only vaginal penetration was considered as rape under the old law.

RAPE IN MARRIAGE

In July 1997, after years of debate and several attempts in the German Bundestag, rape in marriage was criminalised. The previous law only defined extramarital rape as a crime, whereas sexual intercourse forced on the wife by the husband could only be prosecuted as coercion or bodily harm.

SEXUAL ABUSE IN A COUNSELLING, TREATMENT OR SUPPORT RELATIONSHIP

In 1998, new penal provisions, imposing penalties for sexual abuse in a counselling, treatment or support relationship, were introduced (section 174c of the Criminal Code). Any therapist must refrain from any sexual relationship whatsoever with his female and male patients. In the event of violation of this regulation, the offender can also be banned from practicing his profession in order to avoid repeated offences (section 70 of the Criminal Code). This law also benefits handicapped women.

RULES OF CRIMINAL PROCEDURE

- **Previous sexual history**

Section 68 (1) Questions which may lead to disgrace of a witness or members of her/his family, or that concern their personal lives may only be asked if the questions are indispensable. This provision is aimed to prevent victims of rape from questions about their previous sexual experience.

- **Testimony in the absence of the defendant**

If it is feared that a witness will not be truthful if the defendant is present at the examination, the court may order the defendant to leave the courtroom while testimony is given. The same applies when there is danger for the health of the witness if he/she testifies in the presence of the defendant.

OPTIONS FOR GUARANTEEING PROTECTION OF THE GENERAL PUBLIC AGAINST SEX OFFENDERS

Changes in the penal law and in the law of prison administration are intended to give courts and prison authorities new and more flexible options for guaranteeing protection of the general public against, in particular, dangerous sex offenders.

The therapy options for treatable offenders are, for example, to be expanded and the options improved for committing such offenders to a social therapy institution during their prison term. Sex offenders sentenced to more than two years of imprisonment who are both capable and in need of being treated must be transferred to a social therapist.

Under certain circumstances German criminal law makes it possible for dangerous repeat offenders to be held in indefinite detention (section 66 Criminal Code – CC: preventive detention). It must in principle have already been ordered or reserved in the judgment (section 66a CC). Particularly for the purpose of increasing the protection of women and children against sexual crimes and crimes of violence, the Act to Introduce Subsequent Preventive Detention of 23 July 2004 made it possible for placement in preventive detention to be ordered in cases where it is only after the conviction that facts become apparent indicating that the person convicted presents a significant danger (section 66b [1]). Under strict conditions a subsequent preventive detention order was also made possible in the case of offenders convicted for the first time of particularly serious crimes (section 66b [2] CC).

1.4 CHILD SEXUAL ABUSE /INCEST

SEXUAL ABUSE

The sexual abuse of children i.e. persons under the age of 14 years, is punishable under section 176 of the Criminal Code.

The 6th amendment to reform the Penal Code, which entered into force on 1 April 1998, introduced higher penalties for child sexual abuse. Under the new Act, particularly serious cases of child sexual abuse are no longer classified as mere offences, but as serious crimes and, depending on the severity of the individual punishable act, will generally be punished with a minimum prison sentence of one, two or five years. So the minimum sentence in cases of severe life-threatening physical abuse has been increased from the previous 1 to 5 years of imprisonment. The maximum sentence of imprisonment is 15 years (section 176a of the Criminal Code).

If the sexual abuse is committed for the purpose of producing and disseminating portrayals of child pornography, the standard punishment is now between 2 and 15 years imprisonment.

A person who negligently causes the death of a child as a result of sexual abuse, and a person who commits rape or sexual coercion with a fatal outcome, faces a life sentence or a sentence of not less than 10 years of imprisonment (sections 176b, 178 of the Criminal Code).

Further improvements have been made by the Act to Amend the Provisions concerning Crimes against Sexual Self-determination and to Amend Other Provisions of 27 December 2003 (Federal Law Gazette I p. 3007), which entered into force on 1 April 2004. Inter alia, this Act deleted the less serious instance of the basic crime of sexual abuse of children and introduced a particularly serious case of sexual abuse of children in section 176 CC. Furthermore, there was an increase in the severity of the range of punishment imposable in cases of sexual abuse of children where no bodily contact is involved (section 176 [4] CC) as well as in cases where there has been serious sexual abuse of children (sec. 176a [2] CC).

Owing to the deletion of the restricting requirement that the victim be a German citizen, it has now been possible to hold responsible under criminal law (since 1 September 1993) German tourists who sexually abuse children abroad, even if the offence is not punishable in the country where it was committed.

INCEST

Section 173 outlaws sexual intercourse between related persons.

Section 174 (sexual abuse of a person in one's charge) protects minors in their relationship with persons to whom they have been entrusted for the purposes of education, training and care, or to whom they are subordinate under an employment contract. This rule also applies to a man who engages in sexual acts with his own or adopted children under the age of 18 years.

The punishments imposable are increased by the above-mentioned Act of 27 December 2003 to imprisonment ranging from three months up to five years.

TIME LIMITS FOR PROSECUTIONS

In June 1994, the start of the limitation of prosecution under criminal law for certain serious sex offences to the detriment of children was deferred until the age of 18. This prevents sex offences committed on children from already being statute-barred by the time the victims are no longer under the influence of the offender and are in a position to appreciate the wrong done to them and report it to the police.

1.5 SEXUAL HARASSMENT

The protection from sexual harassment at the workplace has been revised by the General Equal Treatment Act (*Allgemeines Gleichbehandlungsgesetz*, AGG.) According to this act sexual harassment is a case of forbidden discrimination. The Act obliges all employees to immediately take the necessary protective steps in the event that an employee feels sexually harassed. This includes consequences for the offenders under labour and disciplinary law.

1.6 PORNOGRAPHY

Section 184 of the Criminal Code provides for punitive measures against distributing pornographic literature. It is also a punishable offence to publish, distribute, produce or engage in other preparatory work of pornography involving violence, child sexual abuse or sexual acts carried out by human beings with animals (sections 184a, 184b CC).

CHILD PORNOGRAPHY

In order to more effectively combat child sexual abuse in the production and dissemination of pornographic films and photographs, the German Bundestag passed the 27th amendment to the Penal Law - Child Pornography – which entered into force on 1 September 1993. This act increases the penalties for the production and dissemination of child pornography by extending the range of punishment to 5 years and makes the possession and procuring of child pornographic portrayals a punishable offence for the first time.

The 6th amendment to the Penal Code (1998) provides for a maximum prison sentence of 10 years for the commercial or organised dissemination of child pornography portraying an actual or realistic event. Cases in which it is impossible to establish whether the portrayal is real or fictitious are also covered by this regulation.

Using the instruments of the criminal law, the Act to Amend the Provisions concerning Crimes against Sexual Self-determination and to Amend Other Provisions of 27 December 2003 (Federal Law Gazette I p. 3007) puts a stop - more firmly than in the past - to dissemination of pornographic writings involving children. Section 184b creates a criminal offence of its own against dissemination, purchase, and possession of pornographic writings involving children. According to this provision, whoever undertakes to obtain possession for another person of pornographic writings involving children will now be punished with imprisonment ranging from three months up to five years instead of, as in the past, with a fine or imprisonment of up to one year; where this offence is committed on a commercial basis or the perpetrator acts as a member of a gang, the punishment imposable amounts to imprisonment from six months up to ten years provided that the writings reproduce an actual or true to life event.

Further improvements will follow in the wake of implementation of the Framework Decision of the Council of the European Union on combating the sexual exploitation of children and child pornography. On 29 August 2006 the Federal Cabinet adopted a bill for future coverage by section 184b CC of writings showing sexual acts committed by, on or in front of juveniles (persons up to 18 years of age), i.e. in addition to writings showing sexual acts committed by, on or in front of children (persons up to 14 years of age). At the same time, this makes it clear that as soon as a child or juvenile takes up a sexually suggestive pose this will fall within the concept of child and juvenile pornography, and also that there is criminal liability for dissemination, purchase and possession of writings reproducing a sexually suggestive pose by children or juveniles.

1.7 PROSTITUTION

The promotion of sexual acts by minors is an offence punishable under section 180 of the Criminal Code.

Prostitution as such is not an offence under German law. Prostitutes are protected against exploitation (section 180a), pimping (section 181a) and trafficking in human beings for the purpose of sexual exploitation, trafficking in human beings for the purpose of exploitation of workers, promotion of trafficking in human beings (sections 232 to 233a CC)".

TRAFFICKING IN WOMEN

According to the police crime statistics compiled by the Federal Office of Criminal Investigation, 919 cases of trafficking in human beings came to light in 1995 and 1,094 cases in 1996. The number of victims increased from 1,196 in 1995 (including 1,158 females) to 1,473 in 1996 (including 1,445 females). Since 1989, the victims have mainly originated from the countries of Central and Eastern Europe.

The Criminal Law was amended in 1992 by the outlawing of trafficking in human beings. This amendment improves the protection against sexual exploitation, specifically against the dangers of forced prostitution and trafficking in human beings, that the law, in particular, provides for foreign girls and women.

Moreover, a law was passed for improving the combating of money laundering, which is intended, among other things, to expand the possibilities to detect, seize and confiscate the financial resources of organised traffickers in human beings. In addition, Article 180b of the German Penal code (trafficking in human beings) has been added to the catalogue of offences open to accessory prosecution in art. 395 of the German code of Criminal Procedure, so that the victims can also appear as additional prosecutors with the corresponding rights in these proceedings.

The revised articles also apply to criminal acts committed abroad, independently of the law applicable where the offence was committed.

TRAFFICKING IN CHILDREN

The 6th amendment to the Penal Code (1998) introduced a provision against trafficking in children in order to allow more effective action to be taken against the sexual abuse of children (section 236).

MEASURES TO COMBAT TRAFFICKING

The Federal Government combats trafficking in children and women by prevention, prosecution of the offender and support to the victims.

For the female victims who act as witnesses in the criminal proceedings against the offenders, it is a question of the right of residence, special witness protection programmes, accommodation and maintenance, support in the proceedings, medical and psychological support, the protection of their families in their home countries against reprisals on the part of the traffickers and reintegration programmes.

In order to clarify all the associated measures related to the legislation concerning foreign nationals that affects the responsibility of various Federal and Länder agencies, the police, the courts and the victim support groups set up a working group in 1997. The "Working Group on Trafficking in Women" operates under the control of the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth. The aim of this group is to harmonise and coordinate all the necessary measures to combat trafficking in women.

Germany has over 25 counselling centres where prostitutes in duress and women in trafficking can get help.

1.8 OBSCENE PHONE CALLS/TELEPHONE SEX

No information provided.

1.9 FEMALE GENITAL MUTILATION

In Germany is criminalised under sections 223 ff of the Penal Code. Whoever participates in mutilating female genitals is at least threatened with a penalty of deprivation of liberty of up to five years for inflicting bodily injury (section 223 Penal Code). Since it can be assumed that for the mutilation a knife or other dangerous tool is used according to section 224 Penal code (severe bodily injury) the offender is threatened with a penalty of deprivation of liberty between three months and 10 years. The same section is applied if the bodily injury is committed jointly with another participant or by means of a treatment dangerous to life. Punishment cannot be avoided by citing religious reasons for the mutilation since the mutilation of the female genitals seriously harm the bodily integrity of the girl or woman is in general irreversible and violates the victim's dignity.

1.10 INTERNATIONAL CONVENTIONS

The Federal Republic of Germany is a signatory to European Convention for the Protection of Human Rights and Fundamental Freedoms, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Furthermore, Germany has adopted a number of international conventions aiming to protect women from violation of human rights, in particular the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW). With the ratification of the CEDAW Optional Protocol the communication procedure and an inquiry procedure are recognized.

The Federal Republic of Germany is one of the states that has always urged and supported the establishment of a special commissioner at the UN Commission on Human Rights responsible for human rights violations in form of violence against women.

1.11 PROTECTION OF PREGNANCY/PREGNANT WOMEN

No information provided.

2.0 SENTENCING

2.1 SENTENCING DOMESTIC VIOLENCE

No information provided.

3.0 EFFECTIVENESS OF LEGISLATION

3.1 SUPPORT/PROTECTION

SHELTERS

The first German shelter for women, opened in Berlin in 1976, was a project of the Federal ministry for Family Affairs, Senior Citizens, Women and Youth. There are today more than 400 women's shelters in Germany, including 120 in the new Federal Länder, where the Federal Government contributed towards the establishment of the first women's shelters by granting DM 1.2 million for the framework of a special programme. Other pilot projects of the Federal Government are:

- An emergency helpline for female victims of sexual violence;
- A walk-in therapy centre;
- Counselling and housing for sexually abused girls;
- Counselling and housing for prostitutes under duress and victims of trafficking in women;
- Etc.

These pilot projects have often been copied (for instance, there are currently 156 emergency help lines throughout the country), the Federal Länder and the municipalities finance some projects.

In order to exercise more influence on politics and to improve cooperation and information, the support institutions are increasingly networking. The Federal government supports this network by providing financial provision for annual networking meetings of the respective institutions and a national coordination centre for women's shelters.

DOMESTIC VIOLENCE

In 1995, the "Berlin Intervention Project Against Domestic Violence" was initiated. It is intended to improve the protection of women subjected to domestic violence during the police and court proceeding of the offender. This project is modelled on the Duluth, Minnesota, "Domestic Violence Intervention Project" and is aimed to coordinate measures by all institutions and projects to facilitate better protection for maltreated women and prosecution of perpetrators.

In September 2004 the findings of a nationwide comparative analysis of ten different interdisciplinary intervention and cooperation projects in the field of domestic violence, an evaluation of the innovative, proactive support available to women who are victims of violence and their children, a description of how state intervention through the police and justice system has evolved and research evaluation social training courses for men who have committed acts of violence has been published by the Federal Government under the title "Working together to Combat Domestic Violence: Co-operation, Intervention, Research. Findings of the Evaluation Research Assessing Intervention Projects against Domestic Violence (German Acronym WIBIG).

RESEARCH AND TRAINING

The Federal Government has conducted and published an important number of studies concerning violence against women. For evaluating the existing laws and for calculating a possible need for legislative changes a study was commissioned by the Federal Ministry of Justice and the Länder Ministries for Justice and carried out by the Kriminologische Zentralstelle "Legal Probation and Criminal Careers of Sexual Offenders". Some research projects are intended to support needs for amendments of the legislation, for example, research concerning legal practice when the marital home is allocated to the abused wife. Other research projects are the publication of a guide for marriage and family counselling centres for counselling on domestic violence against women and the production of continuing training materials for the female staff of women's shelters and for the police. The concept of training courses for the police concerning violence against women is currently used in the education programmes of the police training schools of the Länder.

In 2002 a study was started on the law on improving the civil law protection against acts of violence and stalking as well as for facilitating the allocation of the marital home in cases of separation "Law on protection against violence". Its goal is to evaluate as early as possible -after the entering into force of the law - the regulations for the allocation of the home and the protective orders as well as regulations of enforcement. Content of the study is the court practice, bodies of the administration of justice, and

Non court institutions (youth welfare offices, counselling centres, intervention centres and- projects). The results of the study are expected for the end of 2004.

EDUCATION

Educational public relations work takes an important place among the measures for reducing violence against women. The Federal Ministry for Women, the Länder Ministries for Women, the municipal commissioners for women's affairs and the anti-violence projects, have implemented many measures designed to effectively attract public attention. There is consequently a host of publications by the Federal Government on the subject of violence against women, illustrating its different forms and aspects.

The three-year campaign (1993 - 1996) on violence against women by the Federal Ministry for Women could specially be mentioned. The campaign addressed women and men in different ways with a host of individual measures.

OTHER MEASURES

- Publicly subsidised "night taxis" for women's safety;
- Informative and awareness raising television programmes.

WITNESS AND VICTIM PROTECTION MEASURES

In December 1998, the Witness Protection Act expanded the right of involvement of victims and ensured that the burdens placed on victims witnessing in court are kept to an unavoidable minimum. For instance, it is possible to examine witnesses by audiovisual media, if they then are spared the ordeal of giving evidence directly in court. In addition, in order to avoid multiple examinations in the course of the criminal proceeding, the Act also permits, under certain circumstances, the use of previous examinations recorded on videotape as a substitute for renewed personal examination in court.

Under certain circumstances, a legal advisor can be appointed for a witness at the expense of the state for the purpose of examination, if the witness is not in a position to exercise his or her authorities personally.

In addition, the possibilities have been improved for crime victims to receive assistance of a lawyer throughout the proceedings. This kind of counsel for the victim is particularly envisaged for the victims of sex offences and is provided at the expense of the state, regardless of the financial situation of the victim.

Victims are entitled to bring an associated action to claim civil damages, especially victims of sexual offences, defamation and crimes involving bodily harm. The victims have also the following rights:

- to join the criminal proceedings as a civil party and to have an active part in the proceedings;
- to use legal remedies to challenge the court's decisions.

COMPENSATION

Women who become victims of crimes of violence can demand compensation from the perpetrator for injuries sustained, medical costs and loss of earnings. In addition, a woman who has suffered bodily harm, violation of her personality rights or who is a victim of certain sexual offences may be entitled to claim compensation for non pecuniary damage. The level of compensation varies according to the circumstances in the individual case.

ORGANISATIONAL MEASURES FOR POLICE STATIONS AND PUBLIC PROSECUTOR'S OFFICES

The national and local government are concerned to encourage the police and the public prosecutor's offices to adopt a sensitive approach to the treatment of victims of violence. The aim is to spare women from degrading treatment and shame when reporting a criminal offence and in the proceedings against the offender. To this end:

- Special departments of public prosecutors have been established in all Länder for prosecuting criminal offences against a person's right to sexual self-determination;
- In most Länder, it is an established principle that women and girls victimised by sexual violence shall be questioned only by women police officers;
- Posts for staff with special responsibilities for dealing with women have been established at Bavarian police stations;
- The police are endeavouring to take into account religious and cultural traditions in the investigations of cases involving women from minority ethnic groups;
- Leaflets and brochures have been produced for victims of sexual offences in order to inform them of their rights and the assistance available;
- In many Länder, special training on sexual offences is given to police officers. The aim is to prepare them to adopt a sensitive approach handling victims of violence;
- Lectures and seminars on the subject of women and violence are offered to judges and public prosecutors.

In July 1995, a 'course concept' for police officers concerning "Male violence against women" was published. This concept is to be incorporated into the continuing education of police officers.

3.2 GRANTING OF ASYLUM

In Germany, unlike many other countries, the right of asylum is not only anchored in the 1951 Geneva Convention on Refugees; it is also enshrined in the constitution (Article 16a of the Basic Law). Foreigners in need of protection are entitled to the right of asylum and can therefore sue the state for it in court

Along with fulfilling its obligations under international law, Germany guarantees the right of asylum as a basic right. Germany fulfils its obligations under the Geneva Convention on Refugees also by applying this convention in granting the right of residence and protection from deportation to foreigners who are victims of political persecution but do not qualify for asylum under the Basic Law, in accordance with the Residence Act

Victims of political persecution are according to the German Case Law not only those who are persecuted in their home country due to their political beliefs. Rather, the right of asylum is based on the conviction that, out of respect for the inviolability of human dignity, no state has the right to harm or endanger the life, health or personal freedom of an individual for reasons of political opinion, religion or characteristics inherent to his or her unique identity.

