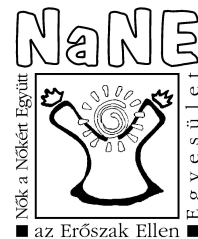


Shadow Report

The joint report
of the Women Against Violence (NANE) Association
and the Habeas Corpus Working Group (HCWG)
on the realization of
the Convention
on the Elimination of All Forms of Discrimination Against Women
in Hungary
incorporated with the critical examination
of the report of the Hungarian government presented
at the 2002 August session of the CEDAW Committee of the UN

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Contents

1	Foreword	5
2	Article 1: Discrimination	7
2.1	The Practice of the Constitutional Court	7
2.1.1	The Constitution	7
2.1.2	The Powers of the Constitutional Court	7
2.1.3	The Constitutional Court’s Practice Concerning Fundamental Rights . .	8
2.1.4	The Constitutional Court’s Attitude to Women’s Equality	9
2.1.5	The References of the Constitutional Court to the CEDAW Convention	9
2.1.6	Decisions the Constitutional Court Has Not Taken	10
2.1.7	Regulations Abolished by the Constitutional Court	11
2.1.8	Regulations That Were Not Abolished	12
2.1.9	A Short Evaluation of Constitutional Court Decisions	14
2.2	Laws	15
2.3	The Practice of the Ombudsman	17
2.4	Further Reflections on the Government Report and Answers, and a General Summary	18
3	Article 2: Policy Measures	19
3.1	General Review	19
3.1.1	Government Activities Specifically Designed to Fulfill International Obligations Resulting Especially from the CEDAW Conception	19
3.1.2	Women’s Representation	22
3.1.3	State Funding of Women’s Organisations	23
3.2	Laws, Institutions and Other Measures in Effect and Missing	25
3.2.1	Constraints of Basic Rights Regulated in Decrees	25
3.2.2	Discrimination in the Legal Domain of Labour	25
3.2.3	Sexual Harassment	26
3.2.4	Domestic Violence and Rape	27
3.2.5	Reproductive Rights	28
3.2.6	Regulation on Prostitution	28
3.2.7	Obstacles in the Penal Code and the Criminal Process	29
3.2.8	The Absence of Victims Protection Regulations and Services Regard- ing Women’s Rights	30

3.2.9	Ignoring Human Rights NGOs That Protect Victims	30
3.2.10	The Absence of Institutions Protecting Women	30
3.3	Our Proposals as to the Creation of an Effective System Laws, Policies, Institutions and Other Measures	31
4	Article 3: Guarantee of Basic Human Rights and Fundamental Freedoms	34
4.1	The Indifference of Authorities	34
4.2	Examples of Police Prejudices	35
4.2.1	The Police Magazine	35
4.2.2	The Curriculum on the Investigation of Sex Offences	35
4.3	The Attitudes of the Government	36
4.4	A Concrete Case	37
5	Article 4: Special Measures	39
6	Article 5: Sex Role Stereotyping and Prejudice	42
7	Article 6: Prostitution	44
7.1	The Violation of the CEDAW and the New York Convention	44
7.2	Traffic in Women	45
8	Article 7: Political and Public Life	47
9	Article 11: Employment	48
10	Article 12: Health	49
10.1	Setback in Reproductive Rights	49
10.1.1	Abortion in Case of Rape	50
10.1.2	The Fee of Abortion	50
10.2	Family Planning	51
10.2.1	Birth Control	51
10.2.2	Artificial Insemination	52
10.3	Summary	52
11	Closing Remarks	54

Chapter 1

Foreword

In this report NANE Association and HCWG will review the realization of the CEDAW Convention in Hungary after the change of regime in 1989 and especially during the period covered by the joint 4th and 5th Hungarian Government Report and the questions asked about it by the CEDAW Committee in 2002.

Besides the general evaluation of the realization of the Convention, this report also includes our reflections on the above mentioned Government Report and related Sections of the governmental answers.

We will also touch upon the realization of the relevant parts of the General Recommendations in the report.

Our report will review primarily relevant legislative and jurisdictional practice concerning general anti-discrimination regulations, violence against women and issues closely related to these, as well as questions of reproductive rights. We will focus our attention especially on articles 12 and 19 of the General Recommendation describing the necessity of the protection of women against all forms of violence in all spheres; to item 40 of article 21 of the General Recommendation, as well as articles 23 and 24 of the General Recommendation, all connected to articles 2, 5, 11, 12 and 16 of the Convention. In some cases we will touch upon some articles more loosely connected to, but always affecting, the above issues of the CEDAW Convention.

In lack of time, we do not or only partly discuss the following rather serious problems:

- The men who abuse and kill their wives are usually sentenced to significantly shorter imprisonments than those abused women who, after not receiving protection from authorities for long years, kill their abusers. This is because the reality of violence against women is acknowledged neither in the Penal Code nor in Directive 15 of the Supreme Court, nor in the jurisdiction of courts.
- In the field of production of evidence of sexual violence against women, there is a strong tendency in the practice of both judges and police to doubt the credibility of women's testimonies and to ignore their experiences.
- Authorities and legal experts are not capable of discovering father-daughter incest cases in cases when no obvious evidence can be found (such as a photo or semen). Authorities are

reluctant to even believe in the possibility of violence against little girls of kindergarten age, they are unable to identify information that would prove the abuse. In the most severe cases, investigation is not directed at discovering the criminal acts but at blaming the female relative (mother or grandmother) acting in interest of the victim.

- Sexism prevalent in the media and education has no counterpoint.

NANE Association is a women's rights NGO established in 1994. In 1999 NANE has achieved the legal status of "highly charitable non-governmental organisation for the public good". Its main fields of activities are: toll-free hot-line for women (and children) who became victims of any form of domestic violence or other forms of violence against women, a toll-free trafficking.in-women prevention line, personal counseling for DV, VAW, sexual harrasment, prostitution and trafficking victims and survivors; trainings for professional and other groups; awareness-raising and informational campaigns and activities; analysis of legal regulations; and elaboration of drafts of bills.

Habeas Corpus Working Group is a civil advocacy organisation that was founded in 1996 and attained the legal status of non-governmental organisation for the public good in 1998. Its aims are protecting, enforcing and extending self-determination rights connected to the body. Its main activities are: telephone and personal counselling for sexual minorities, abused women and children, analysing and criticising legal regulations, and dissemination of legal information to groups whose self-determination rights are limited.

Chapter 2

Article 1: Discrimination

2.1 The Practice of the Constitutional Court

2.1.1 The Constitution

Article 1. of the Convention gives a definition of discrimination on the basis of sex for the purposes of the Convention based on the effects of such discrimination. In our analysis we would also like to refer to the Declaration on the Elimination of Violence Against Women (1993) which sets forth gender-based violence as a form of discrimination. In the review that follows we shall examine to what extent the concepts defined in these UN documents are reflected in the theory and practice of the Hungarian Constitutional Court, in Hungarian laws and in the practice of the Ombudsman.

Subsection (1) of Section 70/A of the Constitution on the general prohibition of discrimination prohibits gender-based discrimination in a non-exhaustive list. Subsection (2) of the same Section stipulates that the law severely punishes any discrimination prohibited in Subsection (1), but in reality no such law exists. At the same time, Section 66 declares separately that “The Hungarian Republic ensures the equality of men and women concerning every civil and political, economic, social and cultural right.” With respect to the fact that, as opposed for instance to the absence of discrimination based on birth, some regulations do differentiate between men and women, we consider it necessary to make clear what differences between men and women may be the basis of such differentiation and to what extent. However, the Constitution does not give guidelines for this. It only states in Subsections (2) and (3) of Section 66 that “mothers must be given support and protection before and after the birth of the child, as set down in a separate regulation,” and that “separate rules ensure the protection of women and the youth during work.”

2.1.2 The Powers of the Constitutional Court

According to some authors, the Hungarian Constitutional Court has the widest powers in the world. The Constitutional Court may examine the constitutionality of legal regulations and may

issue general interpretations of the Constitution, though it has no decision taking power in individual cases. Anyone may initiate a procedure at the Constitutional Court against the unconstitutionality of a legal regulation, and if the regulation is found unconstitutional, the Constitutional Court *abolishes* it. Again, on anyone's initiative, the Constitutional Court may also determine that a legislative body committed unconstitutional neglect, and may oblige the body to pass a regulation. There is no impediment to a constitutional judge or an employee of the Constitutional Court turning to the Constitutional Court requesting a decision on the unconstitutionality of a regulation. This way, the Constitutional Court may abolish regulations quasi ex officio, not just upon an external request.

At the same time, the Constitutional Court is not bound by any deadline in its procedures. Several cases are known in which the Constitutional Court has not taken a decision in 8 to 9 years. This severely endangers legal security, especially in those cases where it is the provisions of the Penal Code that the Constitutional Court is reluctant to take a decision for years. Thus it is no exaggeration to claim that the Constitutional Court is almost fully autonomous; it decides on those regulations that it thinks fit to decide on, and at times when it wishes to.

In certain cases the Constitutional Court gives reasons for its decision to delete a regulation in such a fashion that it gives a general outline of what the new regulation to be taken by the legislative body should be like. At such times, the Constitutional Court believe they are "interpreting the Constitution", despite the fact that the Constitutional Court has no power to declare their sentiments on the desirable contents of a regulation. The only thing the Constitutional Court may not criticise is the Constitution.

2.1.3 The Constitutional Court's Practice Concerning Fundamental Rights

The Constitutional Court brought several progressive, large-scale decisions concerning fundamental rights during the first three to five years following its foundation in 1990, which laid the fundamental requirements for the rule of law, the right to life and human dignity, the protection of personal rights, the constitutionality of criminal law, the freedom of speech and religion, data protection and non-discrimination. For instance, the Hungarian Constitutional Court was first in the world to declare that it is unconstitutional not to acknowledge the partnership of homosexual couples (Constitutional Court Decision 14/1995. (III.13.)). Beginning from 1994 to 1996, however, the Constitutional Court stopped developing human rights, and started to take ambiguous decisions sometimes against the spirit or even the words of its earlier decisions. Not unrelated to changes in personnel, the Constitutional Court has since given up its mission to develop fundamental rights.¹

The retrograde decisions of the Constitutional Court taken after the mid 1990s have caused certain human rights activists to think that it is not worth turning to the Constitutional Court in serious human rights issues, because a bad decision that has not been taken is better than a bad Constitutional Court decision that serves as the apology for a regulation that human rights activists consider unconstitutional. This opinion is especially strong among activists dealing with the protection of women and sexual minorities, as underpinned by the reasons given below.

2.1.4 The Constitutional Court's Attitude to Women's Equality

28 Constitutional Court decisions have touched upon the equality of men and women, but not one of them abolished a discriminatory regulation that put women to a disadvantage in comparison to men, or found that some legislative body caused, through its neglect, a situation of unconstitutional discrimination against women.

The Constitutional Court took its first significant decision affecting women's rights still in its first phase, considered generally progressive, in 1992. The decision, however, affected women's rights disadvantageously. The decision on the right to abortion, which could have formally avoided taking a stance, gave a rather anti-choice interpretation of the right to abortion. In addition, the decision takes no consideration whatsoever of the fact that regulating the right to abortion in any way is providing men and women with different rights.

Never, not even in its initial phase of developing fundamental rights has the Constitutional Court taken a decision that indicates thorough knowledge of issues connected to gender equality, gender roles, women's rights or sexuality. On the contrary, the decisions of the Constitutional Court pertaining to the equality of men and women are superficial, prejudiced, severely burdened with logical mistakes and operate with a rather uneducated notion of gender roles. In our opinion, the standard of the ideas about gender roles discernible from the decisions of the Constitutional Court is low, they indicate that the Constitutional Court is not sufficiently committed to women's equality and studying the issues of equality.

The same findings apply to the Constitutional Court's work relating to the rights of sexual minorities, paradoxically even to the reasons given for the above mentioned decision on the partnerships of gays and lesbians. Another tendency is discernible in this field, namely that the Constitutional Court takes decisions only in questions of limited significance, and these lighter-weight decisions may often be assessed positively. Meanwhile, in weightier issues, as we shall evaluate in the following subsections, it either does not take decisions, or takes decisions in a form that infringes the equal rights of minorities.

Since its foundation **the Constitutional Court has not taken a single decision that extended women's rights.** Without exception, the decisions that point towards the equality of women and men extend the rights of men. However, even these decisions approach the requirement of the equality of women and men in a rather formal fashion and do not attempt to interpret equality in light of the gender roles that actually exist in society.

2.1.5 The References of the Constitutional Court to the CEDAW Convention

Three decisions of the Constitutional Court mention the CEDAW Convention.

The first decision on abortion refers to the fact that

in the opinion of those submitting the motion those regulations which prescribe that the permission for abortion is dependent upon an official examination in the

case of women under the age of 35 or in the case of women who have had less than two children, are contrary to point e) Subsection 1 Article 16 of the Convention on abolishing all forms of discrimination against women, accepted on 18th December 1979 in New York, and ratified with Law-decree 10 of 1982.² (Emphasis added.)

However, the Constitutional Court Decision does not respond to this statement of those submitting the motion. The Constitutional Court did not even mention the possibility that the right to abortion may have any connection with the equality of women and men. (For more details see: page 13.)

Decision No. 28/2000. (IX. 8.) mentions the Convention only in general, it is not used either by the claimant or the Constitutional Court as an argument. The decision rejected the proposal, therefore it did not result in change of regulation.

Decision No. 58/2001. (XI. 7.) refers to point g) Subsection 1 Section 16 of the Convention to support the idea that men should have the right to use their wife's surname.

