

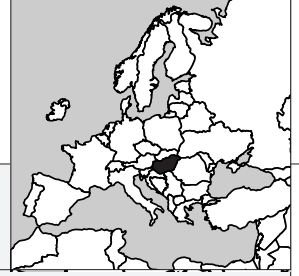


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# 4. Hungary



## GENERAL

### Population

- The total population of Hungary is 10.1 million.<sup>1</sup>
- The proportion of the population residing in urban areas is 65%.<sup>2</sup>
- Between 1995 and 2000, the annual population growth rate is estimated at -0.4%.<sup>3</sup>
- In 1999, the gender ratio was estimated to be 109 women to 100 men.<sup>4</sup>

### Territory

- The territory of Hungary is 35,919 square miles.<sup>5</sup>

### Economy

- In 1997, the gross national product (GNP) was USD \$45 billion.<sup>6</sup>
- In 1997 the gross domestic product (GDP) was USD \$44,845 million.<sup>7</sup>
- The average annual growth between 1990 and 1997 was -0.2%.<sup>8</sup>
- From 1990 to 1995, public expenditure on health was 6.8% of GDP.<sup>9</sup>

### Employment

- Women comprised 44% of the labor force in 1997, compared to 43% in 1990.<sup>10</sup>

## WOMEN'S STATUS

- In 1999, the life expectancy for women was 74.9 years compared with 66.8 years for men.<sup>11</sup>
- In 1997, the illiteracy rate among youth between the ages of 15-24 was 0% for females and 0% for males.<sup>12</sup>
- In 1998, gross primary school enrollment was 95% for boys and 95% for girls; gross secondary school enrollment was 79% for boys and 82% for girls.<sup>13</sup>

## ADOLESCENTS

- 17% of the population is under 15 years of age.<sup>14</sup>

## MATERNAL HEALTH

- Between 1995 and 2000, the total fertility rate is estimated at 1.37.<sup>15</sup>
- In 1999, there were 28 births per 1,000 women aged 15-19.<sup>16</sup>
- In 1999, the maternal mortality ratio was 14:100,000.<sup>17</sup>
- Infant mortality was at 10 per 1,000 live births.<sup>18</sup>
- 99% of births were attended by trained attendants.<sup>19</sup>

## CONTRACEPTION AND ABORTION

- The contraceptive prevalence for any method (traditional, medical, barrier, natural) is estimated at 73%, and that for modern methods at 59%.<sup>20</sup>

## HIV/AIDS AND STIs

- In 1999, the estimated number of people living with HIV/AIDS was 2500.<sup>21</sup>
- In 1999, the estimated number of women aged 15-49 living with HIV/AIDS was 270.<sup>22</sup>
- In 1999, the estimated number of children aged 0-14 living with HIV/AIDS was <100.<sup>23</sup>
- In 1999, the estimated cumulative number of AIDS deaths among adults and children was 220.<sup>24</sup>

**ENDNOTES**

1. UNITED NATIONS POPULATION FUND (UNFPA), THE STATE OF WORLD POPULATION 1999 (visited July 13, 2000) <[www.unfpa.org](http://www.unfpa.org)>.
2. *Id.*
3. *Id.*
4. THE WORLD'S WOMEN 2000. TRENDS AND STATISTICS, at 21.
5. UNITED NATIONS POPULATION FUND (UNFPA), THE STATE OF WORLD POPULATION 1998, at 772.
6. THE WORLD BANK, WORLD DEVELOPMENT REPORT 1998/9, at 190.
7. *Id.* at 212.
8. *Id.* at 210.
9. *Id.* at 202.
10. *Id.* at 194.
11. THE STATE OF WORLD POPULATION 1999, *supra* note 1.
12. THE WORLD BANK, WORLD DEVELOPMENT INDICATORS 1999, at 83.
13. THE STATE OF WORLD POPULATION 1998, *supra* note 5, at 68.
14. CIA, HUNGARY, WORLD FACTBOOK (visited Sept. 23, 1999) <<http://www.odci.gov/cia/publications/factbook/hu.html>>.
15. THE STATE OF WORLD POPULATION 1999, *supra* note 1.
16. *Id.*
17. *Id.*
18. *Id.*
19. *Id.*
20. *Id.*
21. UNAIDS & WHO, EPIDEMIOLOGICAL FACT SHEET ON HIV/AIDS AND SEXUALLY TRANSMITTED DISEASES-HUNGARY 3 (2000) (visited July 13, 2000) <[www.unaids.org](http://www.unaids.org)>.
22. *Id.*
23. *Id.*
24. *Id.*

The Republic of Hungary is located in East Central Europe, and is traditionally regarded as a meeting point between Western and Eastern culture. It borders Slovakia to the North, Ukraine and Romania to the East, Serbia and Croatia to the South, and Slovenia and Austria to the West. Hungary's official language is Hungarian.<sup>1</sup> Its population in 1998 was approximately 10 million people. Hungary promotes equality before the law with measures aimed at eliminating inequalities<sup>2</sup> for all its 13 officially registered ethnic minorities — Bulgarian, Roma, Greek, Croat, Polish, German, Armenian, Romanian, Transcarpathian Ukrainian (Ruthen), Serbian, Slovakian, Slovenian and Ukrainian.<sup>3</sup> The largest ethnic minority is the Roma.<sup>4</sup>

Shortly after World War II, Hungary became a socialist country under the influence of the Soviet Union. In 1989, a peaceful transition to a multiparty democracy took place. At the same time, Hungary instituted a free market economy and applied to become a member of the European Union (EU). It is likely to be among the first East Central European countries to be accepted. Much legislative reform is therefore based on the need to join the EU and to harmonize Hungary's legal system with EU norms. In terms of foreign policy, Hungary's accession to NATO in 1998 has been a significant development.

## I. Setting the Stage: The Legal and Political Framework

### A. THE STRUCTURE OF NATIONAL GOVERNMENT

The Republic of Hungary is defined by its Constitution as "an independent and democratic constitutional state" based on the rule of law.<sup>5</sup> The Constitution establishes the basic organizational structures of the state and the powers and responsibilities of its different institutions, including the legislature, the executive branch, the judiciary, the head of state, the Constitutional Court and local governments.

#### *Executive branch*

There is no single law on executive authorities; the major legal rules are set forth in the Constitution and executive procedures delineated in the standing orders of the government.<sup>6</sup> Within the limits of the law, the government has much flexibility to organize the executive branch.<sup>7</sup> The government consists of the prime minister, who is the head of the government, and ministers.<sup>8</sup> The government is the main executive and policy-making body, and is charged with defending the constitutional order, ensuring the rights of citizens, and implementing laws.<sup>9</sup> Its powers include supervising the ministries, monitoring local governments, formulating and implementing social

and economic policies, defining and implementing the state mandate to develop science and culture, ensuring sufficient funds for the state social welfare and health care services, supervising the armed forces and police, and developing foreign policy.<sup>10</sup> The prime minister can issue decrees so long as they do not conflict with existing law.<sup>11</sup> The government is also charged with annulling or amending all legally irreconcilable resolutions or measures taken by subordinate public authorities (excluding legal statutes).<sup>12</sup> While the government has broad policy and executive authority, it is accountable to the Parliament. The Parliament elects the prime minister and approves the government's program.<sup>13</sup> The government "is responsible to the Parliament for its operation and is required to present the Parliament with regular reports of its work."<sup>14</sup> Members of the government are required to appear before parliamentary committees and provide information requested by those committees.<sup>15</sup>