Under the Residence Act, when applying the Geneva Convention, persecution by non-state actors may also lead to the recognition of refugee status, if the state or quasi-state structures or international organisations are unable or unwilling to provide protection from such persecution that means quasi-state structures that have supplanted the state, or to which the state has surrendered the field, are considered equivalent to a state (quasi-state persecution).

Germany thus now conforms to the practices of the other European Union member states and most of the international community.

The new Residence Act has improved protection also with regard to such gender-specific persecution, which chiefly affects girls and women. The new law clearly states that refugee status may be granted when applying the Geneva Convention if the threat of persecution is based solely on a person's sex.

The Federal Office for Migration and Refugees (BAMF), which lies within the remit of the Federal Ministry of the Interior, is responsible for processing all asylum claims.

If the foreigner's application for asylum is approved by the BAMF, he or she is issued a temporary residence permit and work permit valid for three years. If the foreigner qualifies only for protection against deportation, he or she is granted the status of a refugee under the Geneva Convention and is also issued a temporary residence and work permit valid for three years.

Even if the necessary conditions for granting asylum or refugee status under the Geneva Convention are not met, humanitarian considerations may prevent a foreigner from being deported, even though he or she has no right of residence ("*de facto* refugee"). Considerations preventing a foreigner from being deported include the concrete threat of capital punishment, torture or other cruel or degrading treatment. In such cases, the BAMF may decide that a deportation ban applies. Temporary residence

permits may be issued for as long as the grounds for the deportation ban remain valid. The same applies if the foreigner would face a significant, specific threat to his or her life, health or freedom.

A woman conducts, if possible, a hearing if a female asylum seeker requests this. If the behaviour of the female asylum-seeker or the circumstances of the persecution of a female asylum-seeker (e.g. sexual violence) indicate the need for being heard by female staff members, this requirement is observed ex officio without that the female asylum-seeker have to specifically express such a wish. The same applies for interpretation by a female interpreter.

In order to ensure that the needs of female refugees are given adequate and sensitive consideration in the asylum procedure, the "Federal Office for the Recognition of Foreign Refugees" regularly holds qualification and continuing education courses on reasons for flight specific to women. Furthermore, male and female sole decision-makers who have received special training are appointed as special commissioners in cases of female, minors and torture victims. In addition to dealing with corresponding cases, their tasks include advising decision-makers in cases of persecution of women and to forward information on the latest developments in this sector.

4.0 DOMESTIC VIOLENCE

See Section 1.2 above.

5.0 RAPE AND SEXUAL ASSAULT IN MARRIAGE

See Section 1.3 above.

6.0 RAPE AND SEXUAL ASSAULT

See Section 1.3 above.

7.0 SEXUAL HARASSMENT

See Section 1.5 above.

8.0 INCEST/SEXUAL ABUSE OF GIRLS

See Section 1.4 above.

GREECE

Information provided by the General Secretariat for Gender Equality, Ministry of the Interior, Public Administration and Decentralisation, Law Department, in **October 2006**.

1.0 LEGISLATION AND SANCTIONS RELATING TO VIOLENCE AGAINST WOMEN

1.1 LETTER OF LAW – DEFINITIONS

On the 10th of October 2006 the Greek Parliament adopted the Law «On combating domestic violence and other provisions». The Law addresses the relevant Recommendations of the U.N. CEDAW Committee, the U.N. Human Rights Committee, the U.N. Committee Against Torture, the U.N. Committee on Economic, Cultural and Social Rights, as well as those by the Council of Europe. The new Law on combating domestic violence introduces crucial reforms:

1. The Law provides for stricter penalties for actions that are already characterized as punishable by the Penal Code, when these are performed in the context of domestic violence. Especially, it provides for strict penalties for actions of domestic violence that are performed in the presence of a minor, against a pregnant woman and against persons unable to defend themselves (e.g. disabled persons, senior citizens et.c.)
2. The provisions of the law extend to non-marital partnerships between men and women.
3. The institution of mediation in criminal cases is established, bringing into effect the EU Council Framework Decision of March 2001, in reference to domestic violence offences.
4. Rape within marriage, that is, coercion into sexual intercourse without the consent of both spouses, is regarded as a criminal offence, in accordance to statutory regulations in other Member States of the E.U.
5. Physical violence against minors as a disciplinary measure in the context of their upbringing is explicitly forbidden. Hence the country complies with the Recommendations of the Council of Europe and the Committee on the Rights of the Child.

1.2 DOMESTIC VIOLENCE

The Law «On combating domestic violence and other provisions», which was recently adopted by the Greek Parliament, includes provisions that treat domestic violence as a specific crime (See **Section 1.1** above).

At the level of support/assistance to the victims the new Municipal and Community Code (l. 3463/2006) stipulates, in Article 75 l e par. 2, the incorporation of services for counselling and support to victims of domestic violence within the competences of Municipalities and Communities.

1.3 RAPE/SEXUAL ASSAULT

No information provided.

1.4 CHILD SEXUAL ABUSE/INCEST

The following legislation in the Penal Code protects the young child under 18: Article 336, "Rape"; Article 337, "Insult of generative dignity"; Article 338, "Abuse in Licentiousness", Article 339 "Children's Seduction"; Article 340, "General Provision"; Article 342, "Exploitation of the young under age in Licentiousness"; Article 347, "Licentiousness against nature"; Article 349, "Pandering/Pimping"; Article 351, "Procuring; Article 351A «Lechery with a minor for a fee»; Article 360, "Neglect of the supervision of the young under age".

The article 7 of the Law 3064/2002 on "Combating trafficking in human beings, crimes against sexual freedom, children pornography, and, in general, economic exploitation of sexual life and assistance to

the victims of such crimes” amends and completes the provisions of Article 349 of the Penal Code, which refer to the crime of pandering or forcing a minor to prostitution as well as inducing or facilitating minors’ prostitution, and redefines imposed penalties making them stricter. Article 8 of the same Law amends and completes the provisions of Article 351 of the Penal Code, which refer to minors’ procuring, and imposes imprisonment to the perpetrator for at least ten years. Article 9 completes article 351 of the Penal Code (Article 351A) concerning the crime of lechery with a minor for a fee, and imposes penalties depending on the age of the minor victim, exceeding even ten years of imprisonment (especially when the victim has not completed 10 years of age).

In addition, the Article 24 of the Law on «Combating Domestic Violence and other Provisions», amends and completes the provisions of Article 342 of the Penal Code, referring to the crime of abusing minors with lechery, and redefines perpetrators and imposed penalties. More especially: a) The number of persons (adults) considered, according to the Penal Law, to commit the crime in question is widened, b) Penalties imposed on perpetrators are defined to be stricter than in the past, and they are classified as follows, depending on the victim’s age: i) Imprisonment of at least ten (10) years, in case that the minor has not completed the fourteenth year of age, ii) Imprisonment, in case that the victim has completed the above mentioned age, but not the eighteen years of age, c) Adults who offend, in the prescribed way, the decency of the minor, whose custody or care have undertaken, are imposed a penalty of imprisonment for at least six (6) months. This penalty increases (imprisonment of at least two years), in case that the act in question is committed regularly, d) It is stipulated that the above mentioned crime committed by certain persons (relative, teacher, psychologist, etc.) constitutes aggravating circumstance, e) The penalties of imprisonment imposed to adults who offend, through the Internet or other means of communication, the decency of a minor not having completed the sixteenth (16) year of age, are stipulated, f) the date on which the minor victim comes of age is stipulated as the beginning of term of limitation of the above mentioned acts.

1.5 SEXUAL HARASSMENT

The Greek Parliament has recently adopted Law 3488/2006 on the «Implementation of the principle of equal treatment of men and women in the fields of access to employment, vocational training and promotion, terms and conditions of work». The Law 3488/2006 incorporates Directive 73/2002/EC into national law and meets relevant Recommendations of the U.N. CEDAW Committee and the Council of Europe.

The Law 3488/2006 introduces the definitions of direct and indirect discrimination, harassment and sexual harassment, filling in, therefore, a significant gap in Greek legal order. In particular, the notion of sexual harassment is, for the first time, defined legislatively in Greek law. Sexual harassment is explicitly regarded as a form of discrimination in the workplace on the basis of gender, which is prohibited both where access to employment and where promotion and termination of employment or service are concerned. At the level of penalties, sexual harassment is punishable through civic, administrative, disciplinary and criminal penalties. In particular, as regards the criminal part, strictest custodial penalties are provided for, ranging from six (6) months to three (3) years, as well as imposition of a penalty payment ranging from 1,000 to 30,000 Euro.

1.6 PORNOGRAPHY

Concerning pornography, the general provisions of the Penal Code are in force, as they are stipulated in Article 348 of the Penal Code «Facilitation of promiscuity of third persons». The provisions of Article 348A as they have been introduced in the Penal Code through Article 6 of the Law 3064/2002 on “Combating trafficking in human beings, crimes against sexual freedom, children pornography, and, in general, economic exploitation of sexual life and assistance to the victims of such crimes confront the problem of child pornography and punish, with imprisonment of at least one year and a fine of ten thousand to one hundred thousand euro, anyone who prepares, possesses, supplies him-/herself, buys, transports, trades, disposes, sells or puts in circulation, in any way, pornographic material concerning a minor person, on the purpose of speculation. Penalties are much stricter (imprisonment up to ten years) in cases that the pornographic material is connected to the exploitation of need, mental deficiency, deafness or inexperience of a minor or by exercising physical violence against him/her.

1.7 PROSTITUTION

In Greek legislation, prostitution per se is not a punishable offence. The laws in force do not prohibit it but stipulate the conditions for practicing it.

a. Law 2734/1999 (“Persons prostituting themselves for a fee”) specifies the terms and conditions, the limitations and prohibitions in practicing the activity concerned, regulates the measures of medical control to which persons prostituting themselves for pay have to submit, and introduces criminal and administrative sanctions to ensure effective control of these persons.

b. The Criminal Law includes provisions for repressing the exploitation of women, both minors and adults. The chapter “Crimes against sexual freedom and crimes of economic exploitation of sexual life” provides for both imprisonment sentences and fines. Punishable acts under these provisions are: Facilitation of promiscuity, Pimping, Exploitation of prostitutes, Body trafficking.

c. Law 2675/1999 provides for compulsory insurance coverage of women prostituting themselves for a fee.

Moreover, Article 348 of the Penal Code punishes with imprisonment and a fine of ten thousand to one hundred thousand euro the person who, by profession or for speculation, attempts to facilitate, be it covered up, by means of publishing an announcement, picture, telephone number or by transmitting e-messages or by any other way, lechery to a minor.

1.8 OBSCENE PHONE CALLS/TELEPHONE SEX

No information provided.

1.9 FEMALE GENITAL MUTILATION

No information provided.

1.10 INTERNATIONAL CONVENTIONS

Among others, Greece has signed the following International Conventions:

1. U.N. Convention concerning suppression of trafficking in human beings and exploitation of prostitution of third persons (1950).
2. U.N. Convention for the Elimination of All Forms of Discrimination against Women (1982). Greece ratified the Convention through Law 1342/1983.
3. Convention on Children’s Rights, (1989). Greece ratified the Convention through Law 2101/1992.
4. U.N. Optional Protocol of the International U.N. Convention “For Combating all Forms of Discrimination against Women” (1999). Greece ratified the Convention through Law 2952/2001
5. U.N. Convention against Transnational Organized Crime (2000).
6. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime (2000).
7. Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organized Crime (2000).
8. International Convention 182 on Labour, concerning prohibiting of the worst forms of children labour, and immediate action aiming at their elimination. Greece ratified the Convention through Law 2918/2001.
9. Convention of the Council of Europe on crime in cyberspace (2001).

1.11 PROTECTION OF PREGNANCY/PREGNANT WOMEN

According to Article 6, paragraph 3 of the Law on «Combating domestic violence and other provisions», when the victim of domestic violence is pregnant, the perpetrator member of the family is punished with imprisonment of at least two years.

2.0 SENTENCING

No information provided.

3.0 EFFECTIVENESS OF LEGISLATION

3.1 SUPPORT/PROTECTION

- The General Secretariat for Gender Equality provides legal and psychosocial support to women victims of domestic violence by means of the two Advisory Centres operating in Athens and Piraeus. It also keeps on cooperating with the Municipality of Athens on the operation of a shelter, which accommodates women victims of violence and their children.
- The Research Centre for Equality Issues (K.E.TH.I), a body supervised by the General Secretariat for Gender Equality, provides, inter alia, information about gender equality to women. The KETHI operates in Athens, Thessaloniki, Patras, Volos, and Herakleio/Crete, and four (4) more branches are expected to operate in Amfissa, Preveza, Kalamata, and Komotini.
- The new Municipal and Community Code (in force by Law 3463/2006) provides, inter alia, for advisory support of victims of domestic violence as one of the competencies of Municipalities and Communities.

INFORMATION – AWARENESS-RAISING / SENSITISATION

In the framework of its competencies, the General Secretariat for Gender Equality implements actions to inform and sensitize both public opinion and professionals handling cases of women victims of violence:

- Every year it carries out and publishes a study on the subject of «Domestic Violence – Sample statistical use of data concerning women’s abuse». The study refers to women having contacted the Advisory Centres of the General Secretariat for Gender Equality, and it is carried out on the basis of the 7 European indicators that the Danish Presidency set in 2002.
- It publishes information leaflets on the purpose of preventing and confronting cases of domestic violence. The leaflets have already been published in Greek, English, Arabian, and Persian, and they are soon going to be published in Albanian, Russian, Romanian, and French. The publication of the leaflet on domestic violence in Arabian and Persian has been considered necessary in the framework of the implementation of the Memorandum of Cooperation signed by the General Secretariat for Gender Equality and the U.N. High Commissioner for Refugees. The Memorandum concerns the promotion of women’s and under-age girls’ rights, who have been granted asylum, or have applied for asylum status, or have been granted humanistic status in Greece.
- In cooperation with the Institute for Training of the National Centre of Public Administration (INEP - EKDD), seminars addressing Judges, Public Prosecutors, Police officers, and professionals in the fields of health and social care are carried out in Athens, Thessaloniki, Ioannina, and Herakleio/Crete, aiming at training and sensitizing the above mentioned personnel, so as to enable them to handle cases of domestic violence more effectively.

4.0 DOMESTIC VIOLENCE

See **Sections 1.1 and 1.2** above.

5.0 RAPE AND SEXUAL ASSAULT IN MARRIAGE

Article 8 of the Law on «Combating domestic violence and other provisions» treats rape and lechery against a spouse as crimes of domestic violence.

Article 9 of the same law confronts domestic offences against sexual dignity.

6.0 RAPE AND SEXUAL ASSAULT

No information provided.

7.0 SEXUAL HARASSMENT

See **Section 1.5** above.

8.0 INCEST/SEXUAL ABUSE OF GIRLS

See **Section 1.4** above.

HUNGARY

Information provided by the Secretariat for Women's Issues, Ministry of Social and Family Affairs in **November 2000** and the General Directorate for Women's Issues, Ministry of Employment and Labour, **February 2003** and **September 2006**.

1.0 LEGISLATION AND SANCTIONS RELATING TO VIOLENCE AGAINST WOMEN

1.1 LETTER OF LAW – DEFINITIONS

Section 66 of the Hungarian Constitution establishes a general legal principle of equality between men and women: "The Republic of Hungary guarantees equality for both men and women with regard to exercising all civil, political, economic, social and cultural rights. According to Section 70/A of the Constitution:

- (1) "The Republic of Hungary respects the human rights and civil rights of all persons without discrimination on the basis of race, colour, gender, language, religion, political or other opinion, national or social origins, financial situation, birth or any other grounds whatsoever.
- (2) The law provides strict punishment for discrimination on the basis of Paragraph (1).
- (3) The Republic of Hungary endeavours to implement equal rights for everyone through measures that create fair opportunities for all.

Section 70/B of the Constitution entails important anti-discrimination provisions, such as the right to work, the freedom of choice of labour and profession, the right to equal remuneration for equal work, the right to income according to the quality and quantity of work and the right to relaxation and paid holidays.

On 22nd December 2003 on the bases of section 70/A of the Constitution the Hungarian Parliament adopted Act CXXV of 2003 on the equal treatment and promotion of equal opportunities (hereinafter: Equal Treatment Act).

The purpose of the Equal Treatment Act is to define the beneficiaries and obligors, as well as the essence of equal treatment with regard to the whole legal system and also to provide effective remedy to the victims of discrimination. With this Act the Republic of Hungary harmonised the directives of the European Union concerning equal opportunities for women and men.

Thus one of the most important elements of the Act is the definition of the concept and scope (beneficiaries and obligors) of discrimination.

The Equal Treatment Act generally prohibits discrimination based on sex, marital status and maternity (pregnancy).

The Act includes, beside the rules of equal treatment, the basic rules of equal opportunities. A formal equal treatment of disadvantaged groups would lead to the preservation of their disadvantaged situation. In order to promote the advancement of disadvantaged groups not only equal rights but also positive measures are needed to eliminate disadvantages.

The Act also defines the notion of harassment, separation and retaliation and prohibits these behaviours. It introduces *actio popularis* in cases of discrimination which ensure right to sue in cases of violations of personal or labour-related rights to the public prosecutor, the Equal Treatment Authority and to non-governmental organisations if the violation of rights concerns a larger and indefinable group of victims.

The Equal Treatment Act establishes the Equal Treatment Authority which operates from 1st February 2005. The Authority has national competence to implement equal treatment. It is controlled but not instructed by the Government thus its decisions can be challenged only in court.

The Equal Treatment Authority examines either on request or officially the violation of equal treatment in individual cases.

Besides it has consultative rights: it can express its opinion on legal proposals, can propose governmental decisions and regulations, and annually informs the Government and the public about the status of equal treatment. It also takes part in the elaboration of the governmental reports to the Council of Europe and the European Commission.

Pursuant to the Act violation of equal treatment can be examined either by the Equal Treatment Authority or in public administration procedure, depending on the choice of the victim of discrimination.

Section 76 of the Civil Code deals with the problem as a violation of personality rights. The prohibition of gender-based discrimination is furthermore laid down in Section 5 of the Labour Code:¹

- (1) In connection with the employment relationship the requirement of equal treatment shall be kept.
- (2) The consequences of the violation of equal treatment shall be remedied without the violation or impairment of the rights of other employees.

Women's rights are embodied in the concept of human rights. Certain mechanisms have been established to secure the realisation of these rights, such as the ombudsperson who supervises the practical application of these fundamental rights.

If the right to equality is violated, various judicial remedies are available: the women may bring criminal, civil, family, administrative or labour law actions before the court. In addition, there is a constitutional remedy: according to the Section 70/K of the Constitution, claims arising from the violation of fundamental rights shall be enforceable before court (gender equality is classified as a fundamental right). If a law violates a constitutional provision, redress can be sought before the Constitutional Court. Anyone who has been aggrieved in consequence of the application of an unconstitutional law and who has exhausted all other remedies has access to the Constitutional Court by lodging a constitutional complaint.

1.2 DOMESTIC VIOLENCE

The most significant Hungarian legal rules relating to domestic violence will be presented below.

CONSTITUTION

The Constitution acknowledges and protects human rights and fundamental freedoms.

PENAL CODE

The Penal Code contains approximately 30 provisions concerning violent criminal offences committed against a family member among the crimes against sexual morality and sexual freedom, the crimes against life integrity and health, and also among the crimes against marriage, family and youth and finally the crimes against public order and crimes against property. The Hungarian criminal law does not differ between the assaults against women and men.