2.1.6 Decisions the Constitutional Court Has Not Taken

The Constitutional Court, abusing the rule that no deadline is set for its proceedings, has not taken decisions concerning a number of proposals attacking regulations that have a significant and always negative effect on women's rights.

The Constitutional Court has had filings before it since 1993 on changing the provision of the Penal Code entitled "sodomy against nature" that sets a discriminatory difference in the age of consent for homosexual and heterosexual acts.³ This provision does not only discriminate homosexuals in a disadvantageous way from heterosexuals but in reality girls from boys: as men are the perpetrators of 99% of all sexual crimes regardless of the sex of the victim. By punishing homosexual acts, the law protects boys between the ages of 14 to 18 from sexual abuse, while it leaves girls unprotected as the age of consent for heterosexual acts is 14 years.

Another filing has been before the Constitutional Court in vain since 1994 that criticises numerous provisions, almost the whole of Act on Police because, explicitly or by being obscure, the law grants power to the police to carry out extremely arbitrary procedures. The entire Act on Police fails to meet the criterion of making the operation of an authority predictable and reasonable. The law does not provide clear guidelines on the tasks of the police in certain cases, does not separate criminal prosecution tasks from crime prevention. This for instance affects women's rights severely in that the majority of police officers usually decide rather subjectively whether they have to act and how in domestic violence cases.

Between 1994 and 1997 the Constitutional Court did not decide on filings that were objecting to the fact that domestic rape was not a crime. Thus objectionable provisions of the Penal Code were abolished in 1997 by the Parliament without the Constitutional Court ever voicing its standpoint on the issue.

2.1.7 Regulations Abolished by the Constitutional Court

Abolishing Women's Advantages

The regulations abolished contained mostly discrimination that was disadvantageous for men in comparison to women:

Constitutional Court Decision No. 10/1990. (IV.27.) abolished regulations pertaining to widow's pension, as they made it possible only for a "wife" or a "woman" to have such pension.

Constitutional Court Decision No. 32/1997. (V.16.) was examining a provision that granted men an advantageous early pension provided that they were rearing a child *alone*:

As regards rearing children, men and women enjoy equal rights and their obligations are equal, as well. [...] It is unconstitutional therefore that men are only entitled to a reduced service time to be taken into account when entitlement to pension is being examined [...] if they reared their child alone. With respect to this, the Constitutional Court has [...] abolished the word "alone."

The Constitutional Court did not analyse the circumstances in its decision that men who did not rear children alone usually carry a disproportionately smaller burden than their female partners, and that they are abolishing a provision that was meant exactly to compensate for women's disadvantages in real life. This happened despite the fact that such positive legislation is not excluded by the Constitution, indeed, Subsection (3) of Section 70/A prescribes expressis verbis that "The Hungarian Republic helps the realization of equality of rights with measurements that aim to alleviate unequal opportunities."

Constitutional Court Decision No. 7/1998 (III.18.) abolished a provision of the government decree on the enforcement of the Act on Pension that made it possible only for female weavers to retire at an earlier age. The reasons for the decision state that although it is reasonable to provide certain preferences and positive discrimination based on women's "natural characteristics," "it is constitutionally unfounded to absolutely exclude men in the same position and doing the same work from early retirement."

Abolishing Provisions Infringing on Couples' Rights

The Constitutional Court has also abolished provisions that, in our view, cannot be considered as advantageous or disadvantageous to women as opposed to men. These pertained to rules regulating such areas of life where some degree of consent can be presumed between men and women, and the abolished provision basically violated couples' self-determination rights.

Constitutional Court Decision No. 18/2001 (VI. 1.) abolished the rule under which men over 60 could not take part in a procedure for artificial insemination, not even if the medical intervention was necessary because of the medical condition of a prospective mother who was in reproductive age. In addition to our opinion expressed in the above paragraph, we would like to

note at the same time that full power equality or economic balance is unlikely in most cases of couples made up of a younger woman and an older man. Thus, given the likeliness of gendered imbalance of power observed in the type of relationships that serves as the context of the regulation, this decision may be considered as the strengthening of relationships dominated by the man.

The already mentioned Decision No. 58/2001 (XI. 7.) declares the right of husbands to use their wife's surnames. The organisations preparing the report agree with the spirit of this decision, however, the decision also supports our finding that the Constitutional Court brought positive decisions on the equality of the sexes only in insignificant issues.

2.1.8 Regulations That Were Not Abolished

The “Constitutionality” of Men’s Extra Burdens

Regulations the Constitutional Court found constitutional and therefore left in effect:

Constitutional Court Decision No. 874/B/1994 examined the regulation of widow(er) pension from the viewpoint that men are entitled to such a pension after the age of 60, while women after 50. According to the Constitutional Court this is not unconstitutional, and does not contradict the Section 66 of the Constitution on the equality of men and women because “the regulation applies a discrimination with respect to differences in men’s and women’s physical-biological, social-sociological situation that can be generalised in relation to their age.” The Constitutional Court failed to explain what these differences consist of, and in what way they justify setting a different age limit.

Constitutional Court Decision No. 46/1994 approved of the fact that only men are obliged to do military service. “It is not contrary . . . to the prohibition of disadvantageous discrimination that the legislator . . . takes into account the characteristics of the female sex and the historically evolved tradition that fighting is the task of the representatives of the male sex.”

The Constitutional Court refused several other motions on similar issues. For instance Constitutional Court Decision No. 28/2000 (IX. 8.) found constitutional a regulation on men’s civil defence obligations. It also found constitutional two regulations allowing the establishment of disability pension and early retirement, respectively, for women and men at different ages. These decisions never referred to the extra burden women tend to carry in reality, for example in the form of household work, or that the extra workload should be regulated legally.

The “Constitutionality” of Limiting Women’s Rights

Artificial Insemination Constitutional Court Decision No. 750/B/1990 refused the complaint against the then effective rule on artificial insemination that it could only be awarded to a woman under forty and living in wedlock. The main reasons were as follows:

... the limitation protects children's rights ...

... strengthens the institution of marriage, and thus facilitates the creation of the actual family (married couples with children).

It is desirable that children, if possible, be born into a full family, because from the viewpoint of the child's development, not just maternal care but also the person of the father and education from the father is of extreme importance.

The experiences of the medical profession show that a relatively larger percentage of children born from an older mother carry some form of physical or psychic disability.

Artificial insemination is not connected to such a fundamental human or civil right which everybody should be entitled to without discrimination. This form of insemination is an institutionalised medical treatment, whose goal [...] may be dependent on certain conditions

The Constitutional Court also declared that providing artificial insemination only for a certain group of persons "serves the balancing off of unequal opportunities."

Right to Abortion Both Constitutional Court Decisions concerning the right to abortion⁴ followed the trajectory of contrasting the life of the foetus with the self-determination right of the pregnant woman, and neglected the fact entirely that only a well defined social group, namely women, suffer from unwanted pregnancy. Neither decision discusses the fact that any limitation on the right to abortion increases the inequality between women's and men's rights; and both fail to mention altogether the responsibility of men in creating unwanted pregnancies. (Men are referred to only in the references describing the biological process of "the fusion of female and male gametes".)

The second decision, of 1998, declares that the "regulations creating the appropriate equilibrium protecting fetal life" "against the self-determination rights and other fundamental rights of the mother (sic!)" shall be created, for instance with repeated mandatory "counselling" with the "explicit aim of protecting the foetus." Even the Constitutional Court acknowledged that this solution violates women's privacy rights. In sharp contrast with the alleged aim of the law to "support the pregnant woman in the crisis situation," the Constitutional Court suggested charging the medical costs on the woman. The majority of the Constitutional Court's arguments and their rhetoric (for instance the pregnant woman is called mother 40 times) strongly urges the limitation of women's rights, and only side references are made to the requirement that women's dignity should not be violated. Because in many women's experience, the operation of the Family Protection Service had been humiliating for women prior to this change as well, the change prescribed by the Constitutional Court in 1998 is definitely harmful: as of 2000, law prescribes that the state's intervention shall explicitly aim at the preservation of pregnancy.

In none of its decisions has the Constitutional Court examined whether the regulation of abortion unreasonably limits women's sexual freedom and personal dignity in comparison with that of men.

Less Life Allowance for Women The already mentioned Decision No. 28/2000 (IX. 8.) found the rule constitutional under which women are entitled to a monthly allowance of HUF 1139, while men receive HUF 1430 monthly based on their respective life expectancies (USD 4 and 5,1 respectively) when they turn their compensation coupons into a life allowance. (Compensation coupons were given in part to the victims of nationalisations carried out by the communist system of the 1940s and 1950s, and in part to those persecuted by the Nazis or the communists for political reasons.) In the Constitutional Court's wording:

Life expectancy is not simply a statistical probability but a statistical fact that can be justified by numbers. As a fact, it may be the objective basis for discrimination between legal subjects, and thus a legal regulation that differentiates with respect to life expectancy is not considered arbitrary discrimination, since its bases are differences that actually exist between the legal subjects.

...

On that basis the Constitutional Court concluded that the fact that, in certain cases, men and women are entitled to different amounts of life allowances based on their different life expectancies does not violate the requirement of equal distribution of rights, therefore it refused that part of the filing, as well.

The Constitutional Court did not examine whether the life expectancy statistically valid for the whole population is valid for women and men who were forced to live in concentration camps for years.

2.1.9 A Short Evaluation of Constitutional Court Decisions

We discern a methodological inconsistency in the Constitutional Court's practice regarding the cases in which they take into consideration the wide-ranging social facts causing the unequal situation of men and women, and the cases in which they regard equally wide-ranging and statistical facts as an abstract background that does not serve as a basis for consequences to the advantage of women. In the last example the Constitutional Court found the discrimination, disadvantageous for women and based on statistics, acceptable. Meanwhile, they did not pay attention to the facts in those cases where conclusions drawn from statistical reality would have been advantageous for women: for example, the Constitutional Court did not wish to consider it a legally relevant statistical fact that 100% of the people who need an abortion are women, nor the fact that men who do not raise their children alone statistically spend significantly less energy on child-raising than their female partners.

It is remarkable that only men's disadvantageous discrimination has become an issue for the Constitutional Court despite the fact that in reality, women are in a situation that is disadvantageous compared to men's. We believe, this is primarily so because discrimination of women does not take place through law, but in traditions outside of law. Advocacy organisations could, of course, not attack traditions before the Constitutional Court. However, it is possible to raise complaints before the Constitutional Court about the lack of legislation if this lack leads to an

unconstitutional situation. We are however unaware of the Constitutional Court's receiving any submission that requested that the Constitutional Court establish neglect of a legislative body because the state failed to respond to actual discrimination against women.

Another factor that makes it difficult to attack discrimination against women before the Constitutional Court is that numerous regulations that put women at a disadvantage appear in the abstract system of law as positive advantages. This can be so because regulations do not reflect the real differences between men's and women's situations; they ignore all the real factors that put women at a disadvantage. For instance, during maternity leave the employer is to pay the salary, and not the state, which leads to women's having increased difficulties in getting a job. This rule is usually considered favourable for women, although in our opinion it would be the state's obligation to pay the salaries of women during this period of time. But this would assume that the state acknowledges the difference between women's and men's reproductive roles.

The Constitutional Court has provided justification for its decision to accept the motion of the applicant in several occasions⁵ by quoting the necessity to take "societal changes" into consideration. However, at the same time, it operates with an apparently arbitrary borderline marking those social changes which are not of a magnitude to acknowledge them in law. The Constitutional Court acknowledges the appearance of male workers in traditionally female professions as a social change, and therefore (in our opinion correctly) sees it fit to establish the unconstitutionality of certain regulations that presume that the employee is female. Meanwhile, the Constitutional Court often quotes *social traditions*, and the "characteristics of the female sex" in its relevant decisions⁶, although the latter is left undefined. The Constitutional Court usually believes to provide justification for the constitutionality of discrimination with these references. We deem the choice between arguments referring to social changes and social traditions somewhat arbitrary. The Constitutional Court failed to work out the methods of choosing between traditions and changes; in our view these references are used only to justify ideologically intuitive decisions.

2.2 Laws

As the Government Report correctly points out, numerous codified legal regulations (e.g. the Civil Code, the Labour Code, the Act on Health Care, etc., but not the Penal Code) contain anti-discriminatory clauses in Hungary. However, we may establish that this prohibition generally remains only formal. No directives, procedural regulations and system of sanctions have been elaborated in Hungary to control the observation of these statutes. Even in connection with the Labour Code, which among all acts defines the concept of discrimination most precisely, acknowledges and defines indirect discrimination, and reverses the burden of proof, we may establish that practically it does not provide the employees with any kind of mechanism that would help them assert their rights. Although judicial proceedings are available, we will return to their insufficiency later. Such a mechanism is not included in any other statute (e.g. government or ministry decree) either. A further problem is that in Hungary the concepts of unequal opportunities and discrimination have almost completely merged. Practically, the concept of equal opportunities – although at first it seems to be comprehensive – is used in connection

with employment and rights related to the sphere of employment, furthermore, it is often used as a synonym for the absence of discrimination.⁷ In our view it would be necessary for the legislation to solve this conceptual problem. In case they want to keep the comprehensive label of “equal opportunities,” it will have to include the right to equal access to legal defence, health care, education, etc. In this case, the assertion of these rights and, in lack of such assertion, the remedies should not be dependent exclusively on the personal discretion of the authorities. In our view this requires legislative action in the form of a complex equal opportunities act which would regulate and define in detail and *expressis verbis* both the rights guaranteed (including, but not limited to, labor rights) and the groups of entitled persons.