The president of the republic is the head of state, Commander-in-Chief of the armed forces, and represents "the unity of the nation and monitors the democratic operations of the state."<sup>16</sup> The president of the republic, who must be an enfranchised citizen at least 35 years old, is elected by Parliament for a five-year, one-time-renewable term.<sup>17</sup> The president's functions include representing the state of Hungary; concluding treaties; receiving ambassadors and envoys; announcing parliamentary or local elections; conferring titles, orders, awards and decorations; granting individual pardons; and issuing specific rulings, such as in cases of citizenship.<sup>18</sup> The president has some powers of appointment and dismissal and has the right to initiate national referenda and to petition Parliament to take action.<sup>19</sup> The president of the republic is instrumental in the formation of the government. The president proposes the prime minister to the Parliament and recommends ministers, who are then appointed by the prime minister.<sup>20</sup> However, the president has limited authority, and many of his or her powers require the counter-signature of the prime minister or other relevant minister.<sup>21</sup> While the president's authority is not regulated in detail, the Constitutional Court has declared that "the president can reject a proposal only in very exceptional cases."<sup>22</sup> The president can veto legislation only in limited circumstances, but the final word on whether it becomes law remains with the Parliament.<sup>23</sup>

#### *Legislative branch*

The Constitution vests supreme power in the people "who exercise their sovereign rights directly and through elected representatives."<sup>24</sup> The Parliament is the "supreme body of state power and popular representation in the Republic of Hungary."<sup>25</sup> There are 386 members of the unicameral Parliament,

176 of whom are directly elected for four-year terms; 152 are elected from 20 regional party lists, and the remaining 58 are selected from a list created by the political parties representing at least seven regions.<sup>26</sup> The last elections took place in 1998,<sup>27</sup> and resulted in six parties being represented in the Hungarian Parliament — two of them left-wing to liberal (in opposition), and four of them Christian-liberal to right-wing (one of these in opposition). Two sitting members of Parliament (MPs) are unaffiliated.<sup>28</sup>

As the supreme body of state power, the Parliament is responsible for ensuring the constitutional order of society as well as defining the “organization, orientation and conditions of government.”<sup>29</sup> Its powers include the authority to adopt and amend the Constitution; pass legislation; define the country’s social and economic policies; decide on the government’s program; conclude international treaties; declare wars, states of emergency, or states of national crisis; dissolve local governments; and exercise general amnesty.<sup>30</sup> The Parliament also elects the president of the republic, the prime minister, the members of the Constitutional Court, the Ombudsman, the General Prosecutor and the president of the Supreme Court.<sup>31</sup> Parliament also controls the implementation of the annual budget.<sup>32</sup> It can initiate a motion of no-confidence against the prime minister, which is also considered a vote of no-confidence against the government. The no-confidence petition includes the name of a new prime minister, who, if passed by a majority of Parliament, is elected.<sup>33</sup> To pass legislation, a quorum of at least half of the MPs must be present. A majority vote by the MPs present is usually required, although a two-thirds majority is needed to amend the Constitution,<sup>34</sup> to declare war,<sup>35</sup> to call a national plebiscite,<sup>36</sup> to elect the president of the republic,<sup>37</sup> to ratify the laws on the organization and operation of the Constitutional Court<sup>38</sup> and on the Ombudsman,<sup>39</sup> and to appoint the president of the Supreme Court.<sup>40</sup>

Legislation may be initiated by the president of the republic, the government, all parliamentary committees, or any MPs; the Speaker of the Parliament signs all legislation passed by Parliament and sends it to the president of the republic for promulgation within 15 days.<sup>41</sup> If the president disagrees with the legislation he can send it back to the Parliament for reconsideration. If the Parliament re-passes the legislation, the president is required to ratify and promulgate the law within five days.<sup>42</sup> If the president believes that the law is unconstitutional, he can refer the law to the Constitutional Court for review.<sup>43</sup> If the Constitutional Court finds the law unconstitutional, then the president refers the law back to the Parliament for reconsideration, but if the law is found to be constitutional, the president must ratify and promulgate the law within five days.<sup>44</sup>

### *Judicial branch*

The tasks of the judiciary are divided between the Constitutional Court, which decides the constitutionality of laws, and the Supreme Court and lower courts, which are charged with administering justice.

The Constitutional Court<sup>45</sup> and the parliamentary Commissioner for Citizens’ Rights (Ombudsman)<sup>46</sup> serve as a control over all three branches. The parliamentary-elected Ombudsman protects the rights of ethnic minorities;<sup>47</sup> his or her job is to investigate abuses of national or ethnic minority rights and to initiate general or particular measures for redress.<sup>48</sup> The Constitutional Court oversees and investigates the constitutionality of legal provisions and the protection of human rights. The Constitutional Court, however, does not have the right to overturn a final judgment of a court and, therefore, is not a court of appeal. The Constitutional Court, established in 1990, can annul any law or statute it finds to be unconstitutional.<sup>49</sup> It also examines whether a law is contrary to the international obligations of Hungary,<sup>50</sup> determines whether a constitutional complaint has merit,<sup>51</sup> eliminates unconstitutionality resulting from legislative omission,<sup>52</sup> eliminates conflicts of competence between state and/or local bodies,<sup>53</sup> and otherwise interprets the Constitution.<sup>54</sup> Constitutional Court decisions are binding, and there are no appeals.<sup>55</sup> The 11 members of the Constitutional Court are elected by a two-thirds majority of Parliament,<sup>56</sup> cannot be members of a political party, and may not engage in political activities.<sup>57</sup>

The Supreme Court, Boards of Justice, Municipal Court of Budapest, county courts, and local and labor courts have the task of administering justice.<sup>58</sup> These courts are charged with protecting and upholding the constitutional order, the lawful interests of citizens, determining punishment for criminal offenses, and reviewing the legality of decisions of public administration.<sup>59</sup> Judges, appointed by the president of the republic, are independent and “answer only to the law.”<sup>60</sup> Judges may not be members of political parties or participate in political activities.<sup>61</sup>

The Supreme Court assures the uniformity of administration of justice by the courts, and its decisions regarding uniformity are binding on lower courts.<sup>62</sup> The president of the Supreme Court is elected by a two-thirds majority of Parliament upon the recommendation of the president of the republic.<sup>63</sup> Based on the recommendation of the president of the republic, the president of the republic appoints deputy presidents of the Supreme Court.<sup>64</sup>

Except for the Labor Courts operating in Budapest and at the county level, no other specialized courts function in Hungary.<sup>65</sup> County courts handle all criminal, civil, economic and

public administration matters.<sup>66</sup> Military courts were shut down in 1991. Since then, military councils of Parliament-appointed county courts hold hearings as necessary.<sup>67</sup> Judges may conduct their proceedings with lay jurors, but in Hungary, judges — not jurors — make judicial decisions.<sup>68</sup>

## **B. THE STRUCTURE OF TERRITORIAL DIVISIONS**

### *Regional and local governments*

The country is divided into 19 counties and the capital city of Budapest, which is divided into districts.<sup>69</sup> Further administrative divisions are cities (which may have the same rights as counties), towns, and villages.<sup>70</sup>