It is possible on the grounds of these provisions to conduct a criminal procedure and impose a penalty on the perpetrators of different forms of wife abuse or abuse of children.

Act XCI of 2005 on the amendment of Act IV of 1978 on the Criminal Code introduced restraining as a rule of conduct under the supervision of the probation officer. According to section 82 paragraphs (1) and (2) the court, in case it suspends the sentence on probation, suspends the carrying out of the sentence of imprisonment on probation, or releases the person sentenced to imprisonment on parole, may prescribe obligations and prohibitions as rules of conduct for the person under supervision of a probation officer. According to the amendment, the judge or the prosecutor may order that the person under supervision shall keep away from the victim of the crime or his/her home, workplace or school.

Sexual assault:

Rape: Pursuant to section 197 of the Act IV of 1978 on the Criminal Code the victim of rape could not be the spouse of the perpetrator until 14th September 1997. Act LXXIII amended this regulation and at present rape can be committed also between husband and wife.

¹ Act No. XXII/1992

Assault against decency: Since the amendment of the Penal Code in 1997, assault against decency in marriage constitutes a criminal offence.

ACT ON CRIMINAL PROCEDURE

The amendment of Act XIX of 1998 on Criminal Procedure, adopted on 13th February 2006, includes the restraining order as a new coercive measure. Pursuant to the Act, restraining can be ordered in cases where there is suspicion beyond reasonable doubt of a crime to be punished with imprisonment. At present the Criminal Code contains 27 such crimes. In the case when it may be assumed that if the perpetrator remains in the residence, he/she will influence or threaten the witness of the crime, thereby defeating or making the evidentiary procedure more difficult or would commit the previously attempted or arranged crime against the victim or would commit another crime to be punished by imprisonment against the victim restraining can be ordered instead of pre-trial detention.

According to the provisions of the decision of the court, the perpetrator under restraining order has the following obligations:

- a) Must leave the residence and keep away from it during the determined time period,
- b) Must keep away from the given person, as well as this person's residence, workplace, school, health institute and place of worship,
- c) Must abstain from communication with the given person.

Restraining can be ordered by the court for a period of minimum 10 and maximum 30 days which cannot be prolonged. In case of breach of the above rules, the perpetrator may be placed in pre-trial detention or in case that is not necessary, a fine may be imposed.

The basic aim of restraining is to provide the victims with instant and effective protection and also promote the success of the proof during the procedures even if the procedures last longer.

CONTRAVENTION ACT

Among the acts prohibited by the Contravention Act "dangerous threat" "trespassing" "slander" and "begging with a child" have practical importance in the field of domestic violence.

CHILD PROTECTION ACT

Act XXXI of 1997 on the protection of children and on guardianship governance (hereinafter: Child Protection Act) the system of family-support (child welfare) services are developed and strengthened. It is possible in the framework of these institutions to carry out prevention of domestic violence in the family and support for victims of domestic violence. The Act states that children have right to human dignity, to protection against physical, psychological and sexual abuse and neglect, as well as informational harm. Children cannot be subjected to torture, corporal punishment or other cruel inhuman or degrading punishment or treatment. By the amendment the prohibition of child abuse has been incorporated into Hungarian legal system.

Pursuant to Child Protection Act all child protection authorities and all other authorities dealing with endangered families are obliged to notify the competent child welfare service of the endangering circumstance.

Under Child Protection Act child welfare service must be maintained in all settlements. The main responsibility of the child welfare service is to follow the endangered families with attention and to prevent and manage crisis.

In acute crisis if the abused family members have to flee from their home the temporary family homes provide them accommodation and complex help. Since 1st July 2005 under the amendment of the Child Protection Act settlements with more than 30.000 inhabitants have been obliged to maintain temporary family homes in order to reinforce their network.

ACT ON CIVIL PROCEDURES

Act CXXX of 2005 on the amendment of Act III of 1952 on Civil Procedure (Section 287) entered into force on the 1st January 2006. The amendment includes the introduction of a transitional measure for matrimonial procedures as regards the tenancy of the spouses' common residence. According to the

present judicial practice, the spouses' residence is 'subjectively indivisible' which means that as a general rule the spouse cannot be removed from the residence, except where the common use of the residence causes an injury to the other spouse or their child. Under the new act the court will have the power to decide on the division of the tenancy of the residence as a transitional measure already in the course of the procedure. The aim of this provision is to prevent tragic situations.

PARLIAMENT RESOLUTION NATIONAL CRIME PREVENTION STRATEGY MEASURE OF THE POLICE HEADQUARTERS

Parliament Resolution No. 45/2003 (IV. 23) on the development of a national strategy to prevent and effectively manage domestic violence rejects all forms of violence within families, including also verbal abuse. It highlights the priority of protection of human rights, to which everyone is entitled, stating that violence within families cannot be considered as a private matter. The resolution establishes that a national strategy has to be developed in order to prevent violence within families. The resolution states that the activities of social institutions are indispensable in prevention, victim assistance and education, and calls for co-operation between governmental agencies and NGOs.

One of the five priorities of Parliament Resolution No. 115/2003 (X.28) on the National Strategy of Social Crime Prevention is prevention of violence within the family.

Government Resolution No 1009/2005 (IV 21.) on the short, medium and long term responsibilities concerning the Parliamentary Resolution on the Social Crime Prevention Strategy defines the governmental tasks related to the prevention of domestic violence primarily on the field of social policy and child protection in order to develop the institutional system assisting victims.

The 2005 - 2006 Action Plan on prevention and treatment of domestic violence is set out in the Government Resolution 1036/2005 (IV 21).

The Minister of the Interior has issued No. 34/2002 Directive concerning the tasks required for the enhancement of the effectiveness of the measures aimed at protecting victims of crime - particularly victims of intra-family violence - on the basis of which No. 13/2003 (III. 27.) measure has been introduced at the National Police Headquarters, which will guarantee that police operations in relation to intra-family violence is carried out in a 'pro-active' approach, in a victim-oriented manner and in line with the expectation of society as well as that the duties of the police are performed in a harmonised approach.

SERVICES SUPPORTING VICTIMS OF DOMESTIC VIOLENCE

The Ministry of Social Affairs and Labour (formerly: Government Office of Equal Opportunities) opened the first pilot crisis management centre in January 2004. After the modernisation of the centre the National Crisis Intervention and Information Helpline started its operation in April 2005. The Helpline provides assistance to the victims of domestic violence 24 hours a day free of charge all over the country. If needed it starts immediate steps to help victims. Where immediate intervention is not needed the Helpline provides relevant information.

The victims (parent with child) of domestic violence can be accommodated in the temporary homes of children and families in the right of the child. That is why facilities for victims without children had to be developed in the existing institutes. Thus the necessary facilities were established in 7 regions of the country and in Budapest in the first half of 2005 within the framework of the pilot project "Regional Crisis Management Network".

The members of the pilot project work in close cooperation with the National Crisis Management and Information Helpline and also with child protection and other relevant authorities.

At the beginning of 2006 a secret shelter was opened especially for the victims of domestic violence fleeing from home with or without child(ren).

At the moment shelters operate in 7 regions and in Budapest. The network can accommodate 40 persons on average which is supplemented by the 26 spaces of the secret shelter.

In most cases women and children are accommodated in the centres. In the first half of 2005 159 persons were accommodated altogether 12 of which were women without children. In the first half 95 children stayed in the centres. In 18,4% the accommodation was the result of acute crisis. In the second half of 2005 316 persons were accommodated. Both the number of children and women without children increased. In the second half 74% of accommodations were result of acute crisis.

The members of the network provide the victims with psychological, social and legal assistance as well.

The Ministry of Social Affairs and Labour (formerly: Ministry of Youth, Family, Social Affairs and Equal Opportunities) organizes on a regular basis workshops and trainings for professionals working with the victims of domestic violence in order to facilitate effective work and continuous cooperation.

Victim Assistance Office has been operating within the Ministry of Justice and Law Enforcement (formerly: Ministry of Home Affairs) since 1998. At present 46 victim protection offices operate in Hungary which are maintained in cooperation of the local self-governments, the police and non-governmental organizations. These offices provide with assistance the victims of domestic violence as well.

The Ministry of Justice and Law Enforcement (formerly: Ministry of Justice) within the framework of "People's Advocate" Program established legal assistance offices in every county town which provide information on basic legal matters. In more difficult cases a counselor is assigned who provides information and takes part in drafting official applications, petitions. The competence of the office covers cases concerning housing, employment, social benefits, property, certain administrative procedures, legal protection of crime victims. However it does not have the right to draft contracts.

Pursuant to Act CXXXV of 2005 on the assistance and compensation of victims of crimes the State shall promote the enforcement of the victim's rights and provide prompt financial and legal aid to every victim.

As stipulated in the Act the victim assistance service of the Office of Justice helps the victims to enforce their basic rights and to make use of health services and health insurance services.

The scope of prompt financial help covers housing, clothing, catering, traveling, and health and funeral costs if the victim is not able to meet them.

CRIMINAL LAW

Hungarian penal legislation has no provisions that specifically sanction domestic violence. The Penal Code contains approximately 30 provisions concerning violent criminal offences committed against a family member among the crimes against sexual morality and sexual freedom, the crimes against life integrity and health, and also among the crimes against marriage, family and youth and finally the crimes against public order and crimes against property. The Hungarian criminal law does not differ between the assaults against women and men.

The Integrated Administration and Processing System of the Police called "Robocop 2000" and the Netcop System are now able to process data according to Order No. 13/2003 (III. 27.) of the Head of National Police Headquarters. For the elaboration of maps of criminal affections data from the database of Robocop and Netcop are used. These databases enable domestic violence cases to be engaged in research. According to the report of the Supervision Department of the National Police Headquarters, on the bases of the data from the above databases, in 2004 investigation was ordered in 2.010 cases which (pursuant to section 2 of the Order of the Head of National Police Headquarters) fall under the concept of domestic violence. The most investigations were ordered in Budapest (274), Pest county is the second in the series with 212 investigations followed by Hajdú-Bihar county (184 investigations). According to this research Vas, Zala and Fejér counties are the least affected with the problem of domestic violence. In the examined period 455 investigations were submitted to the Office of Public Prosecutor with proposal of accusation: in Jász-Nagykun-Szolnok County in 66 cases, in Budapest in 53 cases and in Szabolcs-Szatmár-Bereg County in 34 cases. The investigation was discontinued in 274 cases nation-wide: in Budapest in 32 times, in Pest County in 19 cases. In most cases which fell under domestic violence the committed crimes belonged to the category of "crimes against marriage, family, youth and sexual morality" (935 cases). This is 47% of all reported crimes falling under domestic violence. The share of crimes against life integrity and health is 33% (669 cases). 14% of the crimes concerned belong to the category of "crimes against public order" and the ration of "crimes against property" is 6%.

Beside the reports of the National Police Headquarters, the Integrated Database of Police, Public Prosecutor and Court is the other official database of domestic violence cases. The following table contains the relevant data from this database.

"Relationship between the perpetrator and the victim" (relationship between the victim and the perpetrator involved in the reported crimes regarding the relevant categories):

	2000	2001	2002	2003	2004	2005
All crimes (all relationships that could be estimated)	55573 (100%)	52687 (100%)	53611 (100%)	50763 (100%)	55413 (100%)	No data
- <i>relative</i>	3016 (5%)	3049 (6%)	3108 (6%)	3048 (6%)	3557 (7%)	
- <i>spouse</i>	2179 (4%)	2055 (4%)	2121 (4%)	2430 (5%)	2509 (5%)	
- <i>close acquaintance</i>	7249 (13%)	7419 (14%)	7885 (15%)	7471 (15%)	8095 (15%)	
- <i>occasional acquaintance</i>	4924 (9%)	4922 (9%)	5418 (10%)	5176 (10%)	5855 (11%)	
Crimes against the person	7568 (100%)	7262 (100%)	7553 (100%)	7316 (100%)	7961 (100%)	
- <i>relative</i>	953 (13%)	969 (13%)	951 (13%)	950 (13%)	1047 (13%)	
	2000	2001	2002	2003	2004	2005
- <i>spouse</i>	1187 (16%)	1135 (16%)	1104 (15%)	1227 (17%)	1281 (16%)	No data
Homicide	336 (100%)	385 (100%)	357 (100%)	363 (100%)	355 (100%)	
- <i>spouse</i>	90 (27%)	95 (25%)	73 (20%)	90 (25%)	91 (26%)	
Assault	5433 (100%)	5055 (100%)	5321 (100%)	5084 (100%)	5472 (100%)	
- <i>spouse</i>	885 (16%)	847 (17%)	849 (16%)	920 (18%)	953 (17%)	
Crimes against sexual morality	604 (100%)	562 (100%)	614 (100%)	584 (100%)	585 (100%)	
- <i>relative</i>	79 (13%)	55 (10%)	89 (15%)	76 (13%)	92 (16%)	
- <i>spouse</i>	36 (6%)	24 (4%)	45 (7%)	40 (7%)	46 (8%)	
Crimes against property	35038 (100%)	32486 (100%)	31709 (100%)	28728 (100%)	30551 (100%)	
- <i>relative</i>	24 (1%)	24	28	21	23	
- <i>spouse</i>	5 (0,3%)	8 (0,5%)	9 (0,5%)	17 (1%)	10 (0,5%)	
Violent and rowdy crimes	19290 (100%)	19050 (100%)	20714 (100%)	30676 (100%)	22742 (100%)	
- <i>relative</i>	1397 (7%)	1401 (7%)	1484 (7%)	1461 (5%)	1651 (7%)	
- <i>spouse</i>	1590 (8%)	1488 (8%)	1545 (7%)	1807 (6%)	1859 (8%)	

1.3 RAPE/SEXUAL ASSAULT

Title II "Crimes Against Sexual Morals":

RAPE (SECTION 197)

- (1) A person who, by violent action or direct menace against life or limb, forces a person to have sexual intercourse, or who uses a person's incapacity of defence or manifestation of her will for sexual intercourse, commits a felony and is sentenced to 2 to 8 years of imprisonment.
- (2) The punishment is 5 to 10 years of imprisonment if:
 - a) The victim is under the age of 12 years;
 - b) The victim is under the education, supervision, care or medical treatment of the perpetrator;
 - c) More than one person has sexual intercourse with the victim on the same occasion, knowing about each other's acts.
- (3) The punishment is 5 to 15 years of imprisonment if the provisions of subsection (2), paragraph b) or c) are fulfilled and the rape is committed against a person under the age of 12 years.

ASSAULT AGAINST DECENCY (SECTION 198)

- (1) A person who, by violence or direct menace against life or limb, forces another person to engage in fornication or to the endurance thereof or who uses for the purpose of fornication another person's incapacity of defence or manifestation of will, commits a felony and is sentenced to 2 to 8 years of imprisonment.
- (2) The punishment is 5 to 10 years of imprisonment if:
 - a) The victim is under the age of 12 years;
 - b) The victim is under the education, supervision, care or medical treatment of the perpetrator;
 - c) Several persons fornicate the victim on the same occasion, knowing about each other's act.
- (3) The punishment is 5 to 15 years of imprisonment if the provisions of subsection (2), paragraph b) or c) are fulfilled and the sexual assault is committed against a person under the age of 12 years.

CRIMINAL PROCEEDING

Private Motion (section 209)

The crimes defined in section 197, subsection (1), as well as section 201, subsections (1) and (2) may only be prosecuted after a private motion, except for the case of crimes punishable not on private motion are committed in connection therewith.

Interpretative Provision

A person under the age of 12 years shall be deemed as incapable of defence for the purposes of sections 197, 198 and section 200.

1.4 CHILD SEXUAL ABUSE/INCEST

The Hungarian law and legal policy pays special attention to the protection of children's rights, prevention of violence and child-abuse. The Criminal Code penalises more severely crimes committed against children (see rape (Section 197), assault against decency (Section 198) etc). There are however specific acts that are penalised explicitly in the interest of the protection of minor victims: Endangering a minor (Section 195.) seduction (Art. 202.) and pornography (Art. 195/A).

According to Section 202 of the Penal Code, a person who induces somebody under the age of 14 years to have sexual intercourse or to fornicate with another person commits a felony and is sentenced to 1 to 5 years of imprisonment.

A person over the age of 18 years who strives to persuade a person under the age of 14 years to have sexual intercourse or to fornicate with another person, commits a felony and is sentenced to up to 3

years of imprisonment. These conducts are punishable with more serious penalty (respectively 2 to 8 years and 1 to 5 years of imprisonment) if the injured party of the crime is a relative of the perpetrator, or is under the education, supervision, care or medical treatment of the perpetrator.

Changing of Family Status (section 193)

(Chapter XIV "Crimes Against Marriage, Family, Youth and Sexual Morals", title I)

- (1) Any person who alters the family status of another person, thus in particular exchanges a child or smuggles one into another family, commits a felony offence and is sentenced to up to 3 years imprisonment.
- (2) The punishment is 1 to 5 years of imprisonment, if the alteration of family status is perpetrated:
 - a) By an employee of a medical or educational institution within the sphere of his occupation;
 - b) By a person responsible for the tutelage, guardianship or supervision of a person under the age of 18 years.
- (3) If the criminal act is committed by an employee of a medical or educational institution due to negligence, such person is sentenced for a misdemeanour offence to up to 1 year of imprisonment, labour in the public interest or a fine.

Endangering of a Minor (section 195)

- (1) A person obliged to conduct the education, supervision of or care for a minor, who seriously violates his obligations arising from such duty and thereby endangers the physical, intellectual or moral development of the minor, commits a felony and is sentenced to 1 to 5 years of imprisonment.
- (2) Unless a graver crime is realised, an adult who induces or tries to induce a minor to perpetrate a crime or to the pursuance of a dissolute way of life is punished in accordance with subsection (1).
- (3) Any person of legal age who has forced labour conducted by a minor commits a felony offence and is sentenced to 2 to 8 years of imprisonment.
- (4) Any person obliged by the decision of the court or authority hinders the development or maintenance of the visitation of child under his supervision by the entitled person even after the fine used to enforce the right of visitation of the entitled person commits an offence and is punished with maximum one year of imprisonment community work or fine.
- (5) In accordance with subsection (1) a person obliged to conduct the education, supervision of or care for a minor is the partner of the parent with the right of guardianship or guardian and the parent deprived from his right of guardianship if he lives in the same household or flat as the child.

SEDUCTION

Section 201

- (1) A person who has sexual intercourse with a person under the age of 14 years or a person over the age of 18 years who engages in fornication with a person under the age of 14 years commits a felony and is sentenced to 1 to 5 years of imprisonment.
- (2) A person over the age of 18 years who strives to persuade a person under the age of 14 years to have sexual intercourse or to fornicate with him, commits a felony and is sentenced to up to 3 years of imprisonment.
- (3) The punishment is respectively 2 to 8 years and 1 to 5 years of imprisonment if the injured party of the crime defined in subsections (1) or (2) is a relative of the perpetrator or is under the education, supervision, care or medical treatment of the perpetrator.

Section 202

- (1) A person who induces a person under the age of 14 years to have sexual intercourse or to fornicate with another person commits a felony and is sentenced to 1 to 5 years of imprisonment.