On the other hand, if we keep using the present meaning of the concept of equal opportunities, in our view, it is necessary in each and every case to declare (in legislative, governmental and administrative practice) that we are talking about employment regulations.⁸ In the latter case the modification of numerous acts seems to be necessary. In our opinion, in this case (taking into consideration the still insecure judicial practice) an anti-discrimination clause should be included in the introduction of all major, code-like acts (and especially in the Penal Code) referring to Section 70/A of the Constitution. Such clause should properly define the protected parties and list at least some examples of possible forms of discrimination relevant for the given field of law and possible legal remedies. At the moment, only regulations for the protection of general personality rights and for liability for tort of the Civil Code are available. These, however – besides the above outlined conceptual confusion – do not efficiently guarantee legal remedy in discriminatory cases:

- a. Both the burden of proof and the costs of procedure are usually laid on the plaintiff. Taking into consideration the not too generous judicial practice in cases of non pecuniary damages, such cases attempting to establish discrimination simply do not come into existence.
- b. With regard to proof, the plaintiff would have to battle institutions (hospitals, public guardianship authorities, police offices, etc.) whose inner hierarchy guarantees that the plaintiff’s claims are not provable. In connection with the production of evidence, a serious problem is posed by the fact that the forms of discrimination are undefined. No tendency seems to be discernible in judicial practice either, that would, for example, attempt to place medical malpractice related to reproductive rights beyond the specific cases into a wider discriminatory context.
- c. The Civil Code could eliminate the practical difficulties enumerated above in points a.–b. with the help of the institution of *actio popularis*; this institution, however, does not exist in the Hungarian legal system.

In whatever way the conceptual questions will be cleared, however, it seems to be time that legislation provided the system of institutions currently practically missing (e.g. a women’s rights ombudsman, procedural laws, ministerial and government decrees, exact definition of forms of legal remedy, policy, binding directives of the Supreme Court) that is necessary for the realization of the anti-discrimination requirement contained by Subsection 1 Section 66 and Subsection 1 Section 70/A of the Constitution and the definite obligation contained by Subsection 2 Section 70/A (discrimination [. . .] “is seriously punished by law”).

We also find it necessary that the Supreme Court's theoretical advisory announcement declare that the application of Subsection 2 Section 66 of the Constitution cannot lead to the infringement of the rights guaranteed by Subsection 1. In practice, the regulations created to protect mothers but influenced by demographic policy that are usually supported by the Supreme Court quoting Subsection 2 of Section 66 often lead at least in two fields (those of reproductive rights and the employment market) to the infringement of the rights of women guaranteed by the preceding Subsection of the same Section.⁹

2.3 The Practice of the Ombudsman

As opposed to the Government report and the Government's Answers, we consider the operation of the ombudsman problematic, as well. With the exception of a single case, we are unaware of any other occasions when the Parliamentary Commissioner of Citizens' Rights conducted a study either on her own initiative, or on request, either in an individual case or because of discrimination against a group of women. The first ombuds(wo)man, upon ending her mandate gave the following interview to the daily newspaper, Magyar Hírlap:

“You examined every fundamental right during the past six years, so you dealt with women's rights in relation to certain specific cases. However, you did not really publish an opinion on the unequal opportunities between the sexes.”

“I wanted to treat this question as a human problem. Fortunately Péter Polt [former deputy ombudsman] tackled the filings in feminist issues [sic!], since he could more freely move in this world of values. In the last year, I did not really encounter complaints of discrimination against women, and I myself was not looking for such cases, because in the world of labour rights, where that most often occurs, the ombudsman has no powers. These cases are already in the competency of the courts. By the way, I believe positive discrimination is needed. And that must be initiated first of all by parties and civil organisations.”

We have several clients who turned to the ombudsman in a letter for an examination of their cases. The cases include domestic violence, sexual abuse perpetrated by a father against his child, and systematic discrimination against women in the area of health care. The answer was refusal in all cases. One example is our disabled client, who, after turning to the police because of a severe beating, and after receiving no legal protection from them, applied to the ombudsman. Péter Polt, the general deputy of the Parliamentary Commissioner refused her application on the grounds that law is incapable of solving family conflicts. His professional advice was that the woman should try to talk to her abusive husband and son about the problems. (See the description of the case at Öcsöd on page 37.) It is the ombudsman's competence in Hungary to examine the negligence of police, child protection authorities and local governments.

In addition, the ombudsman has wide competence in initiating the legislation of regulations.¹⁰ The ombudsman of national and ethnic minorities prepared a draft of a general anti-discrimination bill. Only subjective reasons may have been the impediments to the ombuds(wo)man's work concerning women's rights.

2.4 Further Reflections on the Government Report and Answers, and a General Summary

In our opinion the Government Report reviews the questions connected to the concept of discrimination rather superficially. We find it problematic as well that the Government Report, while discussing the general concept of discrimination, mentioned only the questions of regulation of employment. Although it is possible that the actual lack of legal protection in terms of women's rights was not brought about by the interpretation of the Constitution by the Constitutional Court, (we have already discussed our reservations above¹¹), we definitely do not agree with the Government Report's statement that the present situation "does not indicate the lack of legal protection" (see in more detail in the next section).

Based on the above, we see the need for

- a. the creation of the office of a women's right ombudsman,
- b. the theoretical clarification of what exactly equal opportunities encompass and the drawing of the practical consequences if it does not include discrimination outside of the sphere of labor,
- c. following such clarification, legislation and/or the modification of the existing legal regulations (see also the next section) incorporating the definition of the concepts of discrimination and equal rights.

Chapter 3

Article 2: Policy Measures

3.1 General Review

Article 2 of the CEDAW Convention obliges all the participant states to engage actively in securing equality between men and women. The Convention, among other things, explicitly mentions the obligations of state in legislation, to eliminate all discriminative laws, to create institutions and to adopt other measures that provide women with efficient protection against discrimination, and to refrain from discriminatory practice. Similar actions are urged by numerous suggestions in the General Recommendations. In this Chapter we will evaluate to what extent these provisions are observed in Hungary.

3.1.1 Government Activities Specifically Designed to Fulfill International Obligations Resulting Especially from the CEDAW Conention

The Vacuity of the National Mechanism

Government Decision No. 2268/1995 (mentioned in the government-report) created the institution of the Secretariat for the Representation of Women. However, this bill cannot be called a serious public act and it cannot be claimed that this decision created the “National Mechanism for The Equal Status of Women”. To illustrate this fact the full text of the Government Decision is copied here except for the part containing the list of the secretaries of state in charge:

Government Decision No. 2268/1995 (IX. 8.)

of the division of governmental work concerning policy on women’s status:

1. Human resources for the work on the policy on women’s status are settled by the Ministry of Labour from the personnel for reduction.
2. Financial coverage needed for the provision of this year’s task is to be secured by internal redistribution of the budget of the Ministry.

3. The allowance of the yearly 30 million HUF needed for the provision of the task in 1996 is to be taken under consideration during the preparation of the bill for the budget of year 1996 as part of the budget allowance of the Ministry of Labour.

The brief Government Decision above was repealed by Government Decision No. 2166/2001 from July 1, 2001 (though the Secretariat of the Representation of Women was sustained), which is understandable as the government decision gave instructions only for the years 1995-1996, and within that only for administrative tasks in the Ministry. Thus it was obviously not to result in changes perceptible for masses of women.

Action Plan

The government released a decision in 1997¹² in which certain tasks were defined and the responsible ministers were designated. The tasks included:

- elaboration of a legal regulation required for efficient measures against domestic violence,
- examining whether the education of civil servants includes information on women's rights,
- obtaining statistical data on women's situation,
- publishing a collection of laws and a practical manual to help the assertion of rights,
- elaboration of a school program aiming at the prevention of and protection against violence, etc.

The deadline for the realization of each of these tasks was established individually and none of them were later than April 1998. In May 1998, the government changed after the elections. None of the tasks defined in the government decision were realized, neither within the deadline, nor during the following four years.

The Secretariat and the Council of the Representation of Women

Government Decision No. 1059/1999 created the Council of the Representation of Women as the coordinating agency between government bodies (especially ministries) NGOs and experts. This institution functions under the auspices of the Secretariat (whose very name and place had changed with every change of the government: first it operated within the Ministry of Labour as Policy for Women Bureau, then as Bureau for Equal Opportunities, from 1998 it has been under the name of Secretariat of the Representation of Women under the Ministry of Welfare and Family Affairs, and presently it is a subdivision of the Equal Opportunities Directorate within the Ministry of Labor) and it has always been concentrating almost exclusively on discrimination in the world of employment. This was reasonable in the case of the government before 1998, since the Bureau for Equal Chances was operating within the frame of the Ministry of Labour (like now). As a consequence, it could not perform its interest-assertion tasks concerning other rights – even if those were seen as its tasks. As it is clear in the Government Report, the main direction of the function of the Secretariat of the Representation of Women working within the frame of the Ministry of Welfare and Family Affairs has not changed in the past four years, it has remained functioning in connection to equal opportunities and employment mainly.

Unfortunately, we cannot describe the educational programs and law-making processes initiated in relation to domestic violence, because the Bureau has informed in detail neither our organisations, nor the public. Our questions and suggestions raised both in public and in the Council of the Representation of Women were not discussed. Those non-governmental organisations that provide practical, available, systematic and continuous services to the victims of violence against women were not initiated into any drafting process concerning a bill on violence against women or other issues; in fact, drafts of bills were sometimes concealed from them. The Habeas Corpus Working Group has not received any answer for the letter sent to the minister of welfare and family affairs requesting information on law-making processes, even though our letter was sent repeatedly.¹³

NANE Association did not participate in any of the programs for training experts specialising in the issues of domestic violence because of the lack of invitation, thus we cannot take the exact measure of its efficiency. However, based on the calls received on NANE's hotline, we can ascertain unambiguously that the efficiency of the single, short training event does not lead to the ideal state of the situation, not even to a perceivable change. NANE Association is the single non-governmental organisation providing assistance for clients in Hungary since 1994, dealing exclusively with the issue of violence against women in general and domestic violence in particular. Therefore, it seems very problematic that the experiences of NANE are disregarded. We hope that if programs like these start in the future, the attitudes in this regard will change.

As mentioned above, the new government, formed in 2002 transferred the Secretariat of the Representation of Women to the Ministry of Labour as a department of the Equal Opportunities Directorate. More than 1 billion 250 million HUF (about 4.400 thousand USD) is available for the employment-market reintegration program of the Bureau – whose appropriation period is not given in the text, – according to the data given in the Governmental Answers on the budget of 2002 of the Secretariat of the Representation of Women. This strenghtens the impression that non-discrimination measures are again likely to be reduced to the sphere of employment.

Looking at the current definition of tasks and authority of the Secretariat of the Representation of Women, we do not see that on the one hand policies concerning women are ensured appropriate weight, and that on the other hand within policies concerning women's questions other than equal opportunities in the labour market are addressed appropriately. At the same time, in our experience it is a danger that the other Ministries do not take into consideration or do not even ask for the opinion of the Secretariat and Council of the Representation of Women concerning tasks in their competence. This is the case with regulating and treating prostitution and traffic in women that pertains more to the Ministry of Domestic Affairs, the Ministry of Foreign Affairs, the Ministry of Justice, and the Ministry of Health than to the Ministry of Labour. The situation is similar in the case of domestic violence and reproductive rights: we were informed that even obtaining the data and materials necessary for the CEDAW country report met with occasional difficulties between certain ministries. To adequately prepare all these, it is necessary to set up an organisation that either makes equal participation of all ministries compulsory with naming the appropriate representative in each ministry, or is superimposed on the ministries.

We recommend that the government creates a Women's Ministry with wide ranging powers, and with the responsibilities of regulating, managing, supervising, surveying all questions significantly affecting women. We find it necessary to redirect activities so far done in other ministries and mainly related to women's rights to the Women's Ministry, to oblige other ministries to enforce the guidelines worked out in the Women's Ministry when carrying out other activities affecting women's rights, and to grant the Women's Ministry supervision rights over activities in other ministries. This is necessary because in our opinion no other ministry has educated professionals in the field of women's rights.

3.1.2 Women's Representation

In our view, the approach – exemplified by the name of the Secretariat of the Representation of Women – that governmental agencies whose responsibilities include women's issues are actually representing women should be abandoned. In constitutional democracies specific social groups are represented by elected bodies, their grass-roots organisations for the representation of their interests, or the confederations of these. The Council of the Representation of Women had no influence on the personal makeup of the Secretariat of the Representation of Women, thus not even the civil organisations that to some degree really represented women and participated in the Council of the Representation of Women were ever asked of who would or would not be fit for work at the ministry's women's affairs section.

We do not believe that a monolithic institution representing "women" would be necessary. Women are divided into several groups, their interests may only be represented credibly by a strong, diverse, civil women's movement. Women's representation really belongs to civil organisations actually representing women. Governmental agencies concerned with women's issues are to carry out the governmental actions necessary to enforce and develop women's rights. No doubt, it is useful if the governmental agency commissioned with women's issues is well acquainted with the positions of representative women's organisations and takes them into consideration, but as a governmental organisation it cannot aim to realize those positions "word by word." All the less because that would only mean realizing the current in the women's movement with the strongest potential to enforce its interests.