Local governments — the mayors and the district assemblies — are elected by direct, secret, universal, adult suffrage. (Non-Hungarian citizens can vote, too.)<sup>71</sup> The local governments can be constituted in whole or in part by national or ethnic minority governments.<sup>72</sup> The members of local representative bodies are elected for four-year terms,<sup>73</sup> and the Mayor is the president of this representative body.<sup>74</sup> The representative body — and, exceptionally, on the basis of the law or legal authorization, the Mayor — may perform duties of state administration and authority, such as levying and collecting local taxes, issuing decrees not in conflict with legal provisions of a higher level, and administering programs for the development of the local community.<sup>75</sup>

A local government is defined as a body of independent, democratic management of local affairs that exercises local public authority in the interests of the local population.<sup>76</sup> Local governments are legal entities and may pass laws,<sup>77</sup> although Parliament, in consultation with the Constitutional Court, can dissolve any local government acts contrary to the Constitution.<sup>78</sup> The chief tasks of local government include local development, housing management, water management, local public transportation, garbage collection, health care and social services, primary education, and enforcement of the rights of national and ethnic minorities.<sup>79</sup> Minorities have a constitutional right to form ethnic self-governments at the local and national level; their basic task is to defend and represent the interests of the minorities.<sup>80</sup> Individuals have the exclusive and inalienable right to decide and declare their minority status; no one can be forced to declare any such status,<sup>81</sup> and declaration of belonging to one minority does not exclude acknowledgement of double or multiple bonds.<sup>82</sup>

## **C. SOURCES OF LAW**

### *Domestic sources of law*

Hungary's Constitution states that it is the "supreme law of the Republic of Hungary."<sup>83</sup> Additional sources of law, specified in Act No. XI of 1987 on Law-Making, are acts of Parliament,

governmental decrees, decrees of the prime minister and ministers, and local self-government laws.<sup>84</sup> Following this legal hierarchy, no inferior rule may contradict a superior rule.<sup>85</sup>

Professional opinion varies as to what extent judges may take the intentions of the legislative body into consideration in cases of interpreting the text of the law. Judges are obliged to follow the Supreme Court's decisions on judicial principles.<sup>86</sup> The decisions of the Constitutional Court have played an important role in reshaping the legal and constitutional systems of Hungary. According to some views, Hungary is increasingly evolving a notion of *stare decisis*, or precedent in practice, although theoretically Hungary is a civil system of non-precedent-making law.

Hungary's Constitution enumerates certain fundamental human rights and duties, which are accorded constitutional protection and are a responsibility of the state to enforce.<sup>87</sup> These rights (along with the rest of the Constitution) are "equally binding for all social organizations, government bodies, and citizens of the country,"<sup>88</sup> and apply to all without discrimination based on "race, color, gender, language, religion, political or other opinion, national or social origins, financial situation, birth or any other grounds whatsoever."<sup>89</sup> The non-discrimination section also provides for punishment of those who discriminate.<sup>90</sup> There is also a specific constitutional provision that requires the Republic of Hungary to ensure equality between the sexes "in all civil, political, economic, social and cultural rights."<sup>91</sup> The Constitution provides for special protection and support of mothers, before and after birth, and the protection of women and youth in the workplace.<sup>92</sup> There are also provisions for equal pay for equal work, equality before the law, and freedom of belief, thought, religion and expression.<sup>93</sup> The Constitution guarantees the right to human dignity, life, assembly, association, education, and the highest attainable level of health.<sup>94</sup> Religious laws are not openly integrated into the Hungarian legal system, although, depending on the orientation of any given government, religion influences government policies in such areas as child care benefits, labor law regulations on pregnancy leave, and taxation based on the size of the family.<sup>95</sup>

### *International sources of law*

The Constitution states that Hungary "accepts the generally recognized principles of international law, and shall harmonize the country's domestic law with the obligations assumed under international law."<sup>96</sup> In 1980, Hungary ratified the Convention on the Elimination of All Forms of Discrimination Against Women.<sup>97</sup> It is also a party to the International Covenant on Civil and Political Rights,<sup>98</sup> the International Covenant on Economic, Social and Cultural Rights,<sup>99</sup> the

European Convention for the Protection of Human Rights and Fundamental Freedoms,<sup>100</sup> the International Convention on the Elimination of All Forms of Racial Discrimination,<sup>101</sup> the First Optional Protocol to the International Covenant on Civil and Political Rights,<sup>102</sup> and the Convention on the Rights of the Child.<sup>103</sup>

## II. Examining Health and Reproductive Rights

### A. HEALTH LAWS AND POLICIES

Some of the most thorough reforms during the transition to the market economy have been to the social security system, and within it, the provision of health care. These reforms have been subject to much controversy. The first changes were begun in the late 1980s and early 1990s and instituted the right to choose one's doctor. More recent plans — far from complete — include the privatization of primary health care<sup>104</sup> and legalization of a wide range of alternative medical practices that are currently criminalized.

The health care system is regulated by laws, ministerial orders, and standard-setting regulations (as in environmental regulations relating to health). These laws, orders and regulations cut across different legal fields: civil law,<sup>105</sup> labor law,<sup>106</sup> criminal law,<sup>107</sup> and administrative law.<sup>108</sup> The multiple sources and genres of law have added to the difficulties of reforming the health care system. Because of the numerous parallel acts, decrees, laws and bills, even the experts, including government officials working on the reforms, do not agree as to the content of any given reform, starting with the most basic issue of whether an entitlement to health care must be based on citizenship.

The principal goal of health care provision and policy has nevertheless been consistent over the past 10 years — an emphasis on primary health care and services to protect health and prevent diseases.<sup>109</sup> The differences among the various governmental policies lie principally in debates about how to finance the system, in questions of whether it is a public or private responsibility to provide health care, and in discussions about the role social security ought to play. The current government's health program stresses the importance of prevention, the necessity of privatization of family doctors' and pediatricians' practices, the role of non-profit organizations, and the special importance of local district nurses. These preferences are embodied in the proposed legislative and financial projects presently under discussion.<sup>110</sup>

The Hungarian Constitution guarantees the right of every person living in the territory of the Hungarian Republic to the

highest attainable level of physical and mental health.<sup>111</sup> It is the task of the state to organize the health care system and health institutions according to this right.<sup>112</sup> The basic law governing health care is Act CLIV of 1997 on Public Health Care (Public Health Care Act).<sup>113</sup> The objectives of the law are to improve the health of the individual and therefore of the whole population;<sup>114</sup> to contribute to the equal access to health services for all members of the society;<sup>115</sup> to create the conditions necessary for all patients to maintain their human dignity, identity and self-determination and all other personal rights;<sup>116</sup> to establish the general professional conditions and quality of health services irrespective of the legal status of the provider and the type of coverage for the service;<sup>117</sup> to define the rights and obligations of the providers of health services;<sup>118</sup> and to facilitate a harmonious balance of individual and community interests.<sup>119</sup> Basic principles guiding this law, such as equal opportunities<sup>120</sup> and patients' rights,<sup>121</sup> are mentioned, while prevention and health maintenance are to be the primary means for improving public health.<sup>122</sup> The Public Health Care Act gives unprecedented protection of patients' rights by promoting the principle of autonomy.