- (2) A person over the age of 18 years who strives to persuade a person under the age of 14 years to have sexual intercourse or to fornicate with another person, commits a felony and is sentenced to up to 3 years of imprisonment.
- (3) The punishment is respectively 2 to 8 years and 1 to 5 years of imprisonment, if the injured party of the crime defined in subsections (1) or (2) is a relative of the perpetrator or is under the education, supervision, care or medical treatment of the perpetrator.

Incest (section 203)

- (1) A person who has sexual intercourse or fornicates with a relative in direct line commits a felony and is sentenced to 1 to 5 years of imprisonment.
- (2) The descendant is not punished if he/she is under the age of 18 years at the time of the perpetration of the act.
- (3) A person who has sexual intercourse with his or her sibling is sentenced for misdemeanour offence to up to 2 years of imprisonment.

1.5 SEXUAL HARASSMENT

Sexual harassment does not appear as a proper crime, but in jurisdictional practice it is judged equivalent to "defamation". Furthermore, a perpetrator may be held responsible for duress, restriction of personal freedom.

Obscenity (section 208)

A person who exposes himself before another person in an indecent way for the satisfaction of his or her sexual desire, commits a misdemeanour, and is sentenced to up to 2 years of imprisonment, labour in the public interest, or a fine.

1.6 PORNOGRAPHY

Abuse of Prohibited Pornographic Pictures (section 195/A of the Penal Code (amended with Act No. CXXI of 2001))

- (1) Any person **obtaining and/or** having possession of pornographic images of a minor made by video, film or photographic equipment or by any other means is guilty of a felony punishable by imprisonment not to exceed three years.
- (2) Any person who offers and/or conveys pornographic images of a minor made by video, film or photographic equipment or by any other means is guilty of a felony punishable by imprisonment not to exceed five years.
- (3) Any person who produces pornographic images of a minor by video, film or photographic equipment or by any other means, and/or distributes **and/or trades** or makes such pornographic images available to the public is guilty of a felony punishable with imprisonment between two to eight years.
- (4) A person having a minor participating in a pornographic show shall be punished as set forth in Subsection (3).
- (5) The person providing financial means and thus assisting in the committing of the crime defined in Subsections (3)-(4) shall be punished with imprisonment between two to eight years.
- (6) For the purposes of Subsections (1)-(4), pornographic picture or pornographic show is the act or display of sexuality in a gravely indecent manner of exposure specifically for arousing sexual desire.

1.7 PROSTITUTION

Prostitution was until 1993 a crime in Hungary. The Act XVII. of 1993 eliminated prostitution from the circle of crimes. However, this legal solution was only a shy step towards legalisation, since the sanctions under the contravention law against "sexual service for financial compensation" were kept

by the legislator. At the same time, the sanctions concerning crimes related to prostitution was increased.²

The step towards a more restricted legalisation concerning prostitution was taken in 1999 when the chapter on acts related to prostitution came into force. (Act LXXV of 1 September 1999 on the Rules of Intervention Against Organised Crime and the Individual Phenomena Related Thereto and related amendments).

The following crimes related to prostitution are criminalised in the Penal code: Promotion of prostitution (Art. 205), living on the earnings of prostitution (206.) and pandering (Art. 207.). The legislator defines the notion of prostitution among the Interpretative Provisions (Art. 210/A.) as follows:

- (1) A person who has sexual intercourse or fornicates, striving to make a regular profit, pursues prostitution.
- (2) For the purposes of this title, fornication means: any gravely indecent act except for sexual intercourse, which stimulates or satisfies a sexual desire.

Promotion of prostitution (Art. 205.) and pandering (Art. 207.) is punished more severely if the victim is under the age of 18 years. Promotion of prostitution is sanctioned with 2 to 8 years of imprisonment, if "Any person under the age of 18 years engages in prostitution in the brothel" (205. §. (3) a.)). Pandering is sanctioned with 2 to 8 years of imprisonment if the procuring is committed "Against a relative of the perpetrator or a person under his education, supervision or care or who is under the age of 18 years" (Art. 207. (3) a.).

ZONES OF PROHIBITION AND ZONES OF TOLERANCE

In recent years, continuous efforts have been made to elaborate a system, to prevent and control prostitution, without violating the rules and principles of the Convention on the Suppression of Traffic in Persons and of the Exploitation of the Prostitution of Others. (New York, 1949). The result was a new law, based on a so-called limited abolitionist concept. According to this model, there are zones of prohibition, described by the law, where prostitution is not allowed and zones of tolerance to be created by the local governments, in the places where prostitution dominantly appears. The assignment of such locations cannot be neglected, if prostitution permanently appears in public places and the settlement has more than 50.000 inhabitants.

Prostitutes as well as clients are prohibited from offering or accepting sexual services in the protected zones. Furthermore, the offering of sexual services to persons under the age of 18 years, the accepting of offers of such person and the offering services in a way offending other people is forbidden. Violations are sanctioned with fines. The advertisement of sexual services (and to take part therein) by written form, audio-visual or other means in protected zones is forbidden and sanctioned by a fine. All of the above mentioned violations of the law are *contraventions*, (petty offences) which belong to the competence of the police.

There still do not exist any so-called "zones of tolerance" as most local governments are reluctant to create such zones on their own territory. (It is not elaborated, by whom and how it is possible to build the infrastructure of such zones.)

HEALTH CONTROL OF PROSTITUTES

Health control of prostitutes is regulated in the order No.41/1999 (IX. 8.) of the Minister of Health Affairs. According to this regulation, a prostitute is only allowed to offer sexual services if she possesses the prescribed medical certificate, which is valid together with her identity card. The prostitute herself should initiate the medical examination. It is not free of charge and should be repeated every month or once every three months, depending on the kind of medical examination.

² Criminal acts: promotion of prostitution – Section 205 of the Penal Code, living on the earnings of prostitution – Section 206, pandering – Art. 207.

Criminal Code

PROMOTION OF PROSTITUTION (SECTION 205)

- (1) A person who makes a building or another place available for another person's prostitution commits a felony and is sentenced to up to 3 years of imprisonment.
- (2) The person who maintains, heads a brothel or supplies financial means to its operation commits a felony and is sentenced to up to 5 years of imprisonment.
- (3) The punishment is 2 to 8 years of imprisonment if:
 - a) Any person under the age of 18 years engages in prostitution in the brothel;
 - b) repealed by Act CXXI of 2001
- (4) A person who persuades another person to engage in prostitution is sentenced in accordance with subsection (1).

LIVING ON EARNINGS OF PROSTITUTION (SECTION 206)

A person who lives entirely or in part on the earnings of another person's prostitution commits a felony and is sentenced to up to 3 years of imprisonment. Banishment may also take place as a supplementary punishment.

CRIMINAL PROCEEDING (SECTION 210/A)

- (1) Prostitution is pursued by the person who has sexual intercourse or fornicates striving to make regular profit.
- (2) For the purposes of this title, fornication is any gravely indecent act, with the exception of sexual intercourse, which serves the stimulation or satisfaction of sexual desire.

PANDERING (SECTION 207)

- (1) A person who solicits another person for sexual intercourse or fornication with somebody else in order to make profit commits a felony and is sentenced to up to 3 years of imprisonment.
- (2) The punishment is 1 to 5 years of imprisonment, if the pandering is conducted like a business.
- (3) The punishment is 2 to 8 years of imprisonment, if the pandering is committed:
 - a) Against a relative of the perpetrator or a person under his education, supervision or care or who is under the age of 18 years;
 - b) With deceit, violence or direct menace against life or limb;
 - c) repealed by Act CXXI of 2001.
- (4) A person who agrees to perpetrate pandering defined in subsection (2) commits a felony and is sentenced to up to 3 years of imprisonment.

VICTIM/WITNESS PROTECTION

In accordance with Act CXXVI of 2000, one of the tasks of the "Coordination Centre against Organised Crime" is to combat trafficking in human beings. The operation of the Centre is regulated by the Government Decree No. 70/2001. (IV.20.).

The Government Decree No. 1074/1999 (VII.7.) sets out the legislative tasks and other measures to be taken with a view to protect victims of crimes and their relatives, to compensate or mitigate their damages. On the basis of the said provision, there has been a series of legislative measures taken, including Act LXXXV of 2001 on the Protection Program of the participants in the criminal procedure and those assisting the criminal justice, which entered into force on 1 April 2002 and also the Act CXXXV of 2005 on the assistance and compensation of victims of crimes.

The purpose of the Act LXXXV of 2001 on the Protection Program of the participants in the criminal procedure and those assisting the criminal justice is to provide protection to the participants of the criminal procedure, the persons actively supporting the criminal procedure and the persons closely related to the persons mentioned above, whose threatened situation is the consequence of their said relationship and their personal safety demands increased protection by the State. A further objective of the Act, in accordance with the degree of the danger threatening the person in question, is to apply

special measures to combat crime, in particular organised crime, and to efficiently apply the interests of crime prosecution and criminal justice. The Protection Program constitutes, for the witness, victims, and the accused party participating in the criminal procedure, as well as their next of kin and other persons in relationship with the injured and being in a threatened situation, an organised form of protection which may not be provided in the framework of personal protection,

- a) provided by the police under a civil law and on the basis of an agreement with the person being in threatened situation, and
- b) in the course of which it is necessary to apply special measures (Section 16) and, for the purpose of promoting the social reintegration of the person in question, to provide mental, social, economic, human and legal support (Point 1 of Section 1.).

The Protection Program may be applied during as well as after the completion of the criminal procedure. In relation to a crime of a serious nature, an agreement may be concluded with witnesses, injured persons or accused parties participating in the criminal procedure, and co-operating with the authority according to the requirements prescribed by the law. The crimes of a serious nature are the following: in particular crime, where the characteristics of organised crime may be identified, or which are connected with terrorism, blackmail, money laundering, trafficking in drugs and arms, prostitution, paedophilia as well as with crime committed in relation to the above against the life or physical integrity of people.

For the prevention of unlawful acts against the life, physical integrity or the personal freedom of the person involved, the Service may apply the following special protective measures:

- a) changing the place of residence in order to move the protected person to safe place, or in the case of involving persons under detention and participating in the Program to transport them to another law enforcement institution;
- b) providing personal protection;
- c) ordering suspension of data provision in registers, and requiring the reporting of any request for information in the data registered;
- d) changing name;
- e) changing personal identity;
- f) participation in international co-operation.

Point c), Paragraph (1), Section 15 of Act XXXIX of 2001 on foreign individuals' entry to and residence in Hungary provides the Alien Police Authority with the opportunity to grant, on humanitarian grounds, a residence permit to those foreign citizens who are co-operating with the authorities of criminal justice in order to discover offenders of trafficking in human beings. The issuing of the residence permit is based on the proposal of the crime prosecution authorities.

1.8 OBSCENE PHONE CALLS/TELEPHONE SEX

No information provided.

1.9 FEMALE GENITAL MUTILATION

No information provided.

1.10 INTERNATIONAL CONVENTIONS

Overview on international human rights conventions ratified by Hungary:

UN INSTRUMENTS

Convention	Ratification by Hungary	Entry into force	Promulgation
International Covenant on Civil and Political Rights (ICCPR) 1966	1974	1976	Law Decree No. 8 of 1976
Optional Protocol to ICCPR 1966	1988	1988	Law Decree No. 24 of 1988

Second Optional Protocol to ICCPR on the Abolition of Capital Punishment 1989	1994	1994	Act No. II of 1995
International Covenant on Economic, Social and Cultural Rights 1966	1974	1976	Law Decree No. 9 of 1976
International Convention on the Elimination of All Forms of Racial Discrimination 1965	1967	1969	Law Decree No. 8 of 1969
Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984	1987	1987	Law Decree No. 3 of 1988
Protocol amending the 1926 Slavery Convention 1953	1958	1958	Law Decree No. 18 of 1958
Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery 1956	1958	1958	Law Decree No. 18 of 1958
Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others 1949	1955	1955	Law Decree No. 34 of 1955
Convention relating to the Status of Refugees 1951	1989	1989	Law Decree No. 15 of 1989
Protocol relating to the Status of Refugees 1967	1989	1989	Law Decree No. 15 of 1989
Convention on the Political Rights of Women 1953	1955	1955	Law Decree No. 15 of 1955
Convention on the Elimination of All Forms of Discrimination Against Women 1979	1980	1980	Law Decree No. 10 of 1982
Convention on the Rights of the Child 1989	1991	1991	Act No. LXIV of 1991
Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women	2001	2001	Act No. LX of 2001

INSTRUMENTS OF THE COUNCIL OF EUROPE

Convention	Ratification by Hungary	Entry into force	Promulgation
European Convention on the Protection of Human Rights and Fundamental Freedoms (ECHR) 1950 and Additional Protocols No. 1, 4, 6, 7	1992	1992	Act No. XXXI of 1993
Protocol No. 11 to the ECHR on the	1995	1998	Act No. XLII of 1998

transformation of the Control Mechanism 1994			
European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment 1987	1993	1994	Act No. III of 1995
European Social Charter 1961	1999	1999	Act No. C of 1999
Framework Convention for the Protection of National Minorities (1995)	1995	1998	Act No. XXXIV of 1999
European Convention on Cybercrime 2001	2004	2004	Act LXXIX of 2004

1.11 PROTECTION OF PREGNANCY/PREGNANT WOMEN

No information provided.

2.0 SENTENCING

2.1 SENTENCING DOMESTIC LEGISLATION

See **Section 1.2** above.

3.0 EFFECTIVENESS OF THE LEGISLATION

3.1 SUPPORT/PROTECTION

In Hungary, several NGOs exist which provide support to victims of crimes. For details see previous report for governmental efforts on the field of victim support see 1.2.

4.0 DOMESTIC VIOLENCE

See **Section 1.2** above.

5.0 RAPE AND SEXUAL ASSAULT IN MARRIAGE

See **Section 1.2** above.

6.0 RAPE AND SEXUAL ASSAULT

See **Section 1.3** above.

7.0 SEXUAL HARASSMENT

See **Section 1.5** above.

8.0 INCEST/SEXUAL ABUSE OF GIRLS

See **Section 1.4** above.

ICELAND

The information from Iceland is drawn from summarised information provided by the Office of Gender Equality, in **December 2003** and **September 2006**.

1.0 LEGISLATION AND SANCTIONS RELATING TO VIOLENCE AGAINST WOMEN

1.1 LETTER OF LAW – DEFINITIONS

There is no specific legislation relating to violence against women in Iceland. It is regulated like other forms of violence, with the same rules applying to both sexes. Most are found in the Icelandic General Penal Code no.19/1940.

1.2 DOMESTIC VIOLENCE

On 3 April 2006 the Icelandic parliament passed an amendment to the General Penal Code with regard to domestic violence. A new paragraph was added to Article 70 of the Code, relating to severity of punishment, as follows:

In the event that an infraction was directed against a man, woman or child closely related to the perpetrator and their family connection is believed to have aggravated the violence of the act, this should generally be taken into account to increase the severity of the punishment.

Furthermore, the following provision is added to Article 233.

A person who offends or humiliates his/her spouse or former spouse, child or another individual closely related to the perpetrator in such a way that may be regarded as constituting gross dishonour shall be subject to a prison sentence of up to two years.

According to art. 211, murder can lead to 5-16 years of imprisonment or a life sentence. According to art. 217, physical assault can lead to fine, custody or imprisonment of up to 1 year. Art. 217 rule so-called lesser physical assault and this article is probably the most commonly used in cases concerning domestic violence against women. This article provides that a prosecution should not take place unless it is necessary from the point of view of the public interest.

According to art. 218 a serious physical assault can lead to imprisonment of up to 16 years.

In addition, article 218a provides that consent to physical assault decreases the punishment under art. 218 and that offences under art. 217 are not punishable if the assaulted person consented to the act. Art. 218a further provides that if the assault takes place during a physical fight or struggle, it is permissible to decrease or omit the punishment under Section 217. The same section applies if the one who suffers harm is the one who started the fight by assault or provocation.

According to art. 220 it can lead to up to 8 years of imprisonment to put someone in such a situation that she/he is unable to help himself and leaving her/him without helping her/him in this helpless state.

Under the Marriage Act 31/1993 a wife/husband can divorce her/his spouse if he/she is guilty of physical assault or sexual violence (Art.40).

Action plan with regard to domestic and sexual violence

At a cabinet meeting 26 September inst., an action plan was agreed upon with regard to domestic and sexual violence during the period 2006-2011. The composition of the action plan was based on a proposal by the Minister of Social Affairs and the Minister of Justice and Ecclesiastical Affairs, dating from October 2005, to the effect that work should begin on the compilation of an action plan regarding domestic violence and sexual abuse directed against women and children.

The chief objective of the action plan is to counteract domestic and sexual violence directed towards women and children and to improve services for those who have been the victims of violence or are at risk in this respect.

The action plan is divided into two parts:

1. Actions regarding domestic violence and sexual abuse of children
2. Actions regarding domestic violence and sexual violence against women

Each part, respectively, is guided by the following aims:

- Strengthen preventive measures which stimulate open discussion regarding the abuse of children and sexually oriented violence and encourage altered social attitudes.
- Train the staff of relevant institutions in diagnosing the characteristics of sexual violence and the abuse of children, as well as how to assist victims.
- Ensure that appropriate assistance is made available to individuals who are subjected to domestic or sexual violence.
- Break the vicious cycle of violence by improving methods of treatment available to perpetrators.

This is an elaborate action plan comprising 37 separate tasks. Each task is described in particulars, together with its objective. Individual ministries have been made responsible for the implementation of each task within a certain time frame.

SURVEY ON VIOLENCE AGAINST WOMEN

In May 1994, the Icelandic legislative body voted in favour of a resolution entrusting the Minister of Justice to appoint a committee whose task it was to supervise a research into the reasons for, the prevalence of and the consequences of violence against women. The stated goal was to get an overview of the situation in order to find ways to improve it. This committee began its work in February 1995 and the main results of the investigation were published in February 1997. 3000 Icelanders (Iceland has a population of around 270.000), half women and half men, were in the sample. The survey was carried out in telephone interviews in April 1996. A similar survey was made in Denmark a few years before.

The survey showed that 1.3 % of women had experienced violence at the hands of their partner in the last 12 months. Around 54% of women subjected to violence from their partner have experienced severe violence. 4.5 % of the women said that they have been raped after reaching the age of eighteen. More than 80 % knew the perpetrator. Only 13.3 % reported the rape to the police. In the instances when the women knew the rapist only 9 % reported the incident but 30 % when they did not know the perpetrator.

The general results show that males are far more subjected to violence than women and they are also far more likely to be the perpetrators. (Women who have used violence have relatively more often been the victims of violence than males. 70 % of women perpetrators have also been subjected to violence. Among males 37 % of the victims are also perpetrators.) On the other hand, women are far more likely to have been subjected to violence from their husband or former husband.

Only 0.7% of the women say that they have been subject to violence from both their current and previous partner. This must either mean that women who have been in a violent relationship do not repeat that experience, or that they are reluctant to admit the violence.

When women kill abusive husbands/partners the judge has possibilities to take into account specific circumstances when deciding the punishment. So there is room for "leniency" under certain circumstances, such as abuse in marriage. This has indeed been used, but there are no legal guidelines.

1.3 RAPE/SEXUAL ASSAULT

Rape and sexual assault are regulated in the General Penal Code no. 19/1940, mainly as crime against the person. The rules concerning sexual crimes were revised in 1992. The main changes were that the rules could now be applied to both sexes, while the former rules were only applicable to women.