In connection with this, we also consider it problematic that the Secretariat of the Representation of Women has tried to fulfil functions in the past years which did not really belong to its competence but should rather have been left to the women's organisations that protect women's interests. We do not consider organising precedent lawsuits a task of the ministry. Instead, the state should promote the strengthening of women's rights organisations. We have not experienced measurable changes since the creation of the the Secretariat of the Representation of Women in 1999, either in the field of enforcing women's rights or in protecting women's interests.

We consider it particularly problematic that the Secretariats have not worked out a system of criteria for themselves during the past seven years, to help them differentiate women's rights organisations and human rights organisations that significantly support the realization of women's rights, from organisations that were in part or wholly founded or made up by women but whose operation is not connected to enforcing women's rights. If the Secretariats indeed want

to include civil organisations into the process of drafting bills and policies, such system of criteria would enable them to determine accurately which organisations to cooperate with in certain areas.

We find it important to supplement the data given in section 4 of the Governmental Answers, because they make the false impression that there are 300 women's organisation in Hungary. The list currently used by the Secretariat of the Representation of Women to invite persons to various events contains 177 lines. Some of these persons come from the same organisation, several others have stopped taking part in the work of their organisation since the compilation of the list. Furthermore, the list includes the representatives of trade unions, organisations of political parties, churches, local governments, professional organisations, and experts. Without doubting the importance of any civil organisation, we would like to indicate that the list includes representatives from organisations whose area of operation is unquestionably unrelated to women's rights or the protection of women's interests, but have a different (e.g. environmental, child-protection, health) agenda. The list contains but a few women's rights organisations or civil organisations of the representation of women's interests that qualify as strictly speaking women's organisations when their stated aims, activities, methods of criticism are taken into account.

It is therefore important to note concerning the data given on women's participation in civil organisations that these data do not provide an adequate picture of the number of women's organisations and the women working in them.

We do not find it problematic that the Secretariat of the Representation of Women, whose task is to "reach" the widest range of strata of women (although in our opinion not to "represent" them), to become acquainted with the particular interests of the largest number of groups, and to possibly coordinate these viewpoints, endeavours to include all these organisations and groups into its work. In our opinion it has been characteristic of both Secretariats (before 1998 and after) that they tried to work on numerous tasks, with more or less success, that could have been carried out by civil organisations, had they been delegated through a system of proposal writing. We consider it a lesson to be drawn from the past seven years that it would be more productive for the Secretariat to have primarily coordinating, proposal inviting and information disseminating responsibilities.

3.1.3 State Funding of Women's Organisations

Funding for women's rights organisations: based on the information at our disposal, state funding for organisations that deal with women's rights is insignificant. Not a single agency of the Hungarian state published an invitation of project proposals that wished to support especially the work of organisations protecting and enforcing women's rights. The funding distributed by the Parliament to support the civil sphere is for all organisations irrespective of their activities. Distributing these funds does not serve the financing of organisations which carry out a substantial amount of work or even take on state responsibilities, but only as some form of "gift" for their activities. This statement is supported by the facts that no supervision whatsoever exists over the support distributed by the Parliament, and that larger amounts are regularly given to

organisations affiliated to the political parties. In 2000, for instance, 25 organisations received donations of over HUF one million from the Parliament, none of them were women's organisations or charitable organisations primarily supporting women, however four organisations were religious even in their names, and a further 9 organisations had openly conservative political activities. Similarly, state invitations of tenders from civil organisations with the aim of donating real estates served rather as building a clientele for the parties.

In its spring 2001 invitations of tenders for the non-state sector, The Social and Family Affairs Ministry allocated ten times as large an amount (HUF 600 million, that is USD 2.1 million) for programs strengthening the conservative family model (aims of the invitation included in addition "strengthening religious organisations") than the whole amount donated for the aims of "social policy, the area of family, child and youth protection, and the support of the activities of those organisations that aim to improve the social situation of the Roma and promote Roma integration" (HUF 60 million, approximately USD 210 thousand were allocated for these latter aims).

It is to be stressed that neither the Justice, nor the Social and Family Affairs, nor any other Ministries published any invitation that was meant to support advocacy NGOs. Invitations of the Social and Family Affairs Ministry gave a detailed description of the supportable areas but promoting women's rights was impossible to either openly or covertly include into these. Out of the HUF 32 millions the Social and Family Affairs Ministry distributed among 107 organisations under its family policy program during the last year, HUF 16,322,000 was awarded to parishes and organisations whose name is religious, while the nationally operating child psychological hotline, Kék Vonal, which has been successfully operating since 1993 and is well known for its high professional standards, only received HUF 81,000. No women's organisation received donations, only two female convents. The Social and Family Affairs Ministry distributed HUF 17.765.000 among 56 organisations for aims related to social policy, none of them had the words "woman", "girl", "wife" or "lady" in their names.

The invitation entitled "Professional programs for promoting women's equal opportunities 2001" declared its primary aim to be the promotion of women's employment and keeping their jobs in a "crisis situation." Only a donation of HUF 600 thousand (USD 2100) was to be donated per organisation. Taking into consideration the fact that the amount is for a whole year, not even the mandatory minimum salary of a single employee can be paid from that amount. The invitations of the Social and Family Affairs Ministry usually exclude using the support for salaries.

The above examples are absolutely typical of the support system of the past four years.

As far as we know, NANE (Women Against Violence) is the only organisation that runs a telephone hotline specialising in domestic violence. State funding has covered 5 to 7 % of the Organisation's finances during its continuous operation since 1994. The Organisation never received any support for starting a legal aid service, although at certain times there were lawyer volunteers that counselled clients. The only law office, employing two lawyers and working as a civil organisation, that provided advocacy to victims of domestic violence ceased to operate this year – in lack of funding. The Habeas Corpus has received state funding once since its foundation in 1996; HUF 300,000 (approximately 1070 USD) in 1999.

3.2 Laws, Institutions and Other Measures in Effect and Missing

In the following sections we shall attempt to show to what extent existing legal regulations and/or the lack of needed regulations and policies create the lack of capacity to safeguard the realization of women's rights and equality.

3.2.1 Constraints of Basic Rights Regulated in Decrees

Numerous regulations that have disadvantageous effects on women's rights are regulated not by laws but by decrees. One of these is the government decree regulating the fee of the official medical records used exclusively in criminal procedures¹⁴, which fixes the fee in 2000 HUF. Many callers of the NANE helpline, being battered women, have no money or no free disposal of it to pay for the medical records. Most doctors do not inform these women that the medical records may be obtained by the police during a possible later criminal procedure, thus many of them do not have access to these documents. Without them (often even in possession of them), however, in an alarmingly high percent of the cases both the police and the courts refrain from investigating the fact of battering. A decree regulated some important elements of the abortion process (e.g. the fee of abortion), the amount of some of the local governmental support for families with children, etc.

3.2.2 Discrimination in the Legal Domain of Labour

The comprehensive regulations of the legal relations of employment was initiated – in accordance with the conditions of the market economy and the constitutional principles – in a consolidating statute by the Act No. 22 of 1992 on the Labour Code. This statute and other public acts in relation to it were modified several times so they guarantee the realization of anti-discrimination (as it is mentioned in the Government Report). The latest modification of the Labour Code¹⁵ gave an even more detailed definition and description of the direct and indirect forms of discrimination. The Labour Code by then had already contained the obligatory affirmative action as a possibility for the employer¹⁶. However, neither this Code nor any other public act determines exactly to whom affirmative action may refer, why, and how it may be applied.¹⁷ Likewise, we do not find any obligatory procedural regulation prescribing the exact procedure for the workplace fulfilling the obligation set in Subsection 7 Section 5 of the Labour Code, demanding that “discrimination is to be remedied adequately.” Consequently, the employee has to file a lawsuit in such cases. We can only greet the new provision of the Code, according to which “the remedy to the damages of the employee discriminated against cannot bring about the infringement of the rights of other employees”¹⁸, since it prohibits, for example, any infringements of the rights of colleagues testifying in court. However, should such infringements still occur, in the absence of detailed procedural regulations, the victims of these infringements can only file a lawsuit as well. Hence, in this form this provision will not bring any relevant changes.

The Role of the Trade Unions

The trade union, that might be capable to proceed on behalf of the employee who does not have the possibility to file a lawsuit for pecuniary or other reasons, can only represent its member in court. The objection of the trade union – that may be filed in relation to non-trade-union-member employees in case of unlawful conducts of the employer – is excluded if the employee can initiate litigation against the conduct. Finally, at present “neither the trade union, nor the work council has any means at its disposal to stand for the employees against the collective infringements of their rights”¹⁹. As the joint effect of all this, the assistant role of the trade unions as possible helper institutions regarding the access to legal remedy in cases of sexual harassment and discrimination in the workplace is insignificant for individuals as well as groups.

3.2.3 Sexual Harassment

We would like to emphasise that neither in employment law, nor in any other part of the Hungarian provisions do any regulations exist on sexual harassment in the workplace. Sexual harassment is a non-existent category for Hungarian law. The occasional proposals aiming at the codification of the prohibition of sexual harassment are solidly rejected by the political and legal public opinion. The typical arguments for rejection are somewhat contradictory: it is either said that such regulation would entail intervention into private relationship, or it is argued that such regulations are unnecessary, since in case of the violation of Section 175 and 180 of the Penal Code (restraint of liberty and libel), as well as in the case of a violation of privacy, regulated under Section 76 of the Civil Code, the remedies included in Section 84 of the Civil Code provide adequate protection in cases of sexual harassment. This reasoning however, is not accurate partly for the reasons explained in points (a)-(c) on page 16, and partly because of certain conditions set out in the sections of the Penal Code mentioned above. This statement is also supported by the fact that no one has managed to win a case of sexual harassment at the workplace in Hungary on the basis of these provisions.

Victims of violations are usually aware of this situation, but if they are not, advocates will usually advise them against litigation and prosecution, mentioning the lack of regulations or inability to prove the case. NANE’s help line has received ten such calls during the past two years from women who were harassed at their workplaces.

We are aware of three lawsuits that were started because of sexual harassment.

1. In the first case, a female secretary employed at the military prosecutor’s office in Debrecen started a employment lawsuit against the prosecutor’s office, because she was dismissed when she complained of the harassment. The court did not establish that the harassment happened, but declared that the employee was dismissed illegally.
2. In the second case, six army employees filed a prosecution because the commander of the headquarters was harassing them sexually. Since such a crime is not regulated in the Penal Code, the procedure was initiated for the military crime of “humiliating a subordinate” (Section 358 of the Penal Code, with the highest penalty of one year of imprisonment). The sentence declared

the defendant guilty, who was sentenced of first instance to ten months of imprisonment suspended for two years of probation, which was mitigated by the Supreme Court to a fine of HUF 150,000. The mitigation was justified by the fact that the perpetrator is an exemplary father of three. Until the sentence of first instance, the defendant was not posted elsewhere; the Supreme Court's decision found him fit for further military career.²⁰

3. In the third case, a leading physician of a Miskolc hospital continuously harassed nurses. Three nurses made a complaint against the leading physician at the director but two of them revoked their complaint under the pressure of colleagues and bosses. The third nurse made a criminal prosecution because of defamation in action and violation of personal freedom. The police requested what is called a "supplementary report" because they did not see the prosecution to be well founded. We do not know further details of the case from the press.²¹

3.2.4 Domestic Violence and Rape

We cannot talk about any systematic measures aiming at the prevention and elimination of the various forms of violence against women, either. As we mentioned, the Penal Code does not have an anti-discrimination Section. The single legislative result in this respect since 1989 has been the modification, also mentioned in the Government Report, according to which the gender-specific language of rape was changed (now a female can also appear as the perpetrator in the case of rape committed to the offence of a male²²), and the regulation was extended to rape within marriage. However, there was no additional provision after this legal modification to help its implementation. Rape is still one of the criminal offences where judicial decisions and directives of binding force order a close investigation of the contribution of the victim.

The legal regulation of domestic violence has been initiated in the past years on the propositional level. However, the elaborated bill has not even passed the inter-departmental harmonisation. According to our informations, the vice-secretary of state of the Ministry of Welfare and Family Affairs stated in early 2002 (responding to the question of a council member at the meeting of the Council of the Representation of Women), that the bill had been transferred to the Hungarian Psychiatric Society, since the problem is seen as one of psychic nature instead.²³

The chapter of the Penal Code regulating the sexual crimes, entitled "Crimes against Sexual Morals" needs a general reform. The title of each crime refers to the fact that the regulation was born on the basis of a patriarchal and very much homophobic tradition, which sees women as the property of men. The titles of the crimes are unsuitable for the dispensation of justice to consider abuses of sexual character from the aspect of bodily self-determination and human dignity. Instead of this, the titles keep the value judgements of old times. In our opinion, this already influences the view of the dispensator of justice. For example, in the case of incest, ("blood-infection" in Hungarian, where the victim is the "infected") the sexual abuse of children, ("corruption" in Hungarian, where the victim is "the corrupted") expresses the devaluation of the victim. "Lechery" stigmatises all heterosexual sexual contacts different from heterosexual genital intercourse, and "unnatural lechery" is the category for homosexual sexual acts. The latter two used to be the same crime, as well as sexual acts with animals and other non-acceptable forms of sexual conducts.

The only shelter reserved for battered women in Hungary, suitable for three families, is maintained by the Salvation Army.

Stalking is also not in the Penal Code, and our work-experiences suggest that the authorities do not see the pursuit of this crime as solvable on the basis of the operative legal regulations.

3.2.5 Reproductive Rights

The year 2000 amendment of the law on abortion resulting from the decision of the Constitutional Court of 1998 increased the already existing differences between men's and women's reproductive rights. The issue of discrimination between the sexes was present only marginally in the discourse on the right to abortion. (See above on page 13, in fuller detail beginning from page 49.)