The Parliament, the National Health Improvement Council, the government, and the Welfare Minister further define the tasks in the Public Health Care Act, which other agencies and institutions implement.<sup>123</sup> The implementing bodies are state-owned clinics and hospitals, local municipalities, private practitioners, and health insurance agencies. Most primary care is provided by family doctors and specialized clinics operated by the municipalities. These local municipalities must provide general practitioner (GP) and pediatrician services, primary dental care services, mother and child health (MCH) nursing services, school health services, and facilities to provide specialist outpatient or inpatient services.<sup>124</sup> Specialist care is provided by either specialists' clinics operated by the local municipalities or by hospitals. There are both private clinics and private hospitals in Hungary operating with Ministry of Health approval.<sup>125</sup> Care in public hospitals is generally covered by health insurance, but the fees for private care are extremely high for the average patient.

#### *Infrastructure of health services*

The Public Health Care Act classifies health services by type and location. Preventive care services include, but are not limited to, immunizations,<sup>126</sup> diagnostic screenings to protect the family, women and youth,<sup>127</sup> preventive dental services,<sup>128</sup> pediatric and adolescent services,<sup>129</sup> general and locally justified screening examinations,<sup>130</sup> and prenatal and maternal health care.<sup>131</sup> Health care treatments may be carried out at the patient's home,<sup>132</sup> outpatient clinics,<sup>133</sup> hospitals,<sup>134</sup> or emer-

gency wards.<sup>135</sup> The Act also authorizes an ambulance service,<sup>136</sup> emergency medical services,<sup>137</sup> rehabilitation,<sup>138</sup> pharmacology,<sup>139</sup> psychotherapy and clinical psychology,<sup>140</sup> and alternative practices.<sup>141</sup>

The Public Health Care Act does not regulate or restrict the providers of these services, although as recently as 10 years ago, the state had a monopoly on service provision. Today, the state, public welfare authorities, and local municipalities provide health care, as do religious and civil organizations, foundations, private enterprises and individuals. All providers are subject to the same codes of professional regulation, and services provided by GPs, pediatricians, polyclinics operated by the local municipalities or by hospitals, dentists, hospitals, pharmacies, and the national ambulance services are covered by health insurance.<sup>142</sup>

In theory, every citizen is registered with a family doctor or pediatrician.<sup>143</sup> A GP has an average of 1,600 registered patients,<sup>144</sup> while a pediatrician has an average of 1,000 registered patients.<sup>145</sup> In 1998 Hungary had 36,000 physicians in active service, which translated into 358 doctors per hundred thousand inhabitants.<sup>146</sup> There were 5,210 GPs in 1998,<sup>147</sup> and it is projected that there will be 7,000 by the end of the year 2000.<sup>148</sup> In 1997 there were approximately 50,000 nurses practicing in Hungary, representing an increase of about 5,000 since the beginning of the decade. The number of midwives has been decreasing and stood at 2,290 in 1997.<sup>149</sup> According to official statistics, in 1997 there were 4,242 active “mother and child health nurses” (MCH nurses, *see below*), attending more than 1.3 million families.<sup>150</sup>

In addition to the Public Health Care Act, other laws dictate how the health system in Hungary operates: Act LXXX of 1997 on Eligibility for Services Provided by Social Security and on Private Pensions defines those who are entitled to social security services — and therefore to health care services beyond life-saving interventions.<sup>151</sup> Article 2 (1) of this law stipulates that participation in the social security system, proportionate to his or her income, is obligatory for all Hungarian citizens and (in accordance with other regulations) for foreign citizens residing in Hungary.<sup>152</sup> Registration at the social security authority is automatic upon birth.<sup>153</sup> Failure to pay social security fees may result in the loss of eligibility for certain free services. Act LXXXIII of 1997 on the Services Provided by the Mandatory Health Insurance lists the services that can be obtained free of charge by social security policyholders. These services include preventive and therapeutic treatment.<sup>154</sup> The implementing act further circumscribes these services, setting apart those that can be obtained without a referral from those that must be authorized by the person's family doctor.<sup>155</sup> Specialist outpatient services, as well as

hospital services, usually require a referral. If offered by the public polyclinic, services that generally do not need a referral include dermatology, gynecology, general and emergency surgery, ophthalmology, oncology, urology, and psychology.<sup>156</sup>

A special feature of the Hungarian health care system is the MCH nurses. All MCH nurses provide free general health care services with or without GP referral.<sup>157</sup> The tasks of MCH nurses are to “protect” women, to care for pregnant women, to care for women after delivery, and to care for children through grammar school.<sup>158</sup> Their work includes providing advice on family planning, but also in “preparing” women for motherhood, in helping parents and children develop harmonious relationships, and in providing all regular health services that do not need the intervention of a doctor, such as giving immunizations, measuring, and weighing infants. MCH nurses also educate women on the importance of breastfeeding, investigate circumstances that might endanger the healthy development of children, and inform students about health issues, family planning, and addictions. MCH nurses also receive applications for abortions and determine whether the applicant woman has to pay a fee for the service.<sup>159</sup> Given the range of tasks, MCH nurses often face difficulties in fulfilling all these demands.<sup>160</sup>

#### *Cost of health services*

The national budget for health care comes from a variety of Ministries, including the Ministry of Health, the Ministry of Environment Protection, and the Ministry of Youth and Sports. The Finance Ministry reported the following allocations for its 1999 amended plan: USD \$2,117.8 million for health, and USD \$7,233.3 million for social security and welfare services.<sup>161</sup> Those on sick, pregnancy and parental leave, with disabilities, on a pension, at universities, in the military or civil service, or close relatives of all these categories are entitled to free health services with no premium contribution.<sup>162</sup> Similarly all those whose income is less than 30% of the minimum wage, all minors permanently residing in Hungary, all incarcerated and institutionalized individuals, and those in verifiable social need are also legally entitled to free health services.<sup>163</sup> All others not otherwise insured must contribute 11% of the established minimum wage to the state insurance fund.<sup>164</sup>

The social security contribution to be paid by the employer for 1998 was 39% of each employee's wages, out of which 15% went towards health insurance. The law establishes a gradual reduction of the contribution rate, although preserves the same health insurance allocation.<sup>165</sup> Foreign residents in Hungary may enter into an agreement with the National Insurance Company for health services, for a flat fee of 18% of their income.<sup>166</sup>



Several laws regulate the cost of health services. The Implementation Act of the Health Insurance Act lists as free of charge for insured people these services: prevention and early diagnosis of disease; GP, dental, and specialist outpatient services; hospital inpatient services, obstetrics, medical rehabilitation, and patient transportation.<sup>167</sup> State health insurance also pays for patient follow-ups, health education,<sup>168</sup> therapeutic treatment and rehabilitation,<sup>169</sup> and referrals to specialists.<sup>170</sup> The state health insurance also covers in full or in part<sup>171</sup> the cost of certain medications, according to a list set by the Minister of Health. Contraceptives are not subsidized in any way. All medication is free of charge when provided during a hospitalization or in the case of an emergency.<sup>172</sup> Article 18 (6) of the Health Insurance Act also lists health care services that are not covered by the health care system.<sup>173</sup> These are considered either to have little therapeutic value (for instance, plastic surgery), or to have little proven medical effect.<sup>174</sup> The Ministry of Health also has established a price list for certain other services that are not purely related to medical treatment,<sup>175</sup> such as the medico-legal attestation of injury needed to proceed with a domestic violence complaint.<sup>176</sup>