According to article 194, anyone who by force or threat of force compels a person to have sexual intercourse or other sexual congress with him/her shall be imprisoned for at least one year and up to sixteen years. The deprivation of freedom by confinement, drugging or other comparable means, counts as force.

Article 196 states that whoever makes use of the insanity or other mental deficiency of a person in order to have intercourse or other sexual congress with him/her, or if he/she is in any way in such a state that he/she is unable to prevent the act or understand its meaning, is sentenced to up to six years of imprisonment.

According to article 197 it can lead to 4 years of imprisonment for someone working in a prison, mental hospital or other such institute to have sexual intercourse with a client.

According to article 198, it can lead to 3 years of imprisonment to have sexual intercourse by abusing a person's dependency.

Article 205 provides that if the man and the woman in the situation ruled by article 194-198 are married and reconcile, or marry after the event, the punishment may be dropped.

CRIMINAL PROCEDURE

Rape in marriage is outlawed, prosecuted and sanctioned in the same way as other forms of rape.

In Icelandic law, indictments are not to be brought in cases where the investigation reveals that it is unlikely that a conviction will be obtained. This is expressed in Article 112 of the Code of Criminal Procedure no. 19/1991, which states that when the prosecutor has received the materials relating to a case, and has established that the investigation is complete, he is to consider whether or not to prosecute. If he considers that what has been revealed is insufficient, or unlikely, to lead to a conviction, he is to take no action; otherwise, he is to send the case to court.

Proof is difficult in rape cases, in addition to which human rights principles may make it difficult to introduce amendments in this area. It is a fundamental principle of Icelandic law, and one of the basic legal principles of the state as a legal body, and in accordance with the human rights conventions to which Iceland is a party, that an individual who is accused of a criminal act is ensured the right to be regarded as innocent until proven guilty. The burden of proof regarding the guilt of an accused person lies with the prosecution, and the judge is to assess in each individual case whether the commission of a criminal act has been adequately proved. Furthermore, as is stated above, it is laid down in law that cases are to be dropped, or their investigation closed, if there appear to be insufficient grounds for a conviction. As the burden of proof in rape cases is difficult, and all reasonable doubt is to be interpreted to the benefit of the accused, the question has been asked whether the burden of proof should be reversed, which means that the accused person would have to take the consequences of being unable to prove his innocence. However, the rule that a person is innocent until his guilt has been proved is so fundamental to the legal system that interfering with it has not been considered likely to produce good results.

It is necessary to ensure high quality procedure regarding sexual offences and for this purpose the Director of Public Prosecutions recently appointed a task committee to examine the investigation and handling of rape cases and procedure in their prosecution. The committee will examine all rape cases occurring during a specific period and trace their outcomes in order to assess the quality of investigations and procedure by the prosecution. The committee will give particular attention to the correlation between the number of cases that are dropped and the procedure adopted during their investigation and prosecution. It will also re-examine the working rules on the investigation of rape cases. It is due to submit its report by 31 May 2007.

Other means can also be applied to highlight the seriousness of these offences with the interests of the victims in mind, and for this purpose the Minister of Justice has submitted a new bill to the Parliament (Althingi) amending the section of the General Criminal Code dealing with sexual offences. The guiding principle behind the bill is to increase the protection given by the law to women and children and to modernize the provisions, the emphasis being on ensuring respect for each individual's personal privacy, right of self-determination, freedom to determine their sexual behavior and freedom of action. It has been most difficult to prove rape in cases where the victim has not been aware of the action due to unconsciousness or other reductions of mental function. Special attention is given to offences of this type in the bill, the intention being to have them regarded as no less serious than cases of rape that are committed with discernible force or violence. The bill reduces the focus of the current legislation on the method by which the offence is committed; emphasizing instead on the fact that rape involves sexual intercourse with the victim without his or her consent, thus violating the victim's right to self-determination and freedom of sexual action. Offences committed with violence, or the threat of violence, are now regarded in a more serious light by the legislature, and consequently in judicial practice. This emphasis on violence or force as an element in the act of rape is outdated and

does not reflect the reality experienced by the victims. It is necessary that this fact be reflected in the legislation; by broadening the definition of rape in the law and bringing these offences under the definition of rape, it is recognized that the principal element in the offence is that sexual intercourse and sexual acts of other types are carried out against the wishes of the victim and without his or her consent. It is envisaged that this broad definition of the concept of rape will result in those involved, and also the police and the courts, always regarding rape in a serious light, which may lead to fewer rape cases being dropped on the grounds that they are not likely to lead to a conviction. The bill proposes the adoption in law of a special provision covering some factors to be taken into consideration as increasing the punishments to be imposed for rape, and also proposes heavier penalties for repeated offences. The maximum punishments for the most serious forms of sexual offences have been increased; this brings the will of the legislature to the attention of the courts regarding the seriousness of the offences.

A rape case would first be tried before a district court and then (possibly) before the Supreme Court. The age of consent is 14; there is no direct legal definition and the general definition of consent is broad, meaning that it is up to the prosecutor to show that there was no consent.

The usual sentence applied to rapists appears to be imprisonment for 2 years to 4 years. The sentence has been increasing over the last few years.

According to article 8 in the Criminal Procedure Law the Court may order a closed trial to protect the witness or the victim.

According to article 59(2) the judge has to make sure that the questions being asked of a witness are not insulting or hurting and irrelevant to the case in question. Nevertheless, it is not forbidden to ask questions about the witness's previous sexual experience.

If, in an open courtroom, a question is put to a witness about its personal matters, the judge can write down the question and the witness is allowed to answer in writing art.59 (5). According to art. 59(6) the judge can order the accused to leave the courtroom while testimony is given, if it is feared that a witness will not be truthful if the accused is present.

1.4 CHILD SEXUAL ABUSE/INCEST

Child sexual abuse/incest is ruled in the General Penal Code.

According to article 202 it can lead to 12 years of imprisonment to have sexual intercourse with a child younger than 14 years old. Other sexual harassment can lead to up to 4 years of imprisonment. According to article 205 the punishment may be cancelled if the parties concerned get married or start living together.

According to article 200 and 201 it can lead to 10 years' imprisonment to have sexual intercourse with one's child under the age of 18, as well as one's adopted child, stepchild, foster child or a child one has been entrusted with. Other sexual harassment can lead to 4 years of imprisonment.

In 2003, amendments were made to article 200 and 201, which are following: It can lead up to 12 years imprisonment to have sexual intercourse with one's child under the age of 16, as well as one's adopted child, stepchild, foster child or a child one has been entrusted with.

In November 1998, the Government Agency for Child Protection opened the Children's House, a concept adapted from the Children's Advocacy Centre in the United States to Icelandic conditions. The Children's House is a partnership between the child protection services, the health services, the law enforcement and the prosecution. They agree to work together under one roof to investigate child sex abuse and provide assistance and treatment for the victim and the victim's family. Their aim is to prevent the re-victimisation of the child by providing a child-friendly environment for investigation, as well as empowering the child to overcome traumatic consequences.

1.5 SEXUAL HARASSMENT

The Act on the Equal Status and Equal Rights of Women and Men from May 2000 defines sexual harassment. Article 17 states: "Sexual harassment constitutes sexual behaviour that is unreasonable and/or insulting and against the will of those who are subjected to it, and which affects their self-esteem and is continued in spite of a clear indication that this behaviour is unwelcome. Sexual harassment can be physical, oral or symbolic". Article 25 also states that: "Employers shall also ensure that no employee is subjected to injustice in his/her occupation, e.g. regarding safety at work,

working terms or the assessment of his/her performance, due to the fact that he/she has complained about sexual harassment or discrimination on the basis of gender”.

The provision of article 198 of the Penal Code stipulates that any person, who aggressively misuses his/her position against another person who relies on him/her for work, shall be subject to up to three years' imprisonment. Other kinds of sexual harassment can lead to up to two years' imprisonment. The court has few times ruled on sexual harassment. From 2003 to day, only 2 cases have been taken to court, with the outcome of acquittal in one of those and conviction in the other.

The Penal Code also contains a provision (article 209) stating that any behaviour of a sexual nature abusing a person's integrity shall be punishable by law.

Article 1 of Act 1980 on Working Conditions and Human Health at Workplaces stipulates that through this law an effort is to be made to “ensure a safe and healthy working environment, which shall always be in accordance with the social and technological development in the society”. Article 65 of the Act states that the phrase “health care for employees” refers to a service established to “...promote the employees' mental and physical well-being”. As it is clear that sexual harassment results in indisposition and is out of tune with social development in society, the Occupational Safety and Health Administration has felt such harassment is in breach of the objectives of the law on occupational safety and health. Hence it has issued certain guidelines, focusing on education regarding sexual harassment at the workplace.

1.6 PORNOGRAPHY

It can lead to up to 6 months of imprisonment or a fine to publish, sell or distribute pornography (art. 210). This article has very rarely been used and in practice most forms of pornography can be obtained relatively easy.

1.7 PROSTITUTION

According to article 206, prostitution can lead to two years' imprisonment for the prostitute, and up to 4 years for anyone who benefits from the prostitution of others.

1.8 OBSCENE PHONE CALLS/TELEPHONE SEX

No information provided.

1.9 FEMALE GENITAL MUTILATION

In 2005 new legislation was passed with regard to the circumcision of women or girls in childhood. **Article 218, paragraph a** states that anyone who through physical assault injures the body or health of a girl in childhood, or a woman, by removing her genitals, in part or wholly, shall be subjected to imprisonment for a maximum of 6 years. In the event of an assault resulting in grievous bodily harm or damage to health or fatal consequences, or where the assault is regarded as particularly reprehensible with regard to its method, the perpetration will result in a prison sentence for up to 16 years. **Article 218, paragraph b** stipulates that in the event of a person found guilty of violation of article 218, paragraph a, who has previously been punished for offences against those Articles of Law or has been subjected to punishment for an offence otherwise connected with premeditated violence, the punishment may be increased by up to one-half. The victim's consent to participation in physical assault results in permission to decrease the punishment that would otherwise have been earned.

1.10 INTERNATIONAL CONVENTIONS

Iceland has ratified the main International Conventions regarding women's rights. Among them the ILO Convention No. 100 concerning Equal Remuneration for Men and Women Workers for Work of Equal Value, ratified in 1958 and No. 111 concerning Discrimination in respect of Employment and Occupation, ratified in 1963.

In 1985, Iceland ratified the UN Convention on the Elimination of All Forms of Discrimination against Women. The European Convention on Human Rights was ratified in 1953 and Iceland became a member of the European Social Charter in 1976.

1.11 PROTECTION OF PREGNANCY/PREGNANT WOMEN

According to the Act on Parental Leave a pregnant woman has the right to be transferred within her place of work if her health or the health of the foetus is jeopardised. Such a transfer shall not result in lower wages. There are also provisions in the act that protect the right of a pregnant woman against unfair dismissal on behalf of the employer. This provision also applies to a parent on parental leave.

2.0 SENTENCING

2.1 SENTENCING DOMESTIC VIOLENCE

There's no statistical analysis of the incidence of domestic violence. Those issues, however, are linked to a variety of cases, such as homicides and sexual breaches which are regularly dealt with by the courts

3.0 EFFECTIVENESS OF LEGISLATION

3.1 SUPPORT/PROTECTION

WOMEN'S SHELTER

The women's shelter in Reykjavik, serving the whole country, was established in 1982. The shelter is an emergency shelter for women suffering from domestic violence. The shelter is based on a feminist ideology that violence against women, domestic and other sorts of violence, is a social problem not a private one. The shelter is run by the NGO Women's Shelter Alliance, and financially supported by the government, various municipal authorities and private donors. The spokeswomen of the Alliance have criticised the justice system for not being effective enough and pointed out that victims do not obtain redress in the existing system.

Website: www.kvennaathvarf.is

ORGANISATION OF WOMEN AGAINST SEXUAL VIOLENCE- "STIGAMOT"

In 1990, the Organisation of Women Against Sexual Violence "Stigamot" established in Reykjavik a centre for survivors of sexual violence. A collective of women who are themselves survivors of different forms of sexual violence run the centre. All the services are free for its users. The centre is financed by grants from the government as well as local authorities and its own fund-raising. The centre offers individual and group counselling and support to women subjected to violence. If the victims want to report, Stigamot support them through the police hearing and the court proceeding that might follow. One of the main efforts has been to distribute information about sexual violence and its consequences to the public and professionals. The organisation has criticised the judicial system for its responses (or the lack of it) in cases concerning sexual violence; the demand of the burden of proof is too strong and that the punishment is too soft.

Website: www.stigamot.is

EMERGENCY RECEPTION

An emergency reception for rape victims was opened at the Emergency Ward of the Reykjavik Municipal Hospital in March 1993. The emergency reception combines medical, psychological, legal and social assistance for victims of rape or attempted rape. The Emergency reception has made recommendations regarding how investigations of rape and other sexual crimes should be conducted. The recommendations are available in a manual for policemen.

WOMEN'S SHELTER

The Women's Shelter is an overnight refuge for homeless women – a cooperative venture between the Reykjavik branch of the Icelandic Red Cross and Reykjavik Municipality which has been operated since 2004. The Women's Shelter is intended for women who have no other recourse and are looking for a place to sleep. Most of them are addicted to drugs and have mental problems.

OTHER MEASURES

In Iceland, violence against women is recognised as an obstacle to equality. In a new four-year action programme on measures to promote gender equality a number of measures focus on violence against women.

The Equal Status Council appointed a special Men's Committee in 1993. This committee has focused heavily on violence against women. It has organised a public seminar, published two booklets on the subject and organised an education campaign in 1995 under the heading "Men Against Violence." "Men Against Violence." campaign has been started again in the spring 2006 and is still running.

3.2 PROPOSED REFORMS

The Minister of Justice appointed a committee to study whether it is necessary to amend Icelandic law in order to fight this kind of violence. Some of the factors being studied include whether a police decree is sufficient in respect of ordering an injunction against approach, and whether or not to provide the victims with legal counsel. If these proposals are agreed upon, amendments to the law will be needed.

4.0 DOMESTIC VIOLENCE

See Section 1.2 above.

5.0 RAPE AND SEXUAL ASSAULT IN MARRIAGE

See Section 1.3 above.

6.0 RAPE AND SEXUAL ASSAULT

See Section 1.3 above.

7.0 SEXUAL HARASSMENT

See Section 1.5 above.

8.0 INCEST/SEXUAL ABUSE OF GIRLS

See Section 1.4 above.

IRELAND

Information provided by the Department of Justice, Equality and Law Reform in **November 2000** and in **February 2003**.

1.0 LEGISLATION AND SANCTIONS RELATING TO VIOLENCE AGAINST WOMEN

1.1 LETTER OF LAW – DEFINITIONS

Over the past number of years Ireland has reviewed its laws regarding violence against women and has made some significant reforms including: Family Law Act 1996, Family Law (Divorce) Act 1996, Domestic Violence Act 1996 as amended by the Domestic Violence (Amendment) Act, 2002 and Sex Offenders Act, 2001.

It is intended to carry out a full review of the Domestic Violence Acts 1996 to 2002 to take account of recommendations made by various interested organisations in the near future.

Since 1994, a number of important Irish reports on the issue of violence against women have been published including: Policy Document for Women's Refuges (1994), Federation of Refuges; Making the Links (1995), Women's Aid; Report of the Working Party on the Legal and Judicial Process for Victims of Sexual Violence and Other Crimes of Violence Against Women and Children (1996), National Women's Council; Report of the Task Force on Violence Against Women published by the Office of An Tanáiste (April 1997); Safety and Sanctions - Domestic Violence and the Enforcement of Law in Ireland (1999), Women's Aid; (Executive Summary and Recommendations available on Women's Aid website, <http://www.womensaid.ie>), Attrition in Sexual Assault Offence Cases in Ireland: A Qualitative Analysis (2001), Department of Justice, Equality and Law Reform; The SAVI Report - Sexual Abuse and Violence in Ireland (2002) Dublin Rape Crisis Centre.

One of the most significant reports is the Report of the Task Force on Violence Against Women published by the Office of An Tanáiste in April 1997.

The terms of reference of the Task Force were to develop a coordinated response and strategy on the problem of 'mental, physical and sexual violence against women - *with a particular focus on domestic violence*'. Its remit included:

- Examining existing services and supports for women who have been subjected to violence;
- Examining legislation dealing with the victims and perpetrators of violence;
- Making recommendations on how legislation, services and supports could be made more effective;
- Making recommendations for a comprehensive preventive strategy and examining rehabilitation programmes for perpetrators of violence.

Following from the recommendations of the Report, the Government established, in December 1997, a *National Steering Committee on Violence Against Women*, chaired by the Minister of State at the Department of Justice, Equality and Law Reform.

Further information on the National Steering Committee and its work is outlined in Section 3 – Support/Protection.

1.2 DOMESTIC VIOLENCE

Domestic Violence is defined as any form of physical, sexual or psychological violence which puts the safety or welfare of a family member at risk. In respect of children, Irish legislation emphasises the safety and welfare of children. Measures introduced to combat domestic violence include: barring orders; safety orders; and protection orders.

A national survey conducted for Women's Aid, a central NGO dealing with violence against women, showed that 7% of women had been abused in the previous year by a partner or ex-partner; 18% of

women had been abused at some point in their lives; that multiple forms of abuse were common and 10% had experienced physical violence.

CIVIL LAW

The Department of Equality and Law Reform are of the view that for most victims of domestic violence, civil legal processes represent the most effective, accessible and most frequently used remedies.

The most frequently used remedy is the barring order, a civil law remedy. Introduced in 1976, this order empowers a court to order a spouse to leave the family home in the interests of the safety or welfare of the other spouse or children. The order may also prohibit the spouse from entering the family home.

The Domestic Violence Act 1996 repealed the Family Law (Protection of Spouses and Children) Act 1981 and introduced further reforms. The main features of this Act include:

- extending the powers of the courts to grant barring and protection orders for the protection of a cohabitant or the parent of an adult child. The cohabitant must have been living with the respondent for a certain period of time. In both cases the proprietary interests of the applicant in the home must equal or exceed that of the applicant;
- empowering the court to grant barring orders on an interim *ex-parte* basis in exceptional cases;
- increasing the maximum duration of a barring order made in the District Court from one to three years (renewable on application for a further three years). The Circuit Court has unlimited jurisdiction;
- empowering the courts to grant a new type of order, a safety order. A safety order is in effect a long term protection order available to or against all members of a household. It prohibits a person from further violence or threats of violence. A safety order does not oblige that person to leave the family home. If the parties live apart, the order prohibits the violent person from watching or besetting the house. The District Court has the power to make a safety order for up to five years and the Circuit Court has unlimited jurisdiction;
- enabling health boards, subject to certain conditions, to apply for orders on behalf of victims of violence;
- providing increased fines and terms of imprisonment for breaches of barring, safety and protection orders and strengthening the Garda powers to arrest without a warrant in domestic violence cases generally.

The Domestic Violence Act 1996 was amended by the Domestic Violence (Amendment) Act 2002. The Supreme Court, on 4 October, 2002, in a case which arose out of the granting of an *ex parte* interim barring order which was in effect for almost 3 months held that the provisions of section 4(3) of the Domestic Violence Act 1996, as it relates to such orders, were unconstitutional for failing to prescribe a fixed period of relatively short duration during which such an order would continue in force thus depriving the respondent of the principle *audi alteram partem* i.e. that the other side should be heard. The new section 4(3) in the amendment Act of 2002 stipulates that an *ex parte* order has effect for not more than eight working days unless, on application by the applicant and on notice to the respondent, the *ex parte* order is confirmed within that period by order of the court. Also, an application for an interim barring order must be made either on affidavit or on sworn information and, if the order is made *ex parte*, a note of the evidence given together with the court order and the affidavit or sworn information must be served on the respondent as soon as possible.