3.2.6 Regulation on Prostitution

The part of the Government Report dealing with Article 2 does not discuss the situation of prostitution in Hungary. However, the Hungarian regulation of prostitution and its treatment by the police has not been in accordance with subsection d) Article 2 of the Convention, under which Hungary shall refrain from discriminatory actions or practices against women. The Parliament changed the regulation of prostitution in 1993 and 1999. The present Shadow Report only discusses the regulation created in 1999 and its practical consequences.

Under the acts that came into effect in 1999 "Prohibited Lechery" is a minor offence for which the prostitute may be punished with custody or a fine of up to HUF 150 thousand, (appr. USD 610) if she offers "herself to sexual services" in what is called a "protected area." If the prostitute is a legal alien, she may be expelled from the country.²⁴ These sanctions may only be used against clients if they accept the offer of an underage prostitute. As a general rule, a client, compared to the prostitute, is punishable only for fewer acts and with a fine of up to only HUF 50 thousand (appr. USD 200), and he may not be put into custody and cannot be expelled.²⁵ For instance, it is not illegal if the client makes an offer to the underage prostitute (below the age of 18) or a person he believes to be a prostitute. Neither is it a crime, nor a minor offence if a client has sex with a girl aged between the 14 and 18 for money.

The Act on Minor Offences prohibits the offering and advertising of sexual services, but does not punish the reply to such advertising or advertising by the client.²⁶ The Act prescribes that the prostitute shall have a medical certificate stating that certain sexually transmitted diseases cannot be diagnosed in her case. If she fails to produce such a certificate, again, she is punishable with a fine of up to HUF 150,000.²⁷ The client needs no medical certificate. Similarly, the prostitute is punishable if "offering a sexual service takes the form of harassment."²⁸ The Act does not establish the offence of harassment by the client.

The above mean a systematic tendency to punish only the acts perpetrated by prostitutes, or a wider range of them and more severely, and not the comparable acts perpetrated by clients.

Given the fact that the majority of prostitutes are women and girls at the service of men, this imbalance in law is discrimination between the sexes. This is true even if we assumed that the agreement on prostitution is a relationship of equal parties with free will.

Further the Act considers “behaviours of the prostitute that imply the offering of sexual services” as implied offer, and prohibits those in protected areas.²⁹ The Act does not mention any implied acts of the client. In the traditionally evolved methods of street prostitution, the prostitute must be present and accessible for a long time for the act between prostitute and client to be realized. The client need not carry out a long “implied offer”, the fact that he is a client remains hidden as long as he does not go up to the prostitute. Thus no part of the client’s behaviour corresponds to the conspicuous and therefore sanctionable behaviour of the prostitute. The law does not compensate the sanctioning of the prostitute with any other measures that threaten the client. Thus the law treats the patriarchal practice of the prostitute offering herself as commodity for a long time with the sanctioning the subordinate victim, the prostitute’s behaviour.

Police practice further aggravates the above described legislative discriminations in many ways.

Police fine prostitute women or women believed to be prostitutes even if they only stand in a protected public area. Although the law only prohibits explicit or “implied” offer and “providing sexual services” in protected areas, and not standing around, in reality the police will fine women standing in streets, besides roads, etc. that are apparently prostitutes.³⁰ In the opinion of the police officers, for “provocative looking” or “apparently prostitute” women to stand in the street equals implied offer. We have been informed of a case, when police fined a prostitute we know, for going to the shop in the morning, not during her usual time of self-offering.³¹ Thus for women believed to be prostitutes by the police, even walking in the street is risky.

Thus prostitute women’s behaviour is punished in those cases, as well, when they have not offered themselves to any client or potential client.

Further, in practice, police refrain from punishing the client even in the majority of those cases when the prostitute and the client are caught in the act of offering and accepting the offer. Although male clients, too, would be punishable in a large number of the cases, the police usually release them.³²

We would like to stress that the Government Report wishes to hide the fact that prostitutes are, in fact, prosecuted and punished with heavy fines that often add up to detainment, since prostitutes often become unable to pay the fines that accumulate and sometimes reach over a million Hungarian Forint. Besides violating the CEDAW and the New York Convention, this is all the more problematic since this practice is followed based on an explanatory decree which is rather confuse and leaves much space for individual interpretations by the police.

3.2.7 Obstacles in the Penal Code and the Criminal Process

Many further Sections of the Penal Code and, in close connection to these, many Sections of the Criminal Procedure Code suffer from the insufficiencies hindering legal protection of women. The general summary of these insufficiencies would only be possible within a specifically

aimed extended study. Here we can only ascertain that in respect to both the Penal Code as well as the Criminal Procedure Code we think it necessary to modify and complete several rules in order to consider the sanctioning of the typical forms of violence against women solved at least on the level of legal regulations.

3.2.8 The Absence of Victims Protection Regulations and Services Regarding Women's Rights

It is true for all the above crimes that the investigating authorities still do not receive any systematic education in the special knowledge necessary to the investigation of these crimes. The victim and witness protection policy is not adequate, it does not take into consideration the reality of women and children and the special facts of violence against women. The only room in Hungary created specifically for the interrogation of children who were assaulted or sexually abused has rarely been used in the past two years, as far as we know. The hearings of children in cases of sexual abuse against children are not audio- or video-taped. The only one we know of where the confession was recorded on videotape was a criminal procedure against homosexual men on the basis of the discriminative Section 199 of the Penal Code, since the suspects established consensual sexual contacts with a seventeen-year-old male.³³ On the other hand, experts write down only selectively, based on their preconceptions, the confessions of the victims in highly serious cases of abuse against pre-school female children. In these cases mothers ask experts in vain to audio- or video-tape the confession of the girls: the experts do not fulfil these requests at their own discretion. At these hearings the expert and the little girl are alone, the mother is not allowed to be present. We know of a case where, after a ten-minute examination, the psychologist expert judged the confession of a five-year-old girl a fantasy even though the girl had been a victim of abuse for several years.³⁴

3.2.9 Ignoring Human Rights NGOs That Protect Victims

The civil organisations that provide direct services to victims of violence against women have not been financed practically at all by state funding during the past four years, and only to a modest extent before that. Even though a victim-protection NGO operating country-wide that the police cooperates with does exist, it is neither trained to represent victims of gender-based violence nor does it know how and why to advocate this cause during its discussions with government agencies.

3.2.10 The Absence of Institutions Protecting Women

The institutions described in Article 2 Subsection c) of the Convention have not been established. If we only consider the issue of domestic violence: no shelter designed for battered women is maintained or supported by the state or local governments in Hungary. Furthermore, there is not any service for battered women in the mother's-homes – the inhabitants of which

are mainly women and their children escaping from domestic violence – operated within the framework of provision for the homeless.

The Minister of Justice and the Minister of Domestic Affairs emphasised in their latest statements the importance to draft urgently a proposal of a bill on crime-prevention. However, no forms of violence against women appeared in their statements as a special issue.³⁵

3.3 Our Proposals as to the Creation of an Effective System Laws, Policies, Institutions and Other Measures

In the light of all this, we consider necessary the following concrete measures – also taking into consideration Section 36³⁶, 66 and 70/A of the Hungarian Constitution – for the sake of fulfilling the obligations included in Article 2 of the Convention:

- (a) Instead of a policy for women concentrating solely on discrimination in the employment-market, we suggest that all the areas of women's rights be integrated in order to complete the tasks falling into the share of the state from the Convention. The scale and the far-reaching nature of the tasks make it necessary to establish a separate Ministry for Women. Until the establishing of the separate Ministry for Women, it is necessary to place the governmental policy for women from the subdivisional position under the Office of Equal Chance of the Ministry of Labour to a individual office under the Office of the Prime Minister.
- (b) An expert of issues concerning women's rights shall be appointed to an appropriately high position in every Ministry whose activities are related to the realization of women's rights and of the anti-discriminatory policies – especially in regard to the contents of Section 1 (a-c) of the General Recommendations No. 6.
- (c) A complex law-making process is necessary to eliminate domestic violence. It is especially important to prohibit yet unregulated forms of violence against women.
- (d) The action program declared in the Government Decision No. 2174/1997 has to be realized.
- (e) An anti-discrimination act has to be created including the exact determination of the sanctions of discrimination.
- (f) The chapter of the Penal Code containing sexual crimes has to be completely modified, as well as the Act on Police, which is now full of wide interpretations of the obligations of the police, as well as the Act on abortion that blames women for the abortion.
- (g) A completely new regulation on prostitution is necessary which is harmonised with the New York Convention and takes as its main task the protection of the victims of prostitution, the reintegration of the victims to society, and the punishment of procurers/esses, organisers, and coercers.

- (h) Effective measures have to be taken in the interests of young women of impoverished regions, so prostitution should not be their only chance for income.
- (i) The determined prosecution of the prostitution mafia is essential. The now de facto operating brothels have to be liquidated.
- (j) Statutes that are archaic or especially indifferent to the problems of women and thereby hinder the enforcement of women's rights and cause discrimination have to be modified: the Penal Code, the Civil Procedure Code, the Act on Family Law, the Labour Code, the Act on Child-protection, statutes on protection of victims and witnesses, the Criminal Procedure Code, the Act on Health Care, the Act on Foreigner Policy, the Civil Code, and the initiation of *actio popularis*.
- (k) Official standards and binding directives have to be elaborated (if possible in the form of statutes, or directives of the Supreme Court), especially for the courts, employers, the police, the health care institutions, authorities of child-protection, and for the services treating families.
- (l) The creation of a general statute as a frame for all these acts is necessary. It has to be suitable for interpretation, in case there is a defect in law that needs to be repaired (following the Swedish model).
- (m) It is very important to establish and develop the institutions that provide help to secure the protection of life and physical integrity in case urgent intervention is needed.
- (n) It is essential to organise the institutional education of experts, and to initiate continuously a basic education concerning discrimination, fundamental human rights of women, the nature of violence against women and domestic violence into the course bulletin of colleges and universities training professionals (most importantly jurists, psychologists, doctors, policemen, teachers, social workers).
- (o) The plan of the general awareness-raising and information campaigns have to be elaborated and carried out.
- (p) For those people who suffered from practice resulting in discrimination or were discriminated against, a free advocacy service has to be established operated by lawyers with appropriate training and supported by the state, as well as a national free info-line has to be maintained.
- (q) A special information, awareness-raising, and legal protection program designed to suit the needs of the Roma minority to eliminate violence against women and girls, as well as sexual abuse.
- (r) The framework of the application of the expert non-governmental organisation's experiences has to be outlined, so the work of the organisations that assist clients effectively can be maintained and developed in a project-system by state funds.

- (s) The following has to be secured by detailed and exact determination of the National Mechanism, its budget, and the guarantees for clear control mechanisms.
- (t) In case of each form of discrimination and violence against women the perpetrator must be threatened by a significant fine and liability for damages. The most serious forms of violence have to result automatically in an obligation to pay a preset amount of pain award regulated on the statutory level. The procedure for damages caused by violent crimes and crimes against human dignity should be simplified.
- (u) The status of non-governmental organisations providing legal protection and safeguarding of interests has to be regulated on the statutory level.

In our view, the measures listed above may even be realized during one governmental term, and we do not consider the list a mere collection of idealist wishes. There are qualified experts, high quality professional materials and enormous experience available at numbers of non-governmental and state institutions in Hungary as well as abroad to start the process. The list above does not mean that all of these programs must be realized by the state, the ministries or the Secretariat of the Representation of Women. Out of the assignment of tasks, elaboration of policies and bills and the realization of each program, the state institutions only have to provide the elements of financing, organising of the application procedures, coordination, control and codification of the statutes. The only exception is the establishment of the new Ministry and the appointment of the ministerial commissioners. Throughout the execution of all these programs the international documents obligatory for Hungary have to be into consideration exceedingly, (related conventions; recommendations and directives of the United Nations, the European Union, and the Council of Europe).

The currently dominant governmental practice that treats international conventions concerning women's rights as utopistic and therefore considers them merely formally has to be stopped. We demand that the government take seriously all the words of the conventions, especially their spirit, and to implement them.

Chapter 4

Article 3: Guarantee of Basic Human Rights and Fundamental Freedoms

4.1 The Indifference of Authorities

As it has been partly discussed before, in our opinion women's fundamental human rights and fundamental freedoms are not properly enforced. Lacks are significant both in legislation and jurisdiction, as well as in the institutional background. The following are examples of inefficient laws and the inadequate knowledge of authorities dealing with women's rights.

The operative Penal Code and Act on Minor Offences, their procedural regulations, and the relevant civil procedural rules cannot guarantee women's basic safety in the private sphere. Based on certain research data, the calls received at NANE's hotline and the experiences of Habeas Corpus' legal aid service, it can be concluded that the operative law and the lack of certain regulations hinder the realization of women's rights on an institutional level. Hungarian law is severely lacking in certain areas, which civil organisations, researchers and experts have brought to the attention of the governments of the past 8 years. These incomplete areas cause severe impediments to realizing women's rights to freedom of movement, bodily self-determination, human dignity, physical safety, employment, legal protection and redress, and other fundamental freedoms. The answer of the government to these problems is usually no more than silence, and less frequently the acknowledgement that the regulation needs changing. More often governmental answers deny the need for a complex treatment of the problems, they refer to statistically unfounded (and unsupportable) quasi-proverbial statements. We have numerous documents, and opinions voiced at conferences, seminars and in personal conversations at our disposal. The speakers are high ranking ministry and police officials, well-known mental health professionals.