#### ***Regulation of health care providers***

The Public Health Care Act authorizes the training of health care workers at primary, middle, and higher educational facilities as well as their continuing education.<sup>177</sup> It establishes an oversight body to supervise the quality of health education (the Health Education and Training Council) that consists of the representatives of a variety of educational institutions, the professional chambers or other representative bodies, and professional boards.<sup>178</sup>

A Welfare Ministry order regulates the different types of health-care providers and facilities in 17 appendices, and it sets forth the minimum qualifications<sup>179</sup> each one has to fulfill.<sup>180</sup> Separate ministerial orders cover home health care workers and MCH nurses. Physicians, dentists, and pharmacists are required to complete a university degree, while dieticians, nurses and MCH nurses must obtain a college degree.<sup>181</sup> (There are also some “untrained” nurses.) Physicians study 12 semesters and must pass a final state exam in general medical knowledge. In order to become a specialist, a physician must continue his or her training while working at a hospital for another one to six years, depending on the field and on their course load. Specialized training also terminates by a final state exam consisting of written, oral and practical parts.<sup>182</sup> All medical professionals must continue their education by enrolling in professional training courses at least once every five years.<sup>183</sup>

To practice in Hungary, pharmacists also must complete a university degree. At the end of 1998, there were 2,010

pharmacies staffed by as many pharmacists in Hungary,<sup>184</sup> but given a new system of state pharmaceutical subsidy effective November 1999, the Hungarian Chamber of Pharmacists predicts many pharmacies will close down. The new system does away with a prepayment system and instead will have the state only reimburse pharmacies for their actual drug sales.

Traditional healing practitioners, first officially recognized in the 1997 Public Health Care Act,<sup>185</sup> are strictly regulated in Hungary. A governmental order and a subsequent Welfare Ministry order limit what services they can provide. University or college graduate health care professionals with further training may practice traditional healing.<sup>186</sup> The ministerial order<sup>187</sup> defines the content of the training required to become a qualified traditional medicine practitioner. For instance, traditional Chinese and homeopathic medicine may only be practiced by physicians, while a service like kinesiology may be practiced by anyone who had successfully completed its course of training.<sup>188</sup> The quality of this education and its exams are supervised by the Institute for Health Care Studies,<sup>189</sup> while the activities of the traditional practitioners are regularly inspected by the Medical Officer's service.<sup>190</sup> The same regulatory scheme pertains to the production and sale of traditional medications.

All medical and health care providers must possess a license to practice.<sup>191</sup> Upon completing the required studies,<sup>192</sup> permission to practice is issued if the applicant is listed in a Ministry of Health registry.<sup>193</sup> The license to practice is valid for five years.<sup>194</sup> A health care provider can be removed from the register for a formal cause (such as failure to timely renew license) or for substantive ones, such as conviction of a criminal offense.<sup>195</sup> Ethics Committees, established by a Ministry of Health Order in February 1999,<sup>196</sup> determine if a complaint against a doctor should be forwarded to a court or to the relevant Chamber.<sup>197</sup>

#### ***Patients' rights***

The Criminal Code contains nine sections relating to patients' rights in the context of health services.<sup>198</sup> The first, Section 171 (Endangering within the Sphere of Occupation) is a general protective measure against any kind of health-endangering activity. Negligence in the performance of a professional leading to bodily harm is a misdemeanor, punishable by imprisonment of up to one year, mandatory public service, or a fine.<sup>199</sup> If the negligence causes a long-term disability, serious health injury, or mass catastrophe, the punishment is increased to imprisonment of up to three years. If such negligent behavior causes death, it is punishable by one to five years in prison, or if multiple deaths or a fatal mass catastrophe occurs, the punishment is two to eight years.<sup>200</sup> If such behavior is inten-

tional, the crime is a felony, and the punishments increase to three to ten years, depending on the degree of harm caused.<sup>201</sup>

A new subsection of the Criminal Code, effective July 1, 1998, entitled “Crimes Against the Order of Medical Interventions and Medical Research, and Against Self-determination Related to Health Issues,” concerns biomedical ethics. Criminal activity classified here includes human genome interference,<sup>202</sup> human gamete usage,<sup>203</sup> sex selection techniques,<sup>204</sup> human experiment research protocols,<sup>205</sup> embryo and gamete research protocols,<sup>206</sup> health self-determination,<sup>207</sup> and transplantation sale of human body parts and cadavers.<sup>208</sup> Violations of the legal rules and norms is punished with prison terms of up to five years. In some cases, the attempt to commit these prohibited acts is also punishable.<sup>209</sup> Aggravating circumstances include the actual “success” of the intervention,<sup>210</sup> committing the crime as a health care worker<sup>211</sup> or as part of a criminal gang.<sup>212</sup>

Issues of medical malpractice generally are treated by judges as breaches of contract giving rise to liability.<sup>213</sup> If an employee (doctor or other health care provider) in the course of his or her duties causes harm, the Civil Code places liability on the employer, that is, the hospital, unless otherwise provided by law. Malpractice occurs when a doctor’s actions fall below the generally acceptable manner concerning treatment,<sup>214</sup> methods of examination,<sup>215</sup> provision of information,<sup>216</sup> documentation,<sup>217</sup> secrecy,<sup>218</sup> and continuing professional education.<sup>219</sup> Stricter liability can attach if an activity is deemed “hazardous,”<sup>220</sup> although traditionally the activity of doctors would not fall into this category. Genetic technology and therapy are regarded as “hazardous operations,” under Section 345 of the Civil Code, art. 27 of Act XXVII of 1998 on the Regulation of Genetic Procedures<sup>221</sup> and Chapter IX of the Public Health Care Act. Since 1977, pecuniary and non-pecuniary damages may be recovered for medical malpractice. The Civil Code governs the amount of compensatory damages awarded.<sup>222</sup> Malpractice damage awards are usually modest.<sup>223</sup>

Chapter II of the Public Health Care Act regulates patients’ rights and obligations, which include the responsibility to take care of one’s own health, to refrain from endangering the health of others as well as to respect the right of other people to maintain and protect their health. There is an expectation that a person will come to the aid of others in case of an emergency.<sup>224</sup> Patients have an obligation to cooperate with health care professionals in so far as necessary for medical treatment and to respect the rules of the health care institution to which one is confined.<sup>225</sup> Patient rights include the right to health services,<sup>226</sup> to be treated with human dignity,<sup>227</sup> to keep in contact with their relatives,<sup>228</sup> to leave the health institution if not an endangerment to others,<sup>229</sup> to be informed,<sup>230</sup> to

self-determination,<sup>231</sup> to refuse to consent to interventions,<sup>232</sup> to review his or her own medical records,<sup>233</sup> and to medical secrecy.<sup>234</sup> The rights of patients with mental health conditions are balanced against their heightened needs.<sup>235</sup>

The Public Health Care Act directs that as of January 1, 2000, patient complaints must be investigated by a “Patient’s Rights Representative” and the Mediation Council.<sup>236</sup> Each hospital’s Ethics Committee is also charged by the law to safeguard patients’ rights, while its Supervisory Council is supposed to represent the general interests of the clients of a hospital.<sup>237</sup> The Ethics Committee is composed of specialists from each field (legal, medical, psychological, religious, etc.) to ensure a thorough examination of the case.<sup>238</sup> The Supervisory Council is comprised of representatives of civic organizations and of the hospital, and is always chaired by a civil representative.<sup>239</sup>