The current position, then, is that there are two main type remedies available under civil law – the barring order and the safety order. Protection orders constitute an interim remedy and in exceptional circumstances interim barring orders can be granted.

A person can apply for protection through these remedies if they belong to the following categories:

- A married person can apply for a barring or a safety order against her/his spouse;
- A cohabiting person can apply for protection through these remedies. The protection available depends on how long they have been living together and who owns the family home: if they have been living together for an aggregate period of six months during the previous year, a partner can apply for a safety order; if they have been living together for an aggregate period

of six months during the past nine months, a partner can apply for a barring order, unless the violent partner has greater ownership rights to the home.

- Parents - a parent can apply for a barring or a safety order against their own child, if the child is over 18 years of age (ownership restrictions apply as above);
- Others living together - a person can apply for protection against violence by someone over 18 years who lives with them, if the court is satisfied that the relationship is not primarily based on a contract. For example, two relatives living together could be covered. Persons in this category can apply for a safety order but will not qualify for a barring order.
- Health boards are empowered to apply for orders when a person could apply in their own right, but is deterred through fear or trauma from doing so. The consent of the person is not required, although there is a requirement of consultation.

The grounds on which both orders can be granted are similar, i.e. that the safety or welfare of the applicant or dependent person requires it. A safety order can be granted for a period of up to five years and a barring order for up to three years. Both are renewable. If broken, the Gardaí can arrest and charge the person.

The Judicial Separation and Family Law Reform Act, 1989 provides for the granting of a decree of judicial separation. Unreasonable behaviour of one spouse towards another is one of the grounds on which a decree of judicial separation may be granted in accordance with the Family Law Act 1995, or following an application for a decree, the court may grant barring, protection or safety orders and the court may confer on one spouse the right to occupy the family home subject to such conditions as it thinks proper, or it may transfer ownership of a home to the other spouse in appropriate cases.

The Family Law Act 1995 empowers the court in a wide range of family proceedings (including domestic violence proceedings) to order social reports from the Probation and Welfare Service and health boards. This provision is of particular importance in situations of domestic violence.

Provisions to protect the safety and welfare of spouses and children are also enshrined in Ireland's new divorce laws. Removal of the constitutional ban on divorce was approved by the people in a Referendum on 24.11. 1995. The Family Law (Divorce) Act, 1996 gives legislative effect to divorce. The court, in granting a decree of divorce, must be satisfied that:

- At the date of the institution of proceedings, the spouses have lived apart for a period of, or periods amounting to, at least four years during the previous five years;
- There is no reasonable prospect of reconciliation, and such provisions as the court considers proper having regard to the circumstances exist or will be made for the spouse and any dependent members of the family.

The court, on granting a divorce or at any time thereafter, is empowered to make barring, protection or safety orders, or an order conferring on one spouse, either for life, or for another period specified by the court, the right to occupy the family home to the exclusion of the other spouse or it may transfer ownership of the home to a spouse in suitable cases.

CRIMINAL LAW

Any intentional or reckless act of physical violence by one person against another constitutes an assault under Irish Criminal Law. Possible charges include: assault occasioning actual bodily harm; assault occasioning grievous bodily harm, attempted murder, manslaughter or murder. Prosecutions can be brought privately or by the Gardaí and the Director of Public Prosecutions.

While domestic violence is a criminal offence, only a small number of cases go to prosecution. In 2001, according to the Annual Report of the Garda Síochána {police force}, of the 9,983 arrests made in cases involving domestic violence, only 1,286 people (13%) were convicted. The general response is for the victim to apply for protection under civil law. However research indicates that the threat of criminal justice intervention influences men's behaviour in terms of re-offending. The Task force on Violence Against Women (1997) recommends that domestic violence should always be viewed as a serious crime and should be prosecuted. However the Task Force does acknowledge that because of the nature of the crime and the relationship between the parties, each case should be assessed on its own merits and that prosecution is not always possible or appropriate. Where serious violence has occurred and where weapons of any kind have been used, or when the abuser has re-offended, the Task Force believes that prosecution should be pursued, taking into account the wishes of the victim.

The Criminal Law Act 1996 provides for a power of arrest without warrant in relation to offences punishable by 5 years imprisonment. This will apply to assault occasioning actual bodily harm, wherever it occurs.

Non Fatal Offences Against the Person Act 1997 provides for a new offence aimed at 'stalking' which will incur a maximum penalty of seven years imprisonment and will empower the court also to order the 'stalker' not to communicate in any way with the victim for a period specified by the court, or to approach within a specified distance of the victim's residence or place of work. This law could have relevance to some forms of domestic violence - on the part of former boyfriends or former partners.

WOMEN'S EXPERIENCE OF USING THE COURTS

Background

There are two different types of cases involving Domestic Violence in the Courts.

1. Where the abuser is charged by the Gardaí with a criminal offence involving violence. This is dealt with in open court in a similar manner to all such cases. The fact that the violence is in a domestic context does not in any way alter the manner in which the case is dealt with.
2. Where an application under the Domestic Violence Act or Family Law Acts is made to the courts in which violence is involved. Such cases are heard otherwise than in public.

THE PRESENT POSITION

In the District Court, Family Law cases traditionally have been dealt with at the end or beginning of the ordinary list. Considerable progress has been made in separating Family Law cases from the rest of the work of the Courts and in that regard in Dublin and Cork (the biggest urban areas) District Court Judges are assigned on a full time basis to Family Law Courts and deal exclusively with such cases. In 15 District Court Districts dedicated days have been allocated to Family Law.

In three Districts the family cases are dealt with in the larger centres such as county towns. This means that they can be dealt with at venues with more appropriate facilities and with dedicated days. Emergency and urgent cases can still be dealt with at the smaller venues as the need arises.

Court facilities for Family Law cases

In Dublin, all Circuit Court Family cases are held in a purpose built building for Circuit Family Law Court sittings.

Outside of Dublin, Family Court facilities are provided in county towns and a number of other venues through the provision of an additional Courtroom with adjacent waiting and consultation facilities.

THE FUTURE POSITION

Purpose built Family Law Centre, Dublin

Plans have been prepared for a purpose built Family Law Centre at Ormond Quay, Dublin following consultations with all interested parties. This building would accommodate District, Circuit and High Court Family Law sittings and would also accommodate the administration offices, consultation rooms, legal practitioner's rooms, waiting rooms and all the facilities necessary to accommodate Family Law hearings. It is not possible at this stage to say when work will commence on this project.

In Dublin the District Court Family law office has undergone extensive refurbishment to make the office and its environment more user friendly. The improvements include:

- The addition of extra interview rooms and confidential booths
- The creation of a new reception area
- The introduction of a ticketing system for those using the office so that confidentiality can be maintained while the Family Law service is being accessed.

Policing Domestic Violence

The Garda Síochána is recognised as being the first point of contact for women experiencing domestic violence. It is the only state agency with a written policy on violence against women. Given their role in providing protection for women through law enforcement, their response is central to an effective strategy for dealing with domestic violence.

A Garda Síochána Policy on Domestic Violence Intervention was introduced in 1994 and revised in 1997. It establishes a pro-arrest policy (allowing more discretion than a mandatory arrest policy) and outlines procedures to be followed in dealing with domestic violence calls, stating that domestic violence should be treated like any other crime, and defines the Garda's primary role as protection through law enforcement. The policy also recognises the vulnerability of victims in domestic violence cases and the need for prompt action; and that the removal of the offender is an important objective. Other provisions of the policy include: pro arrest policy, given reasonable cause, when a barring, safety or protection order is believed to have been breached; dealing with domestic violence calls promptly on the basis that it is a crime and life and property may be at risk; police bail should not be given, as the likelihood of further victimisation is high; providing information on civil remedies and relevant services; being aware of child protection issues; recording reasons if no arrest is made.

However the Task Force on Violence Against Women (1997) found that the policy was unevenly applied in different districts and recommends that the policy be more closely supervised and at a high level within the police and more closely monitored with regular publication of statistics on calls received, action taken and reasons for not charging stated.

Year	Incidents	Persons injured	No. of Arrests	No. Charged	No. Convicted
1994	3951	750	765	600	392
1995	3956	861	850	527	455
1996	4645	923	860	725	506

From Garda Síochána Annual Reports as cited in Report of the Task Force on Violence Against Women (1997) p 43.

An Assistant Commissioner has been assigned specific responsibility for monitoring Garda policy in relation to violence against women and Garda Superintendents have responsibility for operations within their own districts. The Garda Síochána have a proactive policy on Domestic Violence Intervention. A nominated Inspector in each Garda Division is responsible for ensuring that this policy is implemented.

The Gardaí are represented at Inspector level on each of the Regional Committees on Violence Against Women and this will enhance ongoing contact with the service providers at local level.

The Garda Domestic Violence and Sexual Assault Investigation Unit is based in Harcourt Square, Dublin and was given a national role in 1997. A Garda Inspector in charge of this Unit represents the Garda Síochána on the National Steering Committee on Violence Against Women.

NEED FOR AN INTEGRATED CRIMINAL JUSTICE RESPONSE

The Task Force recommended that to be effective, a pro-arrest police policy must be part of an integrated criminal justice response involving policy, prosecution and sentencing, pointing out that if the criminal justice system fails to punish the perpetrator, or applies totally inadequate sanctions, the risk to victims of reprisals could increase. A pro arrest policy must operate in tandem with adequate judicial sanctions which clearly convey to the perpetrator that violence against women is a serious crime and is punishable accordingly.

ROLE OF WOMEN POLICE

While the number of women in the Garda Síochána is increasing, they still only constitute 14.33% of the force. The Task Force recommends that they should be actively involved in dealing with domestic violence.

POLICE TRAINING

All Gardaí receive training on the investigation of cases of domestic violence, rape and sexual assault. This training is provided by experienced Garda personnel, assisted by other professionals, such as psychologists, doctors, social workers and also experts from the various non-governmental organisations.

There are core programmes on violence at the Garda In-Service Training Schools. Lectures, with an input from non governmental organisations, as appropriate, are given on:

- The causes and effects of crimes of violence on women and children,
- Domestic Violence/Child Abuse
- Forensic evidence in crimes of violence against women and children
- Interviewing victims of crimes of violence against women and children
- Relevant Legislation.

DOMESTIC VIOLENCE AND SEXUAL ASSAULT INVESTIGATION UNIT

The Domestic Violence and Sexual Assault Investigation Unit, within the National Bureau of Criminal Investigation, was established in Dublin in 1993 and was given a national role in 1997. It is staffed by Gardaí who are highly trained and experienced in dealing with domestic violence and sexual assault. Its functions include:

1. Overseeing the investigation of offences of domestic violence, child sexual abuse and other sexual violence offences committed against women and children and providing assistance in more complex cases;
2. Examination of enforcement practices in respect of protection and barring orders;
3. Improving methods of investigation through training, advice and assistance;
4. Liaising with statutory and non statutory bodies which have a brief for sexual assault and domestic violence;
5. Liaising with Community Relations and Juvenile section personnel.

The Task Force recommends that Domestic Violence and Sexual Assault Investigation Units be established in other urban areas of Ireland and that in other areas there should be a sufficient number of Gardaí with the training and expertise to deal effectively with sexual assault and domestic violence cases.

1.3 RAPE/SEXUAL ASSAULT

The Annual Reports of An Garda Síochána record the following statistics for rape and sexual assault, by gender of victim:

Year: 2000

Sexual Offence	Male	Female	Total
Sexual Assault	141	408	549
Aggravated Sexual Assault	3	9	12
Sexual Assault involving Mentally Impaired Person	1	2	3
Gross Indecency	3	0	3
Buggery	23	0	23
Unlawful Carnal Knowledge	0	15	15
Rape Section 4	21	31	52
Rape of a Female	0	238	238
Incest	2	16	18

Year: 2001

Sexual Offence	Male	Female	Total
Sexual Assault	376	672	1048
Aggravated Sexual Assault	2	16	18
Sexual Assault involving Mentally Impaired Person	1	9	10
Gross Indecency	33	0	33
Buggery	31	5	36
Unlawful Carnal Knowledge	0	78	78
Rape Section 4	31	35	66
Rape of a Female	0	335	335
Incest	0	16	16

The recently introduced crime recording system, PULSE, provides a more detailed analysis of sexual offences than that available in the past, in that a wider range of offence classifications is used to describe sexual offences. Since its introduction, it is possible to use separate headings for sexual offences involving mentally impaired persons, gross indecency and rape under section 4 of the Criminal Law (Rape) (Amendment) Act, 1990. The latter offence is a broader offence of rape that that used in previous legal definitions, and it may have a male or female victim.

In the year 2001, 71% of sexual assault victims were female, which compares with 79% for 2000. 29% of victims were male in 2001, as compared with 21% the previous year.

LEGAL DEFINITION

Rape is defined in the Criminal Law (Rape) Act, 1981, as amended by the Criminal Law (rape) Amendment Act, 1990, as sexual intercourse with a woman who at the time of the intercourse does not consent to it and at that time the man knows the woman does not consent, or is reckless as to whether she does or does not consent. In the event of a man believing that a woman was consenting to sexual intercourse, the jury must have regard to the "presence or absence of reasonable grounds for such a belief".

Consent: The issue of consent is central to proving rape. Consent is not defined in the 1981 Act but the Law Reform Commission proposed the following definition:

Consent means consent freely and voluntarily given and, without in any way affecting or limiting the meaning otherwise attributable to those words, a consent is not freely given if it is obtained by force, threat, intimidation, deception or fraudulent means. A failure to offer resistance to a sexual assault does not constitute consent to a sexual assault.

The Criminal Law (Rape) (Amendment Act) 1990 represents a significant improvement in the legal protection afforded to victims of sexual assault. It signifies that it is viewed by government as serious crime. It abolishes certain rules which were regarded as offensive to women, it:

- Removes the marital exemption i.e. abolishes the rule that a husband cannot be found guilty of raping his wife;
- Creates two new offences: aggravated sexual assault and rape under section 4 of the Act which includes penetration of the anus or mouth by the penis or penetration of the vagina by any object held or manipulated by another person (offences of penetration which were not included within the traditional definition of rape). Each of these new offences carries a maximum penalty of life imprisonment;
- Abolishes the common law rule by which a boy under 14 years was presumed to be incapable of sexual intercourse;

- Abolishes the rule which made it mandatory for the judge in trials for sexual offences to warn the jury of convicting on the uncorroborated evidence of the complainant;
- Provides for all serious sexual assaults to be tried in the Central Criminal Court (the highest criminal court);
- Provides for the exclusion of the public but not the press for trials in cases of rape and sexual assault - with certain exceptions;
- Extends the restrictions on cross examination about previous sexual history to other sexual offences defined within the Act;
- Extends evidential and anonymity provisions to all victims of sexual assault - previously limited to rape.

Past Sexual History remains a subject of concern. Complainants report that questioning about their sexual history is invariably hostile and they describe counsels' cross examination as offensive, aggressive and degrading. While such evidence is only admissible at the discretion of the judge, the experience of Rape Crisis Centres would suggest that such discretion is not generally withheld. The Task Force considers that when the complainant is giving evidence, she should not be cross examined as to her past sexual history unless it is proven to the court that the evidence is substantially relevant to the facts at issue, as envisaged by the 1981 and 1990 Acts. Applying this rule should prevent the defence from embarking on "fishing expeditions" where answers to questions are concerned and from attempting general smear tactics, which attack the character of the complainant on matters which have no relevance to the issues before the court. The Task Force, noting that nothing is known about the extent and circumstances under which judges grant permission for the woman's past sexual history to be introduced, recommended in 1997 that law and practice in relation to this area be reviewed so as to ensure that strict legal criteria, as laid down in the 1981 Act, as amended, are being adhered to.

Criminal Evidence Act 1992 provides for the giving of evidence through a television link in cases involving a sexual offence or violence and for the introduction in court of video recordings of statements made by persons under 14 years in cases involving a sexual offence or in cases involving violence. It also sets out the circumstances in which a spouse/former spouse is competent and compellable to give evidence.

Criminal Justice Act 1993 enables appeal against unduly lenient punishments and places an obligation on the court when determining sentences for sexual and violent crimes to take into account the effect on the victim. It also empowers the court to order the convicted person to pay compensation.

ROLE OF THE POLICE

The Task Force notes that there have been real improvements in the response of the Gardai in recent years. The establishment of the Domestic Violence and Sexual Assault Investigation Unit in Dublin in 1993 (see above) marks the introduction of a unit which deals with the specialist investigation and treatment of persons who have been sexually assaulted or raped. The unit provides facilities for the effective collection and processing of forensic evidence and a structured environment for the examination and treatment of victims of sexual assault and rape. Its brief also includes liaising with statutory and non statutory bodies and organisations which have a brief to deal with rape and sexual assault. While primarily designed to meet local needs, in January 1997, it was placed under the National Bureaux of Criminal Investigation giving it a country-wide brief.

SUPPORT SERVICES

Rape Crisis Centres

There are currently 18 Rape Crisis and Sexual Abuse Counselling Services in Ireland. Services provided by each centre focus predominantly on counselling by telephone or on a face to face basis to victims of recent and past rape attacks and child sexual assault. Dublin Rape Crisis Centre, for example, provides a 24 hour crisis telephone service for victims of rape and sexual abuse. In 2002, over 10,000 calls were made to the crisis line. In line with a recommendation of the Second Commission on the Status of Women, secure funding has been made available to Rape Crisis Centres through the health boards since 1995.

Special counselling centres for victims of rape and child abuse have also been established by the Eastern Health Board in Blanchardstown, Clondalkin, Clontarf, Coolock and Tallaght.

There are currently four Rape and Sexual Assault Treatment Centres in Ireland which offer treatment services to victims of rape and sexual assault.

The Sex Offenders Act, 2001 which came into effect on 27 September, 2001 provides that the courts will be able to order the supervision of sex offenders by the Probation and Welfare Service on their release from prison. The system of post-release supervision enables the court at the time of conviction to impose on a sex offender a determinate sentence comprising a term of imprisonment and period of post-release supervision with the latter being served in the community under Probation and Welfare Service supervision.

The Sex Offenders Act, 2001 makes it the duty of the court to consider imposition of sentence involving post-release supervision.

In considering whether to impose a sentence involving post-release supervision the court has regard to:

- a. the need for a period, after the offender has been released into the community, during which his or her conduct is supervised by a responsible person,
- b. the need to protect the public from serious harm from the offender,
- c. the need to prevent the commission by the offender of further sexual offences, and
- d. the need to rehabilitate or further rehabilitate the offender.

During a specified period ("the supervision period") which commences on the date of the offender's release from prison, the offender is under the supervision of a probation and welfare officer and is required to comply with such conditions as are specified in the sentence for securing that supervision.

The aggregate of the sentence of imprisonment and the supervision period cannot exceed the duration of the maximum term of imprisonment that may be imposed in respect of the sexual offence concerned. The term of the sentence of imprisonment cannot be less than the term the court would have imposed if it had considered the matter apart from the post-release supervision period. In determining the period to be specified as the supervision period, the court shall have regard to the matters referred to in paragraphs (a) to (d) above.