4.2 Examples of Police Prejudices

4.2.1 The Police Magazine

The *Zsaru* (Cop) Magazine published under the auspices of the National Police Headquarters regularly publishes reports on deaths that are the result of domestic violence. The Magazine regularly displays these cases as unavoidable and as results of family “conflicts”, “fights”, “jealousy”, etc. Murdered girlfriends and wives are regularly denoted as the “man’s woman.”³⁷ In the words of the magazine a man who beat to death a woman’s partner “continued his persuasion with a broomstick”³⁸ Articles on prostitution or pedophilia are often accompanied by photos with the caption “illustration”, that is photos made subsequently for the magazine, depicting little girls with skirts pulled up or a topless woman wearing lace underwear. The leader of the Habeas Corpus Working Group criticised the prejudiced writing of *Zsaru*’s journalists in an editorial, as well as the police discrimination against women detectable in the cases quoted in the magazine³⁹. *Zsaru*’s reaction did not go further than refraining from publishing reports on domestic wife murder cases for half a year. However, they published a number of reports where an abused woman or child killed the abusing man – the situations preceding the acts were usually not sufficiently explained in the texts, the man was depicted as the victim. Later the articles insulting women victims were restarted in the same tone.

The situation is similar in the case of sexual abuse perpetrated within the family. The *Zsaru Magazine*, which, again, is the magazine of a national organization of the Domestic Affairs Ministry, calls an 11-year incest victim a prostitute on its front cover and page 54 of issue 2002/15. The author only states about the father that “However he had so much *honesty* left in him, that it was not him who initiated the little girl, but trusted that task to a friend.” (emphasis added).

Zsaru is in part written for police officers and in part for the wider public. It is difficult to estimate the damage the tabloid tone of the official police magazine does to the attitudes of police officers towards victims, which is beyond criticism anyway. We have no information on higher-ranking officials having less misogynist prejudices than the weekly magazine of the National Police Headquarters.

4.2.2 The Curriculum on the Investigation of Sex Offences

Under the title “False reports”, the textbook of the above title that teaches future police officers the investigation of rape cases dedicates a three-page sub-chapter to explaining why women lie when they report rape.⁴⁰ According to the curriculum:

During registering a report or complaint attention needs to be paid to circumstances that cause suspicion of false report. These can be summarised as follows:

- a longer time elapsed between the perpetration of the crime and reporting, except if an acceptable reason can be found for this delay, such as severity of injury,

- several contradictory, unlikely statements are made during reporting, and no satisfying answers can be obtained immediately,
- the same perpetrator has, according to the reporter, perpetrated the crime several times but only after a last case has there been a report,
- if the claimant’s personal circumstances (lifestyle, behaviour, appearance) allows the inference that she has sex for financial rewards (as well).

International data indicate that in the case of sexual crimes, false reports amount to 1 to 2%. No Hungarian data are available, but there is no reason to believe that the ratio is different in Hungary, especially if revictimisation during the criminal procedure is taken into account – which does not seem to be avoidable given the police’s attitude discernible from the above quotation.

The same textbook only indicates anecdotally that it is useful for the woman victim to be questioned by a woman, because “woman and woman are usually more intimate!”⁴¹. The book is silent on the idea that it would be useful to employ detectives in such cases who are trained in the field of violence against women. Naturally, it is also silent on the fact that no detectives receive such training. The textbook also does not mention the fact that family members or acquaintances perpetrate the majority of rape cases, and in depicting the characteristics of the criminal act, it disregards domestic perpetration. On the contrary, reporting to the police out of revenge is characteristic of “the ‘lover’ who was let down.”⁴²

4.3 The Attitudes of the Government

Responding to the question of an opposition member of the parliament, the Minister of Justice said in 2000 that the inclusion of domestic violence as a separate criminal act in law would entail positive discrimination and this “would cause an undesirable breach of dogmatics”, and further that such inclusion cannot be deducted from any of Hungary’s international obligations.⁴³ At the same time, in 2001, the Ministry of Justice referred to NANE a desperate domestic violence client, as the accompanying letter to the organization says, “for being kindly assisted.”⁴⁴ When citizens turn to the Ministry of Justice, they usually receive a letter informing them briefly about the possible legal remedies. Referring the claimant elsewhere instead of giving her information indicates that even Ministry officials know: law and authorities are not suitable for the protection of victims.

The situation is no better in the field of criminal offences suffered outside the private sphere.⁴⁵

We have mentioned that under the Criminal Code sexual harassment and stalking are not considered offences, the issues of prostitution and traffic in women are analysed in connection with Article 2 and 6 of the Convention.

We find it contradictory that the Government Report refers to counselling and legal aid services since the state has no role whatsoever in funding these (see on page 24).

While acknowledging the importance of family support centres and the training program of the victim protection program, we need to state that those suffering from domestic violence and

other forms of violence against women are not provided service or help even at a basic level from family support centres or the victim protection officials of the police. For the situation to change training programs should be, as it has been pointed out before, continuous, institutionally integrated and compulsory. They should also have an appropriate legal background which trained experts can apply and to which clients can refer.

The realization of Article 6 of the Convention and especially the contents of General Recommendations 12, 19, 21 and 24, the creation of operative national institutions can not at all be considered a solved problem in Hungary, or even a problem that has already been started to be dealt with. In Hungary, the problem has not even been acknowledged as a real one on the level that could have brought any measurable improvements for women suffering from the abuse of their rights.

4.4 A Concrete Case

Authorities ignore even especially severe cases of violence against women and girls. Many victims experience that authorities, doctors, social workers, etc. consider them mentally retarded if they report the abuse and cannot “support” the report with remarkable injuries, such as a stabbed wound. To support our statements let us see a case description:

The case of Ms Imre Szántó b. Mária Béres, Öcsöd village

A woman, who had been severely abused by her ex-husband since 1998, and was 100% disabled with her spine, took action against her ex-husband. During the court procedure she repeatedly requested the court to come to her home or to provide her with transportation if her hearing is necessary, because she can only be transported in an ambulance on a vacuum bed. The court did not do so in a single case, they expected the victim to go to the court by her own means, or to hire a lawyer, despite the fact that the procedural rules make it possible for the court to have sessions in a home.⁴⁶

The same woman, while living on a disability allowance, turned to a court another time, to cease the common ownership of their house in order to be able to move away from her ex-husband. She requested a public advocate commissioned by the court since she could not act on her own because of her disability. The supporter advocate provided by the court telephoned her and told her that unless she pays, she will receive no help. Thus the victim is unable even to collect the documents necessary for starting the civil case.

Once the woman was also beaten by her son, who is a police officer: he was strangling her so hard that she fainted. The woman reported to the police, but the report allegedly disappeared in the copying machine. The woman filed a complaint to the Minister of Domestic Affairs, but received an answer from the Secretariat of the Main Police Headquarters of the County of Jász-Nagykun-Szolnok, saying that “The police has no legal possibility to improve the relations and circumstances of your family. Police sergeant major ... Jr’s superiors are satisfied with his professional activities

and work, neither in his official working hours, nor in his private life have behaviours arisen that could be criticised.” Thus for the police lieutenant-colonel who phrased the reply, strangling a disabled mother is either a claim that has not arisen or is not to be criticised.

The woman turned to the ombudsman claiming that the police had glossed over her case. The reply written in the name of Dr. Péter Polt (then deputy ombudsman, now state attorney) says “Unfortunately family conflicts cannot be solved through help from the outside ... only those involved – your husband and son – could help.”

Authorities initially described the acts of the abusive ex-husband as “light bodily injuries”, that is they were considered to heal within eight days, which can only be brought before a court at the claimant’s request. The official doctor’s reports, used exclusively in criminal procedures, after the beatings stated only dermatological injuries; nevertheless she was regularly hospitalised after the beatings for various internal hemorrhages for months.

In the wake of the actions of our organisations, the public prosecutor filed a lawsuit for “attempted severe bodily harm against a person unable to defend herself,” at which the town court of Kunszentmárton, with the defendant pleading guilty, and at the recommendation of the prosecutor, put the criminal on parole, that is no sentence was passed over him, despite the fact that under the law his acts are to be punished with one to five years of imprisonment. The police never arrested or kept the perpetrator of the violence in custody during this time.

The family support centre of the village of Öcsöd suggested in the spring of 2002 that the woman should persuade her ex-husband to come to marriage counselling, to “help” him deal with his alcoholism. The centre are aware that the victim and the perpetrator got a divorce in 1999, and that the abuser prevents the woman’s moving out by refusing to sell the house – a joint property –, and by threatening buyers away.

On one occasion, the abuser beat even the woman’s father. The old father in law died within one year of a cancer developing at the place of the injury. In this case too, the abuser had to face the court only for “minor bodily injury.”⁴⁷

Chapter 5

Article 4: Special Measures

A certain conceptual confusion can be discerned in Hungary in relation to positive discrimination, positive programs and programs helping to alleviate disadvantages. Further, because of historical reasons the public believes that positive discrimination is a system of quotas, which makes it more difficult to increase its social acceptance. The institutional and legal developments concerning persons living with disabilities and national and ethnic minorities (especially the Roma) will perhaps bring changes in public opinion. However it is a fact that proposals aiming to balance the disadvantages of women does not usually find support either in society or among legislators.

It is voiced in many formal and informal forums that women do not “want” or “are not suitable by nature” for public appearances, for the profession of a politician, for a leading position, etc. So far no forum has acknowledged that the various forms of discrimination against women (domestic violence, rape, incest, prostitution, sexual harassment, stalking) are forms of discrimination, and that these contribute directly (through the actual lack of access to legal remedy) and indirectly (through their physical and psychic effects on the person) to unequal opportunities; and so positive measures are necessary merely to ensure equal opportunities.

Both the Government Report and the Governmental Answers reduced the possibility of positive discrimination to questions concerning employment. This is contrary to Article 4 of the Convention and the contents of any of the General Recommendations⁴⁸. Such a narrow interpretation of positive discrimination may lead for instance to the fact that the previous Minister of Justice denied the necessity of an act regulating domestic violence, reasoning that it would create positive discrimination, which the European Union does not expect from Hungary.⁴⁹

We are unaware of any state funded or state initiated measure in Hungary that would aim to increase the proportion of women either among government members or other areas of public life. No answer is to be found to the corresponding question under section 7 of the Governmental Answers.

In 1998 the number of all majors was 3.138, 397 majors were women (12,6%). In 1998 the number of candidates running for local government representatives were 101.490, out of which

24.026 were women (23,6%). The proportion of women among parliament candidates and members of parliament is constantly below 10%. The fraction of MSZP is an exception whose quota system accepted for the 2002 parliamentary elections prescribes a 20% rate of female parliamentary candidates. Nevertheless, the proportion of women actually elected is only 13% within MSZP (23 women out of 176 representatives).

Poll results show that 3% of women with higher education agree with the statement that women have equal opportunities in obtaining employment. Only 6% of higher educated men believe that opportunities are equal. The lower qualified the respondents are, this opinion gets stronger but even among men with eight elementary grades, only 21% think that opportunities are equal.⁵⁰

Concerning the data in the Governmental Answers⁵¹ (the relatively high number of women in public service leader positions) we have two observations:

- The data are not detailed enough, for instance, they do not reflect the fact that public servant women are usually employed in the “women’s spheres”, which are considered less important both by the government and the public.
- In lack of a women’s movement and policy on women, women working in the public sphere do not represent specifically women’s interests and do not usually strive to do so. It is customary to repeat, for instance, the high number of women judges and to draw the conclusion that in divorce cases “women get the upper hand.” However, this is not supported by any kind of data, and our experience with our own clients yield the inference that women judges are generally no more sensitive to women’s problems than their male colleagues.

The current government attempted to reach out to women in its election messages, but no specific traces are left of this in the government’s program. Mónika Lamperth, a then candidate of the current government, now Minister of Domestic Affairs in an Internet interview given on 8 March, the International Women’s Day⁵² set out four areas of protection against discrimination:

- introducing a quota system in elected bodies to ensure participation,
- intervention against violence against women, domestic violence,
- intervention against gender stereotypes in education, advertising and media,
- equal distribution of benefits and support regardless of whether the parents of the child to be supported are living in a marriage or a partnership.

Out of the above, the government’s program deals only with the benefits of families, and very briefly says, without naming women as victims, as much as “We are aiming for sweeping changes in stopping the exploitation of children, domestic and non-domestic violence, and in institutionalising modern protection and help.”

In sum:

- (a) We do not find the Governmental Answer to the question on Constitutional Court Decision No. 7/1998, regarding positive actions⁵³ satisfactory.
- (b) In our opinion, several reasons exist in favour of applying rules that prescribe temporary measures concerning, besides issues of employment, constructing support mechanisms for women’s participation in public life, women’s proportionate representation in decision taking bodies, and the enforcement of women’s fundamental human rights.

- (c) We find it necessary to emphasise that by no means do we consider the rules ensuring women's fundamental human rights (safety, advocacy) merely problems that can and should be solved with temporary measurements: we consider it an urgent and long-term task for legislation and jurisdiction.

Chapter 6

Article 5: Sex Role Stereotyping and Prejudice

We are unaware of any state measurements or programs aiming to question traditional gender roles. Especially, no program exists to screen oppressive tendencies that set women on a forced life-course. We consider it a severe problem that the section of the Government Report pertaining to Article 5 quotes demographic difficulties as the government's major impediment to putting an end to prejudices against women. This is a false interpretation, since women wish to have children as citizens with rights equal to men's. When we read data sadly accounting the high divorce rate – regardless the expert stating them–, the fact that 57% of divorced women were regularly battered by their husbands is almost never mentioned.⁵⁴

The Plan for a National Family Policy claimed that Article 5 of the Convention can be realized through strengthening the maternal role in theory and practice, without, however, going any further than a theoretical declaration of the importance of the paternal role.