The Hungarian Constitution affirms all human beings have an innate right to life<sup>240</sup> and to the highest attainable level of physical and mental health.<sup>241</sup> The Civil Code states that all medical interventions carried out without consent — with the exception of life-saving operations or other such treatments — are violations of inherent rights.<sup>242</sup> The Public Health Care Act details the precise meaning and content of consent.<sup>243</sup> The Penal Code defines the circumstances under which not obtaining consent from a patient is excused: where there was trivial harm done to society<sup>244</sup> and where there was an extreme necessity or emergency.<sup>245</sup>

The Public Health Care Act also regulates the right to refuse to consent to medical interventions.<sup>246</sup> A government order further regulates those cases when a refusal to undergo the treatment will either lead to the death of or serious injury to the patient.<sup>247</sup> Patients also have the right to full information about all matters regarding their health, condition, suggested treatments, risks and consequences of both undergoing or refusing to undergo the treatment, alternative methods available, and the results of treatments already applied.<sup>248</sup> The right to full information is absolute even if obtaining prior consent is not a precondition for treatment.<sup>249</sup> The Ministry Order stipulates in art. 2 (1) that if a doctor wishes to involve a traditional healing practitioner in the treatment of a patient, he or she is obliged to obtain the prior consent of the patient.<sup>250</sup>

The Public Health Care Act also frames the obligations (and rights) of health care workers.<sup>251</sup> Generally, health care providers are obliged to treat their patients in accordance with the scientific knowledge that will lead to the best possible results.<sup>252</sup> They are obliged to investigate thoroughly all the circumstances, symptoms, complaints (current or previous) of the patient that may be related to the illness.<sup>253</sup> Doctors are required to provide assistance in all emergencies regardless of

time or place.<sup>254</sup> Health care service providers must inform patients of their right to complain about medical treatment,<sup>255</sup> and they are obliged to investigate complaints within ten days. Patients are also entitled to file complaints with supervising authorities, regardless of whether or not they filed complaints with the hospital.<sup>256</sup>

## **B. POPULATION POLICY**

Hungary's population has been steadily decreasing over the last 30 years. Between 1970 and 1990 the annual growth rate for Hungary was 0.0%, and it further decreased to -0.5% between 1990 and 1997.<sup>257</sup> The total population decreased from 10.71 million in 1980 to 10.16 million in 1997.<sup>258</sup> This decline is underscored by an increase in the crude death rate of 11 out of 1,000 people in 1970 to 15 out of 1,000 in 1997.<sup>259</sup> The crude birth rate decreased also — from 15 out of 1,000 people in 1970 to 10 in 1997.<sup>260</sup> The fertility rate decreased as well, from 1.9 in 1980 to 1.4 in 1997.<sup>261</sup> The average life expectancy at birth has remained steady for the last 30 years — 66 years for men and 74 for women.<sup>262</sup> According to a recent preliminary report from the Central Statistics Office, the 1999 birth numbers were the lowest in recorded history — 95,000 infants. The average number of infants born to women aged 15–35 years decreased from 1.8 to 1.3 in the last decade, while the number of deaths increased to 143,000 in 1999 from 141,000 in 1998.<sup>263</sup>

Given this demographic picture, it is surprising that the Hungarian government does not have an explicit population policy. Rather, the government approaches population through a discourse of family protection — working under the assumption that “Hungarian families have one less child than they would actually like to have,”<sup>264</sup> and would have that child if they had better support. As a result, all Hungarian families receive some preferential treatment, but families with three or more children receive certain material benefits.<sup>265</sup> A new family policy proposed by the Ministry of Social and Family Affairs<sup>266</sup> would extend support to families of married couples (called a “whole” family), give special support to families consisting of one parent and child(ren) (called “broken” families), support common-law partners with children in order to protect the children's interest, and support married couples without children by enhancing their chances and desire to raise children. Since the birth rate in Hungary is predominately influenced by the economy, which remains depressed,<sup>267</sup> current declines are not likely to change as a result of the support offered by state authorities.

The policy of Hungary runs toward encouraging couples — preferably properly married ones — to raise more children. One of the means by which Hungary is implementing its policy is by protecting women of childbearing age,<sup>268</sup> protecting

pregnant women, and supporting them after giving birth through family and support services. This pronatalist policy has resulted in a body of regulations that act as a national “family planning” program. The Ministry Order that regulates the MCH nurses,<sup>269</sup> for example, entrusts them with providing family planning advice to women and students. The National Basic Educational Program also contains a sex education and family planning curriculum to be completed by the tenth grade.<sup>270</sup>

## **C. FAMILY PLANNING**

### *Government delivery of family planning services*

Principally, Hungarian health policy towards women focuses on maternity care.<sup>271</sup> The Constitution declares that the Republic of Hungary protects the institution of marriage and family,<sup>272</sup> and that mothers receive special support and protection before and after the births of their children.<sup>273</sup> The Public Health Care Act defines “Care for the Protection of Family and Women”<sup>274</sup> as supporting families by creating the best physical and mental circumstances for childbirth, providing information on methods of family planning — including the “dangers” of abortion — and protecting the health of women by taking into account their specific biological needs throughout their reproductive life cycles, including the constant monitoring of the health of a pregnant woman and her fetus.<sup>275</sup> To ensure that pregnant women participate in this monitoring, one financial benefit (a one-time payment after delivery called “motherhood support”) is paid only if the mother had participated in this pre-natal care at least four times prior to giving birth (or in case of premature delivery, at least once).<sup>276</sup>

The government provides an array of services for women in labor, including allowing her to choose a person to be with her during labor and to be able to “room in” with her newborn baby (health permitting).<sup>277</sup> Many hospitals, however, lack the necessary facilities to provide these services. Most hospitals cannot provide a private room for the mother and her newborn and do not permit the infants in common rooms shared by several new mothers.<sup>278</sup>

All maternal care services are free for the insured. There is no coverage for contraception, and specific rules apply to abortion and sterilization. It is relatively common, however, for women to pay additional sums to their obstetricians upon giving birth.<sup>279</sup> Gynecologists also offer their services at their private offices and clinics and these visits are not free.

### *Services provided by NGOs/private sector*

There are some non-profit organizations that offer either information or services for contraception and parenting, although they are not widely used or known. Hotlines exist for teenagers and women to obtain information. One, for instance,

offers health consultations for new mothers, another answers questions related to contraception, and another provides specialized information about substances that can affect fetal health.<sup>280</sup> Some local NGOs offer personal medical and psychological consultations, and two NGOs will help find foster parents for unwanted infants.<sup>281</sup>

### **Conclusions**

Family planning and maternal care services are offered by a variety of sources, ranging from state-regulated institutions and private clinics to non-profit organizations. The services are widely accessible and, since participation in them is a condition to receive government financial support, women use them for their basic pre- and post-natal care. With regard to contraception, the lack of insurance coverage and information is a serious shortcoming.