Separate legal representation for victims of rape

The Sex Offenders Act, 2001 also provides for separate legal representation for complainants in rape and other serious sexual assault cases where application is made to adduce evidence or to cross-examine the complainant about his or her past sexual experience. Under present law the sexual history of a complainant - the issue usually only arises in the case of rape - is only permitted to be introduced into a trial by leave of the judge. The application to introduce such evidence - which is made in the absence of the jury - must prove that such evidence is relevant.

OUTSTANDING PROBLEMS

Despite recent changes in law, improvements in policing and improved funding for Rape Crisis Centres, there remains a high level of concern in Ireland in relation to the operation of the law and Criminal Justice Processes relating to rape and sexual assault. The Task Force, for example, reports that only a small number of rape cases are ever reported to the Gardaí and even smaller numbers lead to criminal proceedings. Garda figures demonstrate that, of cases which are reported to them, few result in conviction, only 19% in 1994, for example. Many women report that their experience of the criminal justice system is difficult and the perception is that sentencing in rape cases is inconsistent and lenient.

Recommendations for change have been made by both the Task Force on Violence Against Women (1997) and The Working Group on the Legal and Judicial Process for Victims of Sexual and Other Crimes of Violence Against Women and Children established by the National Women's Council of Ireland which published its report in October 1996. This latter report has made 30 recommendations for changes to the law and the legal process. These recommendations are presently being considered by Parliament.

Priority Recommendations from the National Task Force are aimed at encouraging more women to report cases of sexual violence to the Gardaí. Their principal recommendations concern better liaison with victims; conditions for granting leave to cross question complainants about their past sexual history; and Garda policy on the treatment of rape, sexual assault and other offences of sexual violence. These include:

- The Garda Síochána should develop and publicise clear policy and practice regarding their response to victims of rape, sexual assault and other offences of sexual violence;
- Following a decision to prosecute, the investigating Gardaí should be assigned the task of liaison with the victim. Victims should have regular consultations with counsel before and throughout the trial and should receive a copy of their statement and any Victim Impact Report as a matter of course;

Other recommendations from the Task Force include:

- Expert training to all Gardaí on the initial aspects of handling rape and other sexual violence offences;
- All victims of sexual / domestic violence to be notified if the unescorted release of an offender is anticipated or has taken place;
- In cases of delayed reporting, the judge should instruct the jury that there may be good reasons why she did not complain immediately;
- Custodial sentences should be applied in all cases of rape, unless there are wholly exceptional circumstances;
- All law and rules of practice relating to the corroboration warning (a judicial warning to the jury in cases of rape / sexual assault that it is unsafe to convict on the uncorroborated evidence of a woman) should be abolished and the case heard as any other;
- Victim Impact statements should be requested for both trials and appeals and a list of suitably qualified professionals be compiled and made available to the courts in cases where the victim is not attending a professional therapist; where a victim disagrees with the impact statement, this should be made known to the judge; and

The recommendations of Working Group on the Legal and Judicial Process for Victims of Sexual and Other Crimes of Violence Against Women covered many of these points. In addition they recommended that:

- The Criminal Law (Rape) amendment Act be extended to include penetration of the anus by an object;
- Consideration be given to codifying of rape and sexual offences with a view to creating an offence of 'penetrative sex' (rape) and 'non penetrative sex' (sexual assault);
- That the absence of overt resistance on the part of a complainant should never be construed by the courts as consent;
- In rape trials, where consent is an issue raised by the defendant, the onus of proof should shift to the defendant to prove he sought and obtained the consent of the complainant;
- The powers of the Director of Public Prosecutions be reviewed in the interests of accountability so as to allow the DPP to give reasons as to why prosecutions do not proceed, except when it is not in the public interest to give reasons; the DPP to provide annual statistics as to the number of cases involving sexual and other violence towards women and children which are referred to his office and the outcomes of such cases; and consideration be given to the establishment of a special section within the DPP's office to deal with the prosecution of sexual offences;
- Where bail is an issue, the Gardaí be required to discuss with the victim and their families what concerns they have and what conditions, they might want a court to impose on the accused if bail is granted;
- A full review be undertaken relating to the trial of rape and sexual assault offences, with a view to evaluating their impact on the victims and recommending appropriate procedural changes;
- Where an accused pleads guilty of a sexual violence offence against a woman or a child, it should be a matter of practice that a court will not proceed with the case unless satisfied that the victim(s) have been informed and given an opportunity to be present in court;

- Separate legal representation for complainants in rape and sexual assault cases would provide much needed support for complainants, render the trial processes less traumatic and contribute significantly to an increase in reporting of rape; measures for separate representation, including its insertion in the legal aid system be developed and implemented;
- Where the complainant's credibility is attacked by disclosing any past criminal offences or past sexual history, the defendant's past record and sexual history should also be disclosed;
- Grounds for appeal be stringently applied and monitored; guidelines to be drawn up;
- Support services be provided for women and children victimised by crimes of violence on a countrywide basis; these services must be accessible to women with disabilities and with an awareness of regional and cultural differences; funding should be appropriate to the needs of the service.

1.4 CHILD SEXUAL ABUSE

There has been an increased public awareness of the traumatic effects of sexual abuse of girls and an encouragement of the growing understanding of women/girls' vulnerability in this area.

The Department of Health reports that of the 1,816 cases of child abuse dealt with by health boards, 557 involved child sexual abuse in 1994 and later figures show that of 2,541 cases, 765 involved child sexual abuse. Garda figures show that in 2001, 16 cases of incest involving female victims were recorded, together with 78 cases of unlawful carnal knowledge of a girl.

The procedures followed by health boards in investigating suspected cases of child abuse follow the 1987 Child Abuse Guidelines issued by the Department of Health, as amended by the 1995 Procedures for the Notification of Suspected Cases of Child Abuse between the health boards and the Gardaí which set out a standard procedure for the notification of cases between the two agencies. The Department of Health & Children's guidelines for the reporting of child abuse concerns are contained in "Children First - National Guidelines for the Protection and Welfare of Children". "Children First" emphasises that all allegations or suspicions of child abuse should be reported to the statutory authorities without delay.

LEGISLATION

Criminal Law

The relevant legislation includes: Punishment of Incest Act, 1908; Criminal Law Amendment Act, 1935; Criminal Law (Incest) Proceedings Act, 1995. Other Sexual Offences Acts also apply such as the Criminal Law (Sexual Offences) Act, 1993, the Sexual Offences Jurisdiction Act, 1996, the Child Trafficking and Pornography Act, 1998 and the Sex Offenders Act, 2001. The maximum penalty for incest with a female of 15 years or older was increased from 7 years to 20 years imprisonment in the Criminal Justice Act, 1993.

Civil Law

The implementation of the Child Care Act, 1991, in 1996, has resulted in an improved legal framework for the delivery of services to children. Health boards are now under a legal obligation to promote the welfare of children in their area who are not receiving adequate care and protection. The Act sets out new provisions which deal with the protection of children in emergencies, care proceedings and the powers and duties of health boards in relation to children in their care. A total of £40 million in additional revenue has been provided since 1993 to put in place the necessary services for the implementation of the Act.

These service developments have involved the appointment of additional professional and administrative staff. Nationally the developments include the creation of 900 new posts for child care services. Child Care Development Officers have been appointed in each health board area to act as regional managers of child care services; additional social workers, child care workers, psychologists, child psychologists and family support workers have also been appointed. Other service developments include the establishment of new family support services and the expansion of foster care and residential child care. Increased funding has been provided for preventive services such as family resources centres, youth projects and day nurseries and for the expansion of Home Help and Home Support Services.

POLICING

The domestic Violence and Sexual Assault Unit established by the Garda Síochána in 1993 includes within its remit overseeing the investigation of offences of child sexual abuse.

PREVENTION

The Stay-Safe Programme has been designed for use in Primary Schools on a nation-wide basis and covers all forms of abuse including bullying. The programme consists of a video for children (girls and boys), two separate curricula for junior and senior cycles, a training session for teachers and additional information for parents. The extension of the programme to second level schools is currently under discussion.

The Department of Health & Children's guidelines for the reporting of child abuse concerns are contained in "Children First - National Guidelines for the Protection and Welfare of Children". "Children First" emphasises that all allegations or suspicions of child abuse should be reported to the statutory authorities without delay. The statutory authorities for receipt of these reports are the health boards and the Garda Síochána. A report may be made in person, by phone or in writing. Upon receipt of a suspected child abuse report, a health board carries out an initial assessment and the welfare of the child is always of paramount importance.

"Children First" emphasises that all organisations providing services to children should have clear written procedures on the action to be taken if allegations of abuse against employees are received including the reporting of allegations to the health board without delay. It is stressed that employers have a dual responsibility in respect of both the child and the employee. Allegations of abuse against employees may lead to disciplinary action and any action taken should be guided by agreed procedures, the applicable employment contract and the rules of natural justice. It is recommended that when possible the same person should not have responsibility for dealing with both the reporting issues and the employment issues.

1.5 SEXUAL HARASSMENT

LEGISLATION

Employment Equality Act, 1977

The Employment Equality Act, 1977 prohibits discrimination in relation to employment on grounds of sex or marital status. While the Act does not contain any specific reference to sexual harassment, the Labour Court, in a ground-breaking decision in 1985, found that freedom from sexual harassment is a condition of work which an employee of either sex is entitled to expect. The Court will accordingly treat any denial of that freedom as discrimination within the terms of the Employment Equality Act, 1977. This decision has facilitated employees to pursue claims of sexual harassment under the 1977 Act through the Equality Officer Service of the Labour Relations Commission (now the Office of Director of Equality Investigations) and the Labour Court.

Employment Equality Act, 1998

The Employment Equality Act, 1998, which came into operation on 18 October, 1999, prohibits discrimination in relation to employment on nine grounds, namely gender, marital status, family status, sexual orientation, religion, age, disability, race and membership of the Traveller community. The Act defines sexual harassment for the first time in Irish law. It outlaws sexual harassment in the workplace and in the course of employment whether by an employer, another employee or by clients, customers or business contacts of an employer. It also provides that different treatment of a person in the workplace or in the course of employment, because of rejection or acceptance of sexual harassment, whether in the workplace, in the course of employment or outside the workplace, constitutes discrimination on the gender ground. Sexual harassment is defined to include all unwelcome and sexually or otherwise on the gender ground, offensive, humiliating or intimidating actions involving acts of physical intimacy, spoken words, gestures or the production, display or circulation of written material or pictures or requests for sexual favours. An obligation is placed on employers, to take all reasonable steps to ensure a sexual harassment free environment and to prevent a person being treated differently because of rejection or acceptance of sexual harassment. The legislation also applies to

providers of vocational training, employment agencies and trade unions and employer and professional organisations.

Anybody who considers that s/he has been discriminated against contrary to the Employment Equality Act, 1998 may seek redress by referring the matter to the office of the Director of Equality Investigations, the Labour Court (in dismissal cases) or the Circuit Court (in gender cases).

CODES OF PRACTICE

An Irish Code of Practice on measures to protect the dignity of women and men at work was issued in September 1994, following consultation with social partners. The Code of Practice, which is in accordance with the European Commission recommendation on the Council of Ministers Resolution on the subject, aims to provide guidance towards creating a work environment free of sexual harassment and a framework for dealing effectively with complaints of sexual harassment when they arise.

The Employment Equality Act 1998 provides for the development of statutory codes of practice which will be admissible in evidence and taken into account in determining any relevant case.

A Code of Practice on Sexual Harassment and Harassment at Work was issued in 2002. The Code of Practice aims to give practical guidance to employers, employers' organisations, trade unions and employees on:

- What is meant by sexual harassment and harassment in the workplace
- How it may be prevented
- What steps to take if it does occur to ensure that adequate procedures are readily available to deal with the problem and to prevent its recurrence.

The provisions of this code are admissible in evidence and if relevant may be taken into account in any criminal or other proceedings before a Court under Part VII of the Employment Equality Act 1998, proceedings before the Labour Court, the Labour Relations Commission, the Employment Appeals Tribunal, the Director of Equality Investigations and a rights commissioner.

The code does not impose any legal obligations in itself, nor is it an authoritative statement of the law - that can only be provided by the Office of the Director of Equality Investigations (ODEI - the equality tribunal), the Labour Court and the Courts. It is the employer's responsibility to ensure compliance with the Employment Equality Act 1998 and European equality law.

SUPPORT SERVICES

- (a) The Employment Equality Agency was in operation until 17 October 1999, when it was replaced by the Equality Authority. The Equality Authority provides information and advice to the public in relation to the provisions of the equality legislation. The Equality Authority offers advice and information on sexual harassment at work and can represent a complainant in a case. The following statistics relate to enquiries received by the Equality Authority in relation to sexual harassment for the years 2000*, 2001** and 2002***

Year	Sexual Harassment Inquiries
2002	89
2001	39
2000	69

* Employment Equality Act 1998 only

** Employment Equality Act 1998 and Equal Status Act 2000 (8 months)

***Employment Equality Act 1998 and Equal Status Act 2000

- (b) Trades Unions: should provide advice and support to members on sexual harassment.
- (c) The Rape Crisis Centres provide counselling to women victimised by sexual harassment.

- (d) Other Organisations: Many organisations are providing training for supervisors dealing with complaints and preventing harassment. Many employers in the public sector and large private sector employers now have policies on sexual harassment.

PREVENTION PROGRAMMES

Training programmes have been introduced in workplaces and educational institutions. General information is given by the media. The 1994 Code of Practice has been widely circulated. It is a valuable guide to employers and workers as to their duties and responsibilities regarding conduct in the workplace.

A Framework for the Development of Equal Opportunities at the level of the Enterprise has been established to assist in the development and implementation on a voluntary basis of equal opportunity policies at enterprise level. A Framework committee involving representatives of employers, trade unions and relevant Government Departments and bodies has been established to progress this initiative. Among the issues identified as appropriate for discussion at enterprise level is sexual harassment.

EQUAL STATUS ACT, 2000

The Equal Status Act, 2000 deals with sexual and other harassment in the areas covered by the Act, i.e., in the provision of goods and services, accommodation, disposal of premises and education. A person in authority in an educational establishment, a person providing services or accommodation or disposing of goods or premises is prohibited from sexually harassing or harassing a student, customer, etc., as the case may be. A person who is responsible for the operation of an educational establishment or a place at which goods, services or accommodation facilities are offered to the public may not permit a student, customer, etc., to suffer sexual harassment or harassment there. Sexual harassment is defined as an unwelcome act of physical intimacy, an unwelcome request for sexual favours or an unwelcome act or conduct with sexual connotations. Harassment is defined as an offensive, humiliating or intimidating act or conduct based on any of the discriminatory grounds.

CRIMINAL LAW

Section 10 of the Non-fatal Offences Against the Person Act, 1997 provides that any person who, without lawful authority or reasonable excuse, by any means including by use of the telephone, harasses another by persistently following, watching, pestering, besetting or communicating with him or her, shall be guilty of an offence.

For the purposes of Section 10, a person harasses another where he or she, by his or her acts intentionally or recklessly, seriously interferes with the other's peace and privacy or causes alarm, distress or harm to the other, and his or her acts are such that a reasonable person would realise that the acts would seriously interfere with the other's peace and privacy or cause alarm, distress or harm to the other.

Where a person is guilty of an offence under Section 10, the court may, in addition to or as an alternative to any other penalty, order that the person shall not, for such period as the court may specify, communicate by any means with the other person or that the person shall not approach within such distance as the court shall specify of the place of residence or employment of the other person. It is an offence to fail to comply with such an order.

If on the evidence, the court is not satisfied that the person should be convicted of an offence, the court may nevertheless make an order that the person shall not, for such period as the court may specify, communicate by any means with the other person or that the person shall not approach within such distance as the court shall specify of the place of residence or employment of the other person if, having regard to the evidence, the court is satisfied that it is in the interests of justice so to do.

1.6 PORNOGRAPHY

No information provided.

1.7 PROSTITUTION

Under Irish law, prostitution in itself is not an offence, but the law does seek to protect prostitutes from exploitation and to protect the public from certain manifestations of prostitution.

It is an offence for a person, in a street or public place, to solicit or importune another person for the purposes of prostitution. The offence applies equally to a prostitute (male or female) soliciting a client, a client soliciting a prostitute or a third party soliciting one on behalf of the other. The same offence and penalties apply to prostitutes, clients or anyone who solicits in a public place.

It is also an offence to solicit or importune another person in order to commit certain sexual offences, such as sexual relations with under-age persons, to keep or manage a brothel.

A member of the Garda Síochána who has reasonable cause to suspect that a person is loitering in a street or public place in order to solicit for the purposes of prostitution may direct that person to leave the scene immediately. It is an offence not to comply with such a direction without reasonable cause. "Loitering" includes loitering in a motor vehicle and this provision therefore applies to kerb-crawlers.

The most recent statute law in this area is Criminal Law (Sexual Offences) Act 1993 which, while primarily concerned with decriminalising homosexual acts between consenting adults also:

- Extended the law on soliciting in public, previously applied only to prostitutes, to include clients of prostitutes and any third parties e.g. pimps;
- Strengthened the law on the protection of prostitutes from exploitation by introducing new offences aimed at curbing organised prostitution and strengthening the law against living off the earnings of prostitution of another person.

So now it is an offence for a person, for gain, to compel or coerce another person to be a prostitute or, for gain, to control or direct a prostitute or to organise prostitution. It is also an offence to live knowingly on the earnings of a prostitute and to aid and abet prostitution.

YEAR ENDED 31 DECEMBER 2000		
	Offences in which proceedings were taken	Persons convicted or against whom charge proved or order made without conviction
Section 6	55	34
Section 7	449	341
Section 8	474	235
Section 10	0	0
Section 11	1	0
Other offences	137	10
Total	1,116	620
YEAR ENDED 31 DECEMBER 2001		
	Offences in which proceedings were taken	Persons convicted or against whom charge proved or order made without conviction
Section 6	2	0
Section 7	102	54
Section 8	218	17
Section 10	206	98
Section 11	2	4
Other offences	69	45
Total	599	218

These figures include both men and women.

Source - Annual Reports of An Garda Síochána.

1.8 OBSCENE PHONE CALLS/TELEPHONE SEX

No information provided.

1.9 FEMALE GENITAL MUTILATION

Female Genital Mutilation is never carried out in Ireland.

1.10 INTERNATIONAL CONVENTIONS

No information provided.

1.11 PROTECTION OF PREGNANCY/PREGNANT WOMEN

No information provided.

2.0 SENTENCING

2.1 SENTENCING DOMESTIC VIOLENCE

See **Section 1.2** above.

3.0 EFFECTIVENESS OF THE LEGISLATION

3.1 SUPPORT/PROTECTION

DOMESTIC VIOLENCE: REFUGES

To date there are fifteen refuges and thirteen support services in place being run by the National Network of Women's Refuges and Support Services.

Refuges in Ireland, as elsewhere, provide a safe place offering help and support for women and children who have been victims of domestic violence. The philosophy underlying the development of refuges is the provision of a mutually supportive and caring environment that empowers women to make informed independent choices. The underlying approach to refuge work is based on an understanding that any woman suffering violence has the right to enter a refuge and be treated as a person with dignity, her rights respected and her stated needs met.