We have not seen significant change in the models depicting stereotypical gender roles in school textbooks.

We are unaware of any state program to screen, from this viewpoint, textbooks, educational materials meant for the youth or state funded youth programs. The training curriculum of the National DADA program (a training program supplementing school education, dealing especially with factors endangering the youth – smoking, alcohol, drugs, etc.) contains explicit gender based prejudices and stereotypes putting women at a disadvantage.

For instance in the lesson on “Domestic Violence”:

What reasons do you think lead up to such violent acts happening in a family?

- Social reasons: unemployment, financial, psychic reasons.
- Alcoholic lifestyle and drug addict parents.
- Bad family atmosphere: divorced parents, single parent household.
- Alien partner: for instance appearance of foster parent.
- Criminal activity, increased aggressivity.⁵⁵

Excerpt from the part for the police officer educators, entitled “When You Are Facing Upper Grade Students”:

In this age, **girls** are usually more mature, and have an emotional life that is too confused to follow. At one moment she is laughing, making fun, in the next she gets hurt, then changes her moods again, and everything starts again.

Boys are immature, want to be attractive, they are mean and nice. They make no fuss, they think that life is much less complicated than seen by the girls. This is the age of first love, of flushing, policemen better look out **half of the girls will fall in love with him**. [sic!] (You have got to be able to handle that!) . . . Rationality is far from their deeds and thoughts, they live their everyday life almost exclusively emotionally, with pain and happiness.⁵⁶

In sum:

We are unaware of plausible signs of state attempts to dismantle gender stereotypes that exclude women from public life, only portray women as sexual objects or mothers, and hinder women’s social participation. We hope that the research indicated in the Government Report will bring useful results, but we believe that it is necessary to define more accurately and work out the programs connected to this area to ensure that “education towards family life” will not consist in persuading girls to be mothers and to be the ones responsible for keeping the family together. The so far apparent lack of programs with an aim of dismantling stereotypes, besides hindering women’s participation in society, also contributes to girls’ and women’s disadvantage in access to justice.

Chapter 7

Article 6: Prostitution

7.1 The Violation of the CEDAW and the New York Convention

On pages 28–29 we have pointed out already that the regulation of prostitution in Hungary is discriminatory against women forced into prostitution, formally as well as in practice. The organisations preparing this report do not, of course, consider prostitution to be a case of business agreement between equal parties; instead, it is viewed as a deeply patriarchal phenomenon institutionalising violence against women which humiliates, exploits, and oppresses women. Only this interpretation can be in accordance with Article 6 of the Convention:

Article 6

States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

We quote this Article because this is the CEDAW Article with which the Hungarian government does not seem to agree even formally. While the Convention stresses *the suppression of all forms* of exploitation of prostitution of women, the Government Report designates *the legalisation* of prostitution as a progressive goal.

Public statements in the domestic sphere regularly announce that the Ministry of Domestic Affairs along with several politicians would like to legalise brothels. The socialist–liberal majority of Budapest’s local government, at the initiative of the liberal mayor, have officially suggested to the government several times that Hungary withdraw from “The Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others Opened for Signature at Lake Success, New York, on 21 March, 1950.” The regulation of prostitution is a recurring topic of the political agenda since 1998. Nevertheless, we are unaware of any statement by any political force that would oppose the legalisation of prostitution referring to women’s rights, or would insist on the New York Convention or Article 6 of CEDAW.

It may be inferred from the statements made by politicians as well as ministers that Hungary has not yet withdrawn from the New York Convention because, in order to facilitate Hungary's joining the EU, the government would like to create the impression that Hungary respects human rights and the conventions born in the spirit of human rights.

In reality, however, the Hungarian government does not pay attention to the rights of the victims of prostitution.

The government does not offer any policy for the prevention of prostitution, or for the reintegration of victims into society. Since the government acknowledges this lack in its response to the questions posed by the CEDAW Committee, we only briefly illustrate this statement with the help of a few examples:

It is not illegal for a male client to engage in sexual activity with a girl of 14–18 years in exchange for money. It is a general phenomena that girls below 18 years of age living in state care are prostituted and boys get prostituted.

Despite legal prohibition, the police often turn a blind eye to the organisation of prostitution. According to anecdotal information, several brothels work undisturbed in the centre of Budapest frequented by male politicians and high-ranking police officials. The webpages of the brothels featuring pornographic images of the “choice of girls” remain available for months.

In 2000, at the time of the Formula-1 races, a brothel-camping operated near the racetracks at Mogyoród. Already during the first days of its existence, high-ranking domestic affairs officials declared it an offence of section 205 of the Penal Code, a view shared by *Zsaru* as well. Still, no procedure was initiated against the organisers; the police assisted for several days in maintenance of order around the brothel-camping.

In 2000, in a response to a member of parliament's written request to describe actions to be taken against the *forced* prostitution of female children, the Minister of Justice replied the following:

... the moral influence of the family is of crucial importance, along with moral education in schools, and religious-moral education, as well as the development of the healthy morals of society and its influence.⁵⁷

The ministerial response did not elaborate on who, according to the minister, should be provided with moral and religious-moral education and teachings: the child victim of prostitution, the client, or the coercive prostitutes.

7.2 Traffic in Women

In 2000, the International Office for Migration held a prevention campaign in Hungary against traffic in women (NANE was included into the program as a civil partner to run the hotline). The Ministry of Domestic Affairs was also named as a partner in the campaign. Partnership,

however, was present only on the level of rhetoric: many family members of disappeared women call the hotline, which has been in operation ever since. Their experience testifies that the police, which operate under the leadership of the Ministry of Domestic Affairs, continue to have very little information and to be untrained in the topic of traffic in women. Local police is an unavoidable forum when reporting disappearance, if the woman possibly disappeared in a foreign country, the Hungarian Interpol office is only able to enter the investigation if the procedures have begun on the local level. A large number of cases unfortunately get stuck on that level: police reactions range from passivity to aggression. Typical police reactions we are informed about on the information hotline are the following: 1. the parent/relative voices his or her concerns at the police, enumerates the signs that make him or her believe that a relative has become a victim of traffic in women, and no police activity ensues. Often family members are not aware that their account is in no way documented, since the police do not inform them about what a police file is like, or how to make an official report. 2. The official on duty, who is entrusted with referral within the police, sends the worried relatives away. In some cases this is done in a dissuading way, saying it is not worth having an investigation about their daughter because the case is hopeless anyway. In other cases the tone of the police is explicitly violent: "Your daughter is only a whore, I don't see why you're so worried at all. She got what she deserved."

When victims of traffic in women return home, they receive very little help of a very low professional quality; no shelter exists currently. Because foreign victims arriving to us are ultimately an invisible problem for the government, these women are provided no help at all.

No national data are available on traffic in women directed to Hungary, no research has been made. At a recent regional conference the representatives of both the public prosecutor's office and the Ministry of Justice claimed that Hungary is not a target country. International statistics, however, indicate that traffic in women targeting Hungary from East of the country does exist indeed. Although Hungary has had a regulation criminalising traffic in persons since 1998, but given the indifferent attitude of authorities, it is not to be expected that perpetrators of traffic in persons directed to Hungary will be brought to court. The practice of the immigration authorities is to automatically expel occasionally found prostitutes from the country; the jargon of immigration officials regards these women as perpetrators and not as potential victims of crimes. Given the level of police corruption, we cannot exclude the possibility that the perpetrators of traffic in women coming from East of Hungary, acting as procurers in Hungary, are in informal contact with the police.

Chapter 8

Article 7: Political and Public Life

In the words of the Government Report:

The parliament reacted to changing requirements sensitively, a Women's Subcommittee was created within the Human Rights, Religious Affairs and Minority Committee already in 1998.

We would only like to supplement this information with the following: the homepage of the Parliament⁵⁸ has the following to say about the Women's Subcommittee: "No data on sessions. No filings submitted." The database however shows that the Subcommittee existed pro forma until 14th May 2002, that is until the dissolution of the Parliament. The new Parliament has not created a women's committee or subcommittee. The Women's Subcommittee that existed in theory between 1998 and 2002 had four female opposition members of parliament (3 socialist, 1 liberal). All government party members of the Human Rights Committee, that is the main committee creating the subcommittee, were men. However, this would not have meant difficulty in delegating female members of parliament to the Women's Subcommittee from the side of the conservative government parties, since the only liberal member of the Subcommittee, Gabriella Béki, was not a member of the main committee either.

Chapter 9

Article 11: Employment

Issues of employment mentioned before need to be supplemented here with the following. Since the amendment of the Labour Code in 2001, full legal working hours (whose normal duration is eight hours daily) “can be increased to a maximum of 12 hours if the employee is a close relative of the employer or owner.”⁵⁹ Full legal working hours is the time for which the employee is entitled payment, benefits affecting free time, and other financial benefits. With respect to the fact that a large number of women work as unregistered workers in family businesses, it is possible that this change does not affect too many women. For those, however, who work as registered employees of a family venture, this regulation may result in disadvantages.

The regulations serving the protection of pregnant women and women with small children usually place the extra burden on the employer, which has a disadvantageous effect on women’s employment. The number of day care institutions⁶⁰ has radically decreased during the past ten years. Open discrimination preceding employment has decreased since recent precedent cases and is carried out in a covert way instead.⁶¹ Hungarian court practice has not proved to be efficient in keeping employers from discriminative procedures with sufficiently deterrent legal redress, and in encouraging employees whose rights have been violated to seek justice.⁶²

The international companies that have to conform to strict anti-discrimination rules in their home countries, almost never follow these rules in their Hungarian subsidiaries. Anecdotal reports have surfaced of an electric company of foreign ownership where the prospective employees have to reveal even their sexual orientation.

Chapter 10

Article 12: Health

Although there have been doubtless developments (e.g. mammographical screening or programs against smoking have been introduced lately), we consider the practice of health care problematic in several points.

10.1 Setback in Reproductive Rights

A setback in the field of reproductive rights occurred in the period of 1998 to 2002. On the one hand, the law on abortion has been amended, limiting women's rights to self-determination, and setting legal prerequisite conditions that are humiliating for women. On the other hand, the Ministry of Social and Family Affairs supported with vast funds civil and religious organizations, as well as propagandistic publications against the right to abortion.

There has been a setback in terms of reproductive rights during the last four years.⁶³

Since the first deliberation of the Supreme Court on the issue, the right to abortion (in our opinion correctly) has been regulated by law and not by a decree. The first so-called foetus-protection law was created in 1992⁶⁴. The Supreme Court – in the course of deliberating on a proposal submitted on a different issue – expressed its concerns already in 1995⁶⁵ that liberal abortion rights are not sufficiently counterbalanced by regulations that would result in the continuation of pregnancy. In its deliberation No. 48/1998, the Supreme Court found unconstitutional and eliminated those Sections of the foetus protection law that – in the Court's opinion – rendered the process of abortion too smooth (see page 13). Following this deliberation, the Act was modified in June 2000.⁶⁶

As a result of this modification, the decision on the abortion application became longer, the pregnant woman is required to attend two consultations. At the first consultation, the district nurse is not obliged to inform her about her rights to abortion, she is, however, obliged to inform her about the risks of abortion, the various benefits she would receive in case she would keep the child, and furthermore, about the possibilities of giving up the baby for adoption. The

aim of the consultation explicitly stated in the text of the Act is to influence women to continue with their pregnancies.

In our point of view, this, besides infringing women's personal rights seriously, is completely against the basic principles of social work. The manner of "consultation" prescribed by the law has, in our opinion, the aim of manipulating pregnant women and girls. "Consultation" does not include information on the risks of pregnancy and delivery, the district nurses are obliged to paint a one-sided and dark picture of abortion, while they are required to communicate only positive information about pregnancy. According to the law the district nurses **have to try to convince underage girls to give birth as well – without a lower age limit**. This cannot be regarded as help for a women in a crisis situation.

10.1.1 Abortion in Case of Rape

We know about a case when a woman seriously battered and forced to prostitution by her husband was lectured to in a humiliating tone by the district nurse who said that abortion was not the proper way of contraception and next time she should use protection. Our client had previously told her that she was on the run and the pregnancy was the result of her husband having raped her.⁶⁷

During the modification of the law in 2000, it was only due to the pressure of the non-profit civil organizations that a regulation was added according to which if the pregnancy is a result of a crime, then "the regulations of the content of consultation, the waiting time after and the second session of consultation do not pertain." However, even these favourable regulations were constrained by legislation: "the applicant should be informed about the possibilities and conditions of giving up for adoption in this case as well." The effect of the regulation is further weakened by the condition that the police has to verify—by issuing a certificate—either the crime or the well-grounded suspicion of crime.⁶⁸ Rape can, however, be prosecuted only following the request of the offended for prosecution which, in turn, can only be filed within 30 days after uncovering the identity of the perpetrator.⁶⁹ Knowing that in most cases of rape, the offended do not file a complaint and she does not become aware of the pregnancy within 30 days, most women whose pregnancy is a result of crime cannot make use of the less strict regulations, only if they requested the prosecution in time. Thus, this is one of the regulations that, as condition of support, pose perfectionist requirements for women who were victims of crime.

10.1.2 The Fee of Abortion

The previous government's family policy aimed to direct women towards mothering as a life task – without actually creating the conditions among which women could really choose to have children. Both the mandatory psychic manipulation of women requesting abortion and the fact that for some women the price of abortion is a severe financial burden work against voluntary pregnancy.