## **D. CONTRACEPTION**

### ***Prevalence of contraceptives***

There are no official statistics relating the prevalence of contraceptive use by type. The International Planned Parenthood Federation has estimated that 73% of Hungarian women aged 15–49 use contraception (all methods), out of which 68% use modern methods.<sup>282</sup> Basically, all types of contraceptives are available in Hungary. Oral contraceptives, available in clinics and pharmacies, are the most widespread method used in the country. From unofficial sources, 556,000 women use contraceptive pills (compared to 521,000 Austrians, a country of similar size to Hungary).<sup>283</sup> There are no reliable numbers about the use of other contraceptive methods, such as condoms or intrauterine devices (IUDs).<sup>284</sup> An increase in IUD use has been observed, because women are often afraid of complications from oral contraceptives. IUD insertion is only performed in hospitals. An increased use of condoms is noted as well, due in part to recent public education programs about sexually transmissible infections (STIs) and HIV/AIDS.<sup>285</sup>

In 1999, emergency care for the prevention of unwanted pregnancies has been introduced in 20 Hungarian hospitals (three in Budapest) which provide free “morning after” pills. Underwritten by the pharmacological firm that produces the pills, the service will likely be interrupted or terminated<sup>286</sup> once the hospitals use up their stock. Some hospitals offer specialized gynecological services for adolescents.<sup>287</sup>

### ***Legal status of contraceptives and regulation of medical technology***

Hormonal contraceptives are only sold in pharmacies upon prescription and their prices vary from USD \$0.74 to USD \$4.40. IUDs cost up to USD \$136. Two contraceptive pills (Anteovin and Rigevidon) may be prescribed free of charge

and reimbursed by insurance if there is a serious social or medical justification,<sup>288</sup> but this option is seldom exercised.<sup>289</sup> Condoms are sold in a variety of shops and pharmacies; prices vary from USD \$0.60 to \$0.80 for a package of three.

Until the mid-1960s, contraceptives were not available in Hungary. In the early 1950s through the late 1960s, the only form of birth control available was abortion,<sup>290</sup> permitted for medical, health and social reasons, after a hearing before a committee. By the 1970s, some forms of contraception became available with a prescription from an OB/GYN specialist. However, they were heavily restricted. For example, IUDs could only be prescribed by an OB/GYN practicing at a hospital or clinic in the area where the patient resided (and thus was registered) and after the woman signed a form attesting that she had been notified of all potential side effects.<sup>291</sup> If there was no OB/GYN practicing at the clinic where the woman was registered, she could not obtain an IUD. Now, with the free choice of doctors, the only restriction on medications and medical devices is registration, and women can freely choose contraceptives.<sup>292</sup>

Any medication or medical device — including contraceptives — may only be distributed or sold if the sale is authorized by the relevant authorities. To be legal, medications must be registered in the Hungarian Registry of Medicines. Act XXV of 1998 [Pharmaceutical Act] sets forth the basic regulations about the production, importation and distribution of medication for human consumption, and all pharmaceutical production activities require the prior authorization of the Ministry of Health.<sup>293</sup> The National Pharmaceutical Institution (NPI)<sup>294</sup> supervises the production of drugs, registers them, and issues licenses for their sale.<sup>295</sup> The Hungarian Registry of Medicines, kept and updated by the NPI, contains the general rules and regulations of production, standards, supervision and classification of medication.<sup>296</sup> All drugs must either be listed in the Registry, or must otherwise conform to the regulations of the NPI in order to be consumed by humans.<sup>297</sup> Both the Pharmaceutical Act and the ministerial implementation orders incorporate international standards, especially the EU’s relevant Council and Committee Directives, as part of Hungary’s legal harmonization obligations related to future EU membership.

### ***Regulation of information on contraception***

There are no special laws regulating the dissemination of information about contraception in Hungary. Act LVIII of 1997 on the Rules of Advertising and Welfare Ministry Order No. 24/1997 (VIII. 14) on the Advertisement of Medicines and Medicinal Products regulate the advertising of all medication.<sup>298</sup> Prescription drugs may only be advertised in

specialized publications and other media targeted to physicians and pharmacists.<sup>299</sup> Non-prescription drugs may be advertised in the general mass media, provided the most important side effects are mentioned in the advertisement;<sup>300</sup> a disclaimer directing readers to “consult with a doctor or pharmacist regarding the use and potential side effects of this drug” must accompany the advertisement.<sup>301</sup> There have been, in fact, no advertisements for contraceptives in the mass media except for a recent billboard campaign to promote condoms as effective in the prevention of STIs and HIV.

## E. ABORTION

Abortion rates were relatively stable until around 1991 but have since decreased by 15%.<sup>302</sup> An average of 76,000 abortions per year were officially recorded in Hungary up until 1996.<sup>303</sup> In 1998 only 68,900 abortions were recorded.<sup>304</sup> Eighty out of every 100 pregnancies end in abortion.<sup>305</sup> Half of all abortions in Hungary are requested by married women.<sup>306</sup>

Legal abortion is defined as the deliberate termination of pregnancy in accordance with the law, the rules of which are set forth in detail in Act LXXIX of 1992 on the Protection of Fetal Life [Abortion Law]<sup>307</sup> and in Welfare Ministry Order No. 32/1992 (XII. 23) on the Implementation of Act LXXIX of 1992 [Implementing Order].<sup>308</sup> Illegal abortion is the deliberate termination of pregnancy in contradiction of the law, regulated in Article 169 of the Penal Code. According to a recent ruling of the Constitutional Court,<sup>309</sup> Hungary’s Abortion Law will again be modified by the Parliament.

Before 1992 abortion was administratively regulated,<sup>310</sup> and was permitted for a range of medical and social indications, upon a sufficient showing to a committee.<sup>311</sup> Over time the procedure became more formal. After 1989 and the establishment of the Constitutional Court, abortion rights became the center of a conservative political challenge. A case based on a fetus’ “right to life” was filed in the Constitutional Court seeking to overturn women’s access to abortion. The Constitutional Court rendered a decision in 1991 and sidestepped the “life” argument, concluding the Constitution itself did not say whether a fetus was a person entitled to a “right.” It was an issue for the Parliament to decide, the Court argued, adding that if Parliament were to decide that a fetus is not a person, then rules for the termination of pregnancies could be enacted.<sup>312</sup> The Court did affirm that, according to the Hungarian legal tradition, a fetus is not considered a legal subject.<sup>313</sup>

The Court also contrasted a woman’s right to self-determination with a fetus’ “right to life” and the state’s obligation to provide protection to the fetus. The Court stressed that an absolute ban on abortion would not be constitutional, as it would disregard a woman’s right to self-determination. On the other hand,

it warned that an unrestrained freedom to terminate pregnancies would be unconstitutional as well, since that would not comply with the state’s obligation to protect the fetus.<sup>314</sup>

As a result of this decision, Parliament enacted the 1992 Abortion Law and its implementing order. This scheme was even more liberal than the law it replaced. It did not list all the acceptable “social” reasons for obtaining an abortion, but instead permitted a woman to obtain an abortion if she declared in a written statement filed with the Service for the Protection of Families (SPF) that she was in a “situation of crisis” as a result of the pregnancy.<sup>315</sup> A “situation of crisis” under the law meant “the presence of factors liable to cause profound physical or moral disarray or to create unacceptable social circumstances that would endanger the healthy development of the fetus.”<sup>316</sup> This provision ensured women their unhampered right to terminate a pregnancy. Soon after the 1992 law was adopted, many challenges were filed.<sup>317</sup> In 1998, the Constitutional Court finally heard one of the challenges and ruled that the Abortion Law did not adequately protect the fetus. The Court did not proclaim a fetus’ right to life,<sup>318</sup> but held that a fetus is entitled to some constitutional protection under art. 54(1) (the right to life) of the Constitution.<sup>319</sup>

Although it deemed both the Act and the Ministry Implementation Order unconstitutional, the Court did not strike down the concept of a “crisis situation” as an indication for abortion. Instead, the Court gave Parliament guidelines to refine its legislation, and reform legislation should be enacted before the end of June 2000.<sup>320</sup> At the time this chapter went to publication, Parliament was still considering the reform.