There is considerable practical co-operation between local authorities and health boards in providing emergency accommodation for people whose needs are acute and immediate, including women and children affected by violence. A Voluntary Housing capital Assistance Scheme is available to assist voluntary bodies with non-repayable capital funding to provide accommodation to meet special housing needs, including accommodation for women experiencing violence.

In relation to the provision of transitional housing, a Voluntary Housing Rental Subsidy Scheme is available and has been used by voluntary organisations developing transitional housing.

WOMEN'S AID NATIONAL FREEPHONE HELPLINE

A Women's Aid National Freephone Helpline operating 10.00am -10.00pm, 7 days a week, was established in 1992. This line offers support and information to women and children who are being physically, mentally and sexually abused. It also acts as a referral to refuges, counselling services, solicitors, Legal Aid and other agencies, both statutory and voluntary. Its aims include:

- Providing a free, confidential, anonymous, non-judgmental national phone-line;
Supporting women in making informed decisions in their lives;
- Providing accurate, up to date legal, housing and financial information, outlining their rights, entitlements and options;
- Finding emergency refuges or alternative accommodation for women and children;

- Gathering statistics to educate the general public and policy makers about the needs of battered women and their children, and
- Educating and training women who have been abused to become volunteers to help other women.

From its establishment until December 1996 a total of 34,000 phone calls were made to the line, (8,000 in 1996). The Helpline received 9,808 calls in 2001.

HEALTH BOARDS

Health Boards are empowered to intervene by making applications for orders under the Domestic Violence Act 1996 on behalf of victims in certain circumstances.

LEGAL AID

The Scheme of Civil Legal Aid and Advice administered by Law Centres and staffed by solicitors to provide legal services at little or no cost to persons of limited financial means was introduced in 1980. This scheme is of importance for victims of domestic violence seeking redress through civil law. The Legal Aid Board have a policy whereby priority appointments are arranged for victims of domestic violence.

NATIONAL STEERING COMMITTEE ON VIOLENCE AGAINST WOMEN

The National Steering Committee on Violence against Women is representative of a wide range of interests concerned with violence against women and its remit is to provide, *inter alia*, a multidisciplinary and cohesive response to this issue. The Committee has a number of objectives which include, ensuring that regional and local structures are established, developing public awareness campaigns, coordinating and advising on the distribution of resources among the eight health board regions, coordinating and advising on ongoing development of policies including those concerning perpetrators, criminal justice intervention, services and supports.

Regional Committees on Violence Against Women have also been established in each of the eight health board regions and they will draw together the services available to women in each of these regions in order to provide a sympathetic and consolidated approach to the treatment of victims of violence. These committees are involved in the assessment of existing services in their respective regions and the drawing up of service targets in terms of delivery and development.

PREVENTION

MEN'S PROGRAMMES - PREVENTION

It is open to members of the judiciary to make ancillary orders or to recommend that offenders take part in intervention programmes.

There are a number of programmes available to men who perpetrate violence against their spouse or partner. These programmes are based on voluntary participation and are run by voluntary organisations such as MOVE and the Cork Domestic Violence Project.

The Cork Domestic Violence Project was established in 1993. It offers a 20 week programme with a 10 week induction programme. To date, 80 men have completed the programme. It is based on the principles of the Duluth programme for men in Minnesota USA and places emphasis on inter-agency co-ordination to ensure that violent men remain accountable for their behaviour and to maximise protection for women.

Its primary goal is the protection, rehabilitation and empowerment of women and children. The aim of rehabilitating of men is secondary to this. The programme is based on the analysis that violence against women occurs in societies characterised by gender inequality and that violence is a part of a wider pattern of coercive and abusive behaviour used by men to retain power and control over women. The programme holds that men must be made accountable for their violent and abusive behaviour and challenged to live out a pattern of equality and respect. A parallel education, support and counselling group is run for women partners. A policy of limited confidentiality to men is practised so that the programme can disclose information revealed by men to protect his partner and children.

Women assess the ongoing behaviour, abusiveness and lethality of men, ensuring that the experiences of women victimised by violence remain central to the intervention strategy. Evaluation of the programme is just beginning. In a follow up of partners of 20 men who completed the programme: 67% of women stated there was no further violence; 22% stated there was some and 11% stated there was a lot. The project, however, warns of the need for vigilance about results and points out that the programme is unlikely to change the behaviour of men, but can mitigate the incidence of violence.

This project receives minimal state funding and the majority of resources come from fund-raising.

MOVE, initiated in 1989, has developed programmes in Dublin, Cork and other parts of Ireland. Its primary concern is the safety of women and children which it pursues by placing the responsibility for finding solutions to violence on the men. It operates a 13 week rolling programme throughout the year. Men are referred to the programme by doctors, solicitors, psychiatrists, marriage counsellors and social workers, and a small number are referred by the courts. The programme is based on weekly group sessions facilitated by professionals. Men are challenged to confront and explore their violent behaviour, attitudes and beliefs and are challenged to take full responsibility for their violence. The programme is informed by the understanding that violent men are not 'sick', but use violence as a means of control. MOVE defines success as men stopping being physically violent and ceasing to exert control in the many other ways that batterers do e.g. psychological abuse. MOVE hold the belief that the woman's perspective should be taken into account in deciding whether or not real change is occurring. MOVE is a voluntary organisation with no secure state funding. MOVE also engages in out-reach work to educate and inform professionals and public opinion about violent men and their responsibility for violence.

The Department of Justice, Equality and Law Reform made available a grant to the Cork Domestic Violence Project to develop, in conjunction with the Probation and Welfare Service, a pilot project to deal with perpetrators of domestic violence. An evaluation into this work is underway.

The Department funded "First Contact", a voluntary organisation which aims to reduce male domestic violence in our society. A pilot project, which involves the provision of a confidential telephone service, has been developed. The helpline aims to support and challenge men to recognise their violent behaviour and to take responsibility for breaking the cycle of violence. The Department is examining the effectiveness of this service at present.

The Department of Justice, Equality and Law Reform has provided funding for the establishment of a Domestic Violence Intervention Project on a one year pilot basis in one area in Dublin. The project, which aims to put in place a coordinated response to both the victims and perpetrators of domestic violence, is due to be launched in May 2003.

The project proposal is based on the findings of national research and international studies and is modelled on an intervention project in operation in Duluth, Minnesota and on similar projects in a number of other locations in other jurisdictions. It involves a co-ordinated response from all of the Agencies/Organisations involved in responding to victims and perpetrators of domestic violence.

It is intended that the project will be evaluated following one year of operation so that, if it proves successful, a model will emerge that can be replicated in other centres throughout the country. The model will set a standard of excellence which will inform any intervention in domestic violence. The pilot will establish and develop interventions for perpetrators that will have formal connections with the civil and criminal judicial system.

CUSTODY BASED SEX OFFENDER TREATMENT PROGRAMME

There are at present 29 full-time professionals and two consultants involved in rehabilitation programmes for sex offenders in prisons. All convicted sex offenders in custody, irrespective of the institution in which they are accommodated are invited to apply to participate in the Sex Offender Treatment Programme in Arbour Hill Prison. A similar group/treatment programme is in place at Curragh Prison. Those who apply are considered by the Treatment Team but not all found suitable for participation. All sex offenders are encouraged to avail of treatment, however, they cannot be compelled to attend, not do they receive any extra concessions for attending. The Programme can cater for up to ten offenders at any one time and takes approximately eleven months to complete.

The Department of Justice, Equality and Law Reform, in conjunction with the National Steering Committee on Violence Against Women has developed core principles for funding of Perpetrators Programmes.

AWARENESS CAMPAIGNS

The National Steering Committee has undertaken a number of public awareness campaigns aimed at generating a wider public debate on the issue of violence against women.

The first national campaign, entitled "Going Forward", informed victims that they are not alone and that there is help available, and informed perpetrators that violence against women is a crime and must stop.

A campaign aimed at providing victims with information about where help was available took place in 1999. It involved the production of information leaflets "Important Information for Women", which were adapted for eight different geographical regions in Ireland. The leaflets, which included information on the services available in each of the regions for women experiencing violence or the threat of violence, were widely distributed. These information leaflets were reprinted in 2000 due to demand.

An emblem to be worn to show support for women experiencing violence in their relationships was launched in 2000. The emblems were distributed for sale (at cost) through a large national supermarket chain and almost 30,000 were sold nation-wide. The campaign attracted significant media coverage.

A Directory of Services for women experiencing violence or the threat of violence was launched in 2000. The Directory is a comprehensive document which lists all services available to women experiencing violence. Over 5000 copies were distributed to doctors, Accident & Emergency staff, citizen information centres, libraries, police and service providers.

Having evaluated the Recommendations of recent research into attrition rates in rape and sexual assault cases the National Steering Committee is in the process of developing an awareness campaign around the issue of rape and sexual assault. The awareness campaigns are aimed at prevention of incidents of rape and sexual assault as well as providing information for victims of such assaults.

The first stage of this awareness campaign was launched in September 2002 and consisted of the production of posters highlighting the dangers of drug assisted rape and/or robbery. Posters have been distributed to pubs, night clubs and third-level colleges nation-wide for display. The second stage of the campaign involves the development of an information pack for victims of sexual violence and is due to be launched in 2003.

EDUCATIONAL INITIATIVE

The Department of Education and Science has developed a social and personal health education programme for use in post-primary schools. The programme deals with the issue of violence against women. The Department has also developed a programme, specifically for boys in the Transition Year of the senior-cycle, entitled Exploring Masculinities, which deals with a range of issues of violence, including violence against women.

MARRIAGE, CHILD AND BEREAVEMENT COUNSELLING SERVICES

The Scheme of Grants for Voluntary Organisations providing Marriage, Child and Bereavement Counselling Services is a non-statutory scheme of once-off grants to voluntary organisations providing marriage counselling, child counselling in relation to parental separation, marriage preparation courses and bereavement counselling and support services.

The scheme focuses on supporting the voluntary sector with the development of counselling and support services in the community for families, enhancing stability in family life, and assisting families and their members to deal with difficult periods which they may experience. The aim is to ensure a comprehensive and accessible service, at low cost to the customer.

PREVENTIVE STRATEGIES

PARENTING

Family Support Agency

The Family Support Agency Act, 2001 makes provision for the establishment of the Family Support Agency.

The Family Support Agency has been given formal responsibility for the promotion and dissemination of information about a range of family and family related issues including parenting. Funding has been allocated to the Agency in 2003 to develop a programme of information on parenting.

It is proposed that the Family Support Agency would develop, in line with its statutory function, a programme focusing on the importance of parenting and good parenting practice.

This Agency will take on responsibility for a range of family support programmes and services which have been developed in the Department of Social and Family affairs over the past number of years. The Agency will:-

- provide a Family Mediation Service throughout the country for couples who have decided to separate, helping them to reach agreement on issues such as the family home, financial arrangements and ongoing parenting arrangements so that children can retain close bonds with both parents where possible
- support, promote and develop the provision of marriage and relationship counselling services, child counselling services and bereavement support for families. Grant aid, will also be provided, with the approval of the Minister of Social and Family Affairs, to voluntary organisations providing these services in the community
- support, promote and develop the Family and Community Services Resource Centre Programme
- promote and provide information to the general public about
 - family mediation and how it can assist families,
 - marriage preparation programmes and relationships education,
 - parenting information to support families with the day-to-day challenges of rearing children and carrying out their parenting responsibilities and;
 - in cooperation with other public bodies, provide information to assist families in balancing their work and family responsibilities.
- commission research into matters such as marriage and family formation, trends in marital breakdown, the effectiveness of relationships counselling and other family counselling supports.

The new Family Support Agency will have an advisory role to the Minister for Social and Family Affairs in relation to the matters within its remit. It will be overseen by a Board composed of members with experience and expertise in areas such as family mediation, the Family and Community Centre Resource programme, counselling, research and family law. The Service will be accountable for investment amounting to some € 17.2m in 2003.

RESEARCH INTO FAMILIES IN CRISIS

It is proposed that the Family Support Agency research programme will address issues such as family relationship dynamics, including how parents are coping with upheaval in their parenting relations with their children and the sort of supports needed to help family members get on with their lives after separation as individuals and as parents .

Longitudinal Study of Children in Ireland

The Government has agreed in principle to establish Ireland's first long-term study of children growing up in this country. The information gained from the Study is expected to have a major impact on the types of services and supports provided to children and their families.

The study was proposed in the Report of the Commission on the Family and the National Children's Strategy. The Study will provide invaluable information on children and their families that will assist in the future development of family policy in Ireland. The Family Affairs Unit in the Department of Social and Family Affairs and the National Children's Office have responsibility for the project.

The study will monitor the development of 18,000 children from different backgrounds (10,000 from birth and 8,000 nine year olds) through to adulthood. It will seek to identify the circumstances that allow children to thrive and those that hinder children's development.

The Community Development Programme

The Community Development Programme was established in 1990 in recognition of the role of community development in tackling poverty and disadvantage. In May 1998, a contract was signed with Women's Aid to act as a Support Agency to the Community Development Programme. The purpose is to provide support and advice to projects on the appropriate response to women experiencing violence. While projects will not provide services to these women they will be advised on how to deal sensitively with women coming to them for support and to assist the women to contact the appropriate agencies. The objectives of the Support Agency are to;

1. Facilitate the creation of good practice guidelines for all those in the Community Development Programme who may have a role in responding to women who are abused;
2. Explore the possible strategies the CDP may wish to initiate and develop in order to respond to women in the community who are abused;
3. Facilitate linkages with relevant statutory and voluntary agencies which would enable individual community development projects to develop different strategies appropriate to their community;
4. Facilitate linkages with relevant training and education personnel and agencies towards the development of specific strategies and responses;
5. Support the CDP to promote the integration of policy and good practice guidelines into all relevant statutory and voluntary agencies;
6. Support the CDP to raise an awareness about violence against women within the wider community through education and awareness programmes.

Research

The National Steering Committee recently commissioned research into service needs. It is entitled "*Analysis of current and future needs and responses to Women Who Have Experienced Violence or the Threat of Violence arising from Domestic Violence, Rape or Sexual Assault*". The work is due to be completed in 2003.

The Department of Justice, Equality and Law Reform is providing funding for a Domestic Violence Intervention Pilot Project, arising from research undertaken into the development of an intervention model for victims of domestic violence.

The National Crime Council is currently conducting nationally based research into Domestic Violence.

The Garda Research Unit has undertaken research into rape statistics following an increase in the number of crimes reported to the Gardaí in this area while the figures for crime generally were on the decrease. The results of the research were published in early 1998. It was decided to extend the research and phase two is currently underway. The current research project will focus on the experiences of victims of rape who report to the Gardaí. It will also try to quantify the attrition rate at each stage from reporting a case to the case outcome and to suggest how the processing of cases might be improved with particular reference to Garda practice.

The publication of the findings of the 'Legal Process and the Victims of Rape', a GROTIUS funded research project which was launched in 1998, was jointly carried out by the Dublin Rape Crisis Centre and the School of Law Trinity College. The research project reviewed the legal process and victims of rape in all fifteen EU Member States (www.justice.ie publications 1997 - 2000 - Legal Process and Victims of Rape).

Research which was partly funded by the Department of Justice, Equality and Law Reform, into the operation of the Domestic Violence Act, 1996, was conducted by Women's Aid. The results were published in 1999.

The Department of Justice, Equality and Law Reform funded a research project into the reasons why there are high attrition rates in bringing prosecutions in rape cases. The Research was carried out by University College Cork and the Cork and Kerry Rape Crisis Centres and the findings were published in January 2001 (see section 1.1).

The Department of Justice, Equality and Law Reform also provided funding for a report in relation to sexual abuse and violence in Ireland. The Report, entitled 'The SAVI Report - Sexual Abuse and Violence in Ireland', was commissioned by the Dublin Rape Crisis Centre and published in 2002. It is a national study of Irish experiences, beliefs and attitudes concerning sexual violence (see section 1.1).

The Task Force has identified core principles which should apply in the establishment of treatment programmes for violent men and recommends that only programmes which follow these principles should receive state funding: protocols regarding referrals should be developed;

- Assessment procedures should be established;
- Programmes to be linked to the criminal justice system;
- Contact to be maintained with partners to verify the safety and well-being of abused women and children;
- Only limited confidentiality to be accorded to men to allow for sharing of information and the protection of women;
- Work with men should not be done in isolation, but in full collaboration with statutory services and women's organisations.

3.2 PROPOSED REFORMS

INTEGRATED CRIMINAL JUSTICE RESPONSE TO DOMESTIC VIOLENCE

The Task Force recommended that to be effective, a pro-arrest police policy must be part of an integrated criminal justice response involving policy, prosecution and sentencing.

MONITORING OF LAW

Mechanisms to be put in place for monitoring the operation of the Domestic Violence Act 1996 and to review its effectiveness.

JUDICIAL TRAINING

Training of Judiciary about the nature of domestic violence.

POLICING

Ongoing in service training to supplement domestic violence training provided in induction training; training facilitated by outside experts - including women's organisations.

The new Garda policy in relation to domestic violence to be monitored to ensure consistency in its implementation between the different districts.

The Gardaí should develop strong inter-agency links with statutory, voluntary and community groups working around domestic violence.

Each Garda station should have information packs available detailing local statutory and voluntary sector support services; information on intervention programmes for violent men should be included.

SUPPORT SERVICES

A national helpline networked into locally based services, publicised widely, rather than local helplines, is the way forward. It recommends that this helpline should operate 24 hours a days seven days a week, by trained staff, with guaranteed funding - modelled on Women's Aid's National helpline

The Task Force recommended that 'One Stop Shops' be provided through community development projects in all local areas, to provide advice and information to women experiencing violence.

TREATMENT PROGRAMMES FOR VIOLENT MEN

Establishment of principles for good practice; monitoring and evaluation of programmes.

DEVELOPING A CO-ORDINATED RESPONSE AND STRATEGY FOR DEALING WITH DOMESTIC VIOLENCE

A National Steering Committee should be established with membership drawn from all relevant sectors to advise on policy development and priorities. It should be chaired by a Minister of State with designated responsibility for the development of policies in this area.

Regional Planning Committees with a strategic focus should be established in each region with membership drawn from all relevant sectors.

The establishment of Local Networks with a community based approach to the provision of services, including inter-agency co-ordination of services and sharing of information at a local level.

PREVENTIVE STRATEGIES

A long term strategy aimed at changing society's attitudes and values and the structures which facilitate gender inequality.

IMPROVED SERVICE RESPONSE

Public awareness campaign aimed at both preventing domestic violence and stopping its recurrence to be developed by the National Steering Committee with TV/radio and posters. Information leaflets, posters and other materials giving local information should be displayed in places like supermarkets, health centres, churches, community groups, social service offices, post offices and sporting clubs.

Special focus programmes in education to provide young people with the knowledge, skills and attitudes necessary to prevent violence against women in future generations. Teacher training programmes, gender proofing of educational materials and methods are also needed as a part of such a programme.

Parenting and family support programmes be established.

4.0 DOMESTIC VIOLENCE

See Section 1.2 above.

5.0 RAPE AND SEXUAL ASSAULT IN MARRIAGE

See Section 1.3 above.

6.0 RAPE AND SEXUAL ASSAULT

See Section 1.3 above.

7.0 SEXUAL HARASSMENT

See Section 1.5 above.

8.0 INCEST/SEXUAL ABUSE OF GIRLS

See Section 1.4 above.