The fee of abortion is HUF 20,433 (USD 72, several people live on a pension of that amount). Those who are entitled to various social benefits may apply for abortion at a 50 or 30% discount. The poorest of women who have fallen out of the social care system must pay the full amount.

Therefore even the decreasing number of abortions seems problematic. It is to be feared that this trend reflects unmeditated “decisions” that were made under mere persuasion without providing guarantees. Naturally, statistical data were not collected on this aspect, however, the fact is that the Government Report and the Governmental Answers’ statement, that the amount of child support benefits should be enough for a family to make a living, is not true to reality.

10.2 Family Planning

10.2.1 Birth Control

The mere decrease in the number of abortions does not, in our opinion, mean that women can practice safe reproductive rights safely. The amendment of the law makes it mandatory for nurses to try to influence the applicant towards continuing with the pregnancy. However, at the same time, the state did not support other forms of birth control. Further, no education campaigns are discernible that would target young men emphasising their role in birth control.

A proposal to provide support for young people using birth control methods has been under development for a while, but the procedure has not proceeded beyond the level of coordination between the Ministries.⁷⁰ Therefore, it is uncertain as yet who will qualify as recipient, what extent of support will be available, and whether the proposal will ever become law.

The programs mentioned in the Government Report and the Governmental Answers were initiated and funded not by the state but by companies producing birth control products. According to the daily newspaper *Népszabadság*:

The project was initiated by a company producing urgency birth control products, because statistics showed that almost one thousand girls under the age of 15 asked clinics for help every year to avoid unexpected pregnancy. The youngest patient was barely ten years old. The number of abortions has decreased from a yearly 90 thousand to 58 thousand in the past ten years. Ten to fifteen percent of these operations are done on teenagers, and the number of operations where the patient is under fourteen is between 300 and 400.⁷¹

These data unquestionably point to the necessity of modern sexual education in schools, of educating boys on preventing pregnancies, and this necessity has so far been denied by the government. Further, it needs to be pointed out that NANE’s hotline receives numerous calls during periods when the medication coming from producers runs out in the hospitals. All these facts indicate that the institutional framework of preparing the youth for birth control is missing.

We also want to call attention to the passions aroused by home birth. The only Hungarian institution assisting in home birth is a civil organization⁷² lead by a gynaecologist, obstetrician and paediatrician woman. Both the Hungarian Medical Chamber and the police are conducting procedures (for professional and ethical offences, and under various sections of the Penal Code related to the offence of endangering, respectively) against her. The doctor's license has been repeatedly withdrawn, returned under public pressure, and withdrawn again. These procedures, apart from raising difficulties in the doctor's professional and personal life, also deprive women who want to choose home birth of the possibility to do so.

10.2.2 Artificial Insemination

Currently those women may require artificial insemination in Hungary who are married to or are in partnership with a man.⁷³ Before the Act came into effect, artificial insemination was only to be carried out on married women under the age of 45 years.⁷⁴ A citizen attacked this earlier rule before the Constitutional Court, but the three-member council of the Constitutional Court turned the motion down (see: page 12).

We are unaware of any public civil initiative that aims to extend the right to artificial insemination to single women and women living in a lesbian relationship, although not only the organizations authoring the report but other civil organizations would agree with such an initiative.

10.3 Summary

- (a) We find it necessary to have a thorough study of health regulations affecting women to screen discriminatory regulations or regulations resulting in discrimination.
- (b) We find it necessary to amend at least the regulatory statute of the Law on the Protection of the Foetus in a way that would ensure respect for women's dignity not just in theory but protected by guarantees, and in general we find it necessary to regulate abortion in a way which does not violate women's fundamental rights.
- (c) In relation to this, we find it necessary to ensure that the widest possible strata of women and men have access to other means of birth control.
- (d) In accordance with Article 12 and Article 5 of the Convention, and with respect to the contents of General Recommendations number 3, 9, 15, 19, 21 and 24, we find it particularly important to uncover in studies and statistics the extent to which unwanted pregnancies and the psychic and bodily illnesses of women result from the various forms of violence against women. We find it extremely important to find supporting data in Hungary for the link between violence against women and women's health.

- (e) We find it indiscernible how the spirit of Article 5 of the Convention is being systematically realized in current plans, either within the framework of “education towards family life”, or sexual education in schools, or in general information programs. We are all the more concerned about this as in the same plans we do discern traces of conditioning women to view motherhood and other family related roles as chief goals of their lives.

Chapter 11

Closing Remarks

The recommendations of the 1996 CEDAW Committee concerning domestic violence, prostitution and traffic in women, strengthening reproductive rights, and the situation of refugee women were not realized at all by 2002, apart from some isolated and ad hoc measures. Recommendations concerning the creation of a national mechanism, and those concerning the situation of minority women were realized only in part and mainly only formally. Recommendations on increasing political and social participation, supporting women's organizations and disseminating documents on women's rights, although there may have been projects with these themes, brought no remarkable results in enforcing women's rights.

We do not deal with the other Articles of the Convention specifically, because the information which pertain to these and which is relevant for us has been discussed in our report. Naturally, further detailed studies could be conducted in specific areas, in this report we could only treat the most striking problems.

We hope that the CEDAW Committee will find our report useful, and the Committee's questions and recommendations will contribute to the improvement of the situation in Hungary.

Notes

¹For an analysis of the practice of the Constitutional Court see almost all issues of the periodical, *Fundamentum*.

²Constitutional Court Decision No. 64/1991 (XII.17.).

³Sodomy

199.§ A person over the age of eighteen years who engages in sodomy with a person of the same sex who is younger than that age commits a crime and is punishable with up to three years of imprisonment.

⁴Constitutional Court Decision No. 64/1991 (XII.17.) and Constitutional Court Decision No. 48/1998 (XI. 23.)

⁵For instance Constitutional Court Decisions No. 7/1998, No. 46/1994., No. 14/1995.

⁶Constitutional Court Decisions No. 28/2000, No. 46/1994.

⁷For the differentiation between the two concepts see e.g. Judit Sándor: A szabályozás csapdái és dilemmái. In: *A hátrányos megkülönböztetés tilalmától a pozitív diszkriminációig*. INDOK: Aduprint. pp. 49.

⁸As it is suggested by the present positioning of the Equal Opportunities Directorate under the Ministry of Labour.

⁹See e.g. Dr. Ilona Gere: Nők a munkaerőpiaci változások tükrében. In.: *Nőnem: Íások a Women Leadership Training Program konferenciáiról és tréningjeiről*. Szerk.: Varga Éva. Pécsi Tudományegyetem. 2002. pp. 42-53.

¹⁰Cf. Section 25 of Act No. 59 of 1993 on the Parliamentary Commissioner of Citizen's Rights.

¹¹See page 14.

¹²No. 2174 of 1997 (VI. 26.) Government Decision on the Action Program Aiming at the Realization in Hungary of the Task Included in the Statement Accepted at the IV. Women's World Congress.

¹³The letters of Habeas Corpus Working Group, November 26, 2001 and April 16, 2002 can be found in the archives of the organization.

¹⁴Government Decree No. 284/1996.

¹⁵Operative July 1, 2001.

¹⁶Subsection 6 Section 5 of the Labour Code: "Regulation regarding employment-relations may prescribe the obligation of affirmative action to a certain circle of employees – in connection to the employment relation – in case of similar conditions."

¹⁷See the already cited study on the subject by Judit Sándor.

¹⁸ibid.

¹⁹Lehoczkyné Kolonnai Csilla. ed. *A magyar munkajog II*. Budapest: Vince Kiadó. 2002. p. 180.

²⁰*Beosztottjait zaklatta az ezredes*, Népszabadság: 2002. július 5.

²¹Varró Szilvia: *Védtelen nők a munkahelyeken*, Magyar Hírlap, 2002. február 18.

²²Rape committed to the offence of a same-sex person is regulated by a different Section.

²³See extensive discussion of the current situation of domestic violence legislation in Morvai Krisztina: *Terror a családban: a feleségbántalmazás és a jog*. (Terror in the Family: Wife-abuse and the Law). Bp: Kossuth. 1998, and Morvai at: www.iwm.at/publ-spp/soc101pp.pdf

²⁴Cf. Section 10 of Act No. 75 of 1999 and Section 143 of Act No. 69 of 1999

²⁵Section 144 of Act No. 69 of 1999.

²⁶Section 145 of Act No. 69 of 1999.

²⁷Subsection 1 c) of Section 143 of Act No. 69 of 1999

²⁸Subsection 2 b) of Section 143 of Act No. 69 of 1999

²⁹Provision k) of Section 4 of Act No. 75 of 1999

³⁰Anecdotal information, and Varró Szilvia és Vajda Éva: *Bundás lányok a Rózsadombon*, Magyar Hírlap 2002. július 22. p. 2.

³¹Information of Periféria Egyesület of Nyíregyháza on the case of a local prostitute.

³²Anecdotal information.

³³It was a case taken by Habeas Corpus Working Group, documents are in the archives of the organisation.

³⁴A case taken by Habeas Corpus Working Group, documentation in Hungarian:
<http://hc.netstudio.hu/jogsegely/esetek/X>

³⁵See for example: Népszabadság July 25, 2002 p. 4.

³⁶Section 36 of the Convention: “In the course of fulfilling its responsibilities, the Government shall co-operate with the relevant social organisations.”

³⁷Zsaru, „Eladta a nőjét” 2002/24. 53. „Fejbe lőtte asszonyát” 2002/21. 25.

³⁸Zsaru, 2000/34. p. 15.

³⁹Juhász Géza: *A rendőrség a halott nők védelmében*, Magyar Narancs 2000. szeptember 14., p. 42-43.

⁴⁰Dr. Barta Endre: *A nemi erkölcs elleni bűncselekmények nyomozása*, a Rendőrtisztviselői Főiskola jegyzete, 2000. Rejtjel kiadó, lektorálta dr. Szakács Zsolt, p. 22-24.

⁴¹ibid. p. 17.

⁴²ibid. p. 22.

⁴³Justice Minister Ibolya Dávid’s written reply to the question of a member of parliament can be found in the archives of the civil organisations compiling the current Shadow Report.

⁴⁴The letter of the State Secretary of Public Administration at the Ministry of Justice can be found in the archive of NANE.

⁴⁵See as well the joint CRLP-NANE Shadow letter to the August 2002 session of the CEDAW Committee.

⁴⁶cf. Pp. 125. § (5), Be. 180. § (1).

⁴⁷The documents of the case are accessible in the archives of the Habeas Corpus Working Group.

⁴⁸General Recommendations 5, 8, and in our reading 15, 19, 21, 23 and 24 contain rules that provide that positive measurements to overcome disadvantages suffered by women.

⁴⁹For more details see on page 36.

⁵⁰*Nők és férfiak Magyarországon, 2001.* Szociális és Családügyi Minisztérium. Budapest, 2001. pp. 115, 116, 76.

⁵¹Governmental Answers, subsection 8.

⁵²<http://www.mszp.hu/newscikk.php?ner=n&ni=11016>

⁵³Governmental Answers, subsection 6.

⁵⁴Tóth Olga: *Erőszak a családban*, Társadalmi és Családügyi Minisztérium Tanulmányok, 1999, p. 32.

⁵⁵*Methodological handbook for police officers in the D.A.D.A. program*, no publisher, but it is probably the police as the front cover bears the logo of the police and the authors are 12 police officers, 2001., p. 191.

⁵⁶Ibid, p. 20-21., emphasis in original.

⁵⁷A copy of the letter may be found in HCWG’s archive

⁵⁸www.parlament.hu

⁵⁹Mt. 117/B. § (3) b). Relatives include, among others, spouse, child, parent, sibling and partner.

⁶⁰Institutions serving children under the age of three.

⁶¹Several authors write on the subject, see for instance Lévai Katalin: *A nő szerint a világ*. Budapest: Osiris. 2000.

⁶²The amount of fine can be between HUF 100,000 and 3,000,000, which is not given to the claimant. The employee may take action in a civil court for compensation for non-pecuniary loss, but this rarely happens, and even if it does, the amount of compensation, if awarded, is only of a nominal value.

⁶³See the Shadow Letter of the Centre For Reproductive Law and Policy (CRLP) and NANE Association for the August 2002 session of the CEDAW Committee. (July 2002, especially on the Ministry of Social and Family Affairs supporting propagandistic publications and civil organizations vehemently opposing the right to abortion), and further Wirth Judit, in: *Women of the World: Laws and policies affecting their reproductive lives, East Central Europe*. New York: CRLP. 2000. pp. 49-77 on Hungary.

⁶⁴Act No. 79 of 1992 on the Defence of Embryonic Life

⁶⁵Supreme Court Deliberation No. 43/1995.

⁶⁶Act No. 87 of 2000

⁶⁷S.Á.’s case, 1999.

⁶⁸Foetus protection law Subsection 5 Section 12

⁶⁹Section 209 of the Penal Code, Subsection 3 Section 123 of the Criminal Procedure Code

⁷⁰Telephone information from an official of Fővárosi ÁNTSZ, on 23 July, 2002.

⁷¹*Népszabadság*, 2002. június 14.

⁷²For further details see: www.otthonaszules.hu and www.homebirth.hu

⁷³Cf. Subsection (1) Section 167 of Act No. 154 of 1997 on Health Care, which stipulates further restrictions.

⁷⁴Cf. Section 1 of the Ministry of Health Decree No. 12 of 1981 (IX. 29.) on Insemination carried out with artificial intervention.