### *Legal status of abortion*

According to the 1992 Abortion Law, a pregnancy may be terminated up to the 12th week<sup>321</sup> if the health of the mother is at serious risk, the fetus has a serious impairment,<sup>322</sup> the pregnancy is a result of a crime, or the woman is in a situation of crisis. The pregnancy may be terminated until the 18th week if any of the above conditions apply and the woman has no or limited legal capacity, or if she did not learn of the pregnancy for reasons beyond her control (such as an illness, medical error, or failure of an authority).<sup>323</sup> If the likelihood of genetic or congenital defect of the fetus is greater than 50%, a pregnancy may be terminated up to the 24th week.<sup>324</sup> A pregnancy may be terminated any time if the life of the mother is in danger, or if the infant would not be able to survive after birth.<sup>325</sup> If the doctor finds that there are impediments to performing the procedure (the prescribed time had passed, there are medical contraindications, or the doctor refuses to perform the abortion), the woman has the right to a second opinion.<sup>326</sup> Foreign citizens living in Hungary may also obtain an abortion.<sup>327</sup>

### ***Requirements for obtaining legal abortion***

Abortions may only be performed by OB/GYN specialists in approved medical facilities.<sup>328</sup> In order to obtain an abortion, a woman must first fill out a written application — except for medical indications<sup>329</sup> — in person at the SPF.<sup>330</sup> For a woman with diminished legal capacity, her legal representative must make a “declaration of cognizance” as her legal representative.<sup>331</sup> A MCH nurse — preferably in the presence of the would-be father — must inform the woman of the legal regulations regarding abortions, social and financial government support provided for parents, the possibilities of adoption, the medical risks of abortion, institutions where the procedure is carried out, and preferable methods of contraception. The MCH nurse then fills out the application form which has to be signed by the applicant (and if possible, signed by the man) and the woman selects the hospital of her choice.<sup>332</sup> There is a waiting period of three days from the date of application was first signed before the procedure may take place.<sup>333</sup> The woman has eight days in total to appear at the hospital. If she fails to keep her appointment, the hospital notifies the MCH nurse.<sup>334</sup> Medical reasons for abortion require the joint opinion of two specialists.<sup>335</sup> If an abortion is sought because the pregnancy resulted from a crime, there must be documentation from the authority investigating the case.<sup>336</sup>

### ***Policies regarding abortions***

Official policies regarding abortions are reflected in the legal regulations, and in the commentaries and rulings of the Constitutional Court. Hungary’s overall goal is to reduce the total number of abortions as much as possible. The Constitutional Court did express its view that prohibition and criminalization of abortion would not be as effective as providing correct information and education on methods of contraception.<sup>337</sup>

### ***Government funding/subsidizing of abortion services***

Abortion is covered by the Health Insurance Fund if it is carried out for medical reasons and the applicant is insured,<sup>338</sup> if the applicant is a minor living in a state institution, or if she receives state financial support on a regular basis.<sup>339</sup> In all other cases women pay a fee, which can be as much as USD \$40, and which is determined by the MCH nurse according to the economic situation of the applicant.<sup>340</sup>

### ***Penalties for abortion***

The Penal Code makes the illegal performance of abortion a felony, punishable by imprisonment of up to three years.<sup>341</sup> The punishment is from one to five years in prison if the abortion is committed without the consent of the woman, or causes grievous bodily harm or danger to her life.<sup>342</sup> If it causes death, the punishment is two years to eight years of imprisonment.<sup>343</sup> Abortion without the consent of the woman is

classified as an aggravated assault and battery.<sup>344</sup> However, obtaining the consent of a woman for an abortion that is otherwise illegal does not make the intervention legal.<sup>345</sup> A woman who self-aborts or induces someone not qualified to abort her fetus for her, commits a misdemeanor and can be punished with a prison term of up to one year, community service, or a fine.<sup>346</sup>

### ***Regulation on abortion information/restriction on advertisement***

Article 15 of Act LXXIX of 1992 makes it illegal to advertise or otherwise popularize abortion, the institutions which provide abortion services, or the instruments and substances to perform an abortion.<sup>347</sup>

Officially, there are no religious restrictions on abortion. The Constitutional Court stated that as long as doctors could conscientiously object to carrying out the procedure, the legal regulation permitting abortion is not in contradiction with religious convictions.<sup>348</sup>

## **F. STERILIZATION**

### ***Legal status of sterilization***

Article 187 of the Public Health Care Act,<sup>349</sup> and Welfare Ministry Order No. 25/1998 (VI. 17) permit sterilization<sup>350</sup> for family planning purposes or for health reasons, on the recommendation of a doctor. A written application for sterilization has to be submitted to the health institution,<sup>351</sup> but it may be revoked orally any time before the operation is actually carried out.<sup>352</sup> Sterilization as a method of family planning is available only to those 35 or over, or who have at least three children. If the applicant has reduced or no legal capacity, a representative acts on his or her behalf, and the application must be approved by the State Guardianship Authority. Sterilization for family planning purposes can only be performed on Hungarian citizens permanently living in Hungary.<sup>353</sup> Illegal sterilization is punishable according to the same regulations of the Penal Code for unauthorized medical interventions<sup>354</sup> — up to five years of imprisonment. The punishment for endangering the health of another is up to one year of imprisonment, community service or a fine.

### ***Requirements for obtaining sterilization***

Normally there is at least a three-month waiting period between the application for sterilization and the operation. An exception to this rule is made if the woman is undergoing a caesarian section or other operation, and becoming pregnant again would directly endanger the health or the life of the woman, or if there is no likelihood that a healthy child could be born.<sup>355</sup> A doctor is obliged to inform the client (and the spouse or partner) about alternative contraceptive methods, the nature of the operation, risks and consequences.<sup>356</sup> Sterilization

is covered by the health insurance for the insured in cases when the operation is necessary for health reasons. Sterilizations performed for family planning reasons are not covered by insurance.<sup>357</sup> Currently the fee is approximately USD \$80.<sup>358</sup>

### **Conclusions**

Sterilization as a method of family planning is very unpopular. No research has ever been done regarding sterilization of people with disabilities or other vulnerabilities. Informal reports are that sterilization is habitually performed on women delivering their third child by a caesarian section.<sup>359</sup>

## **G. HIV/AIDS AND SEXUALLY TRANSMISSIBLE INFECTIONS (STIs)**

### ***Prevalence of HIV/AIDS and STIs***

Unlike other countries of the region, Hungary's HIV/AIDS infection rate seems to be stable — ranging between 31 and 46 new cases a year from 1992 to 1998.<sup>360</sup> The total number of AIDS cases in Hungary as of June 1999 was 328.<sup>361</sup> As of 1998 there were 763 cases of HIV-infected individuals in Hungary — 566 of them men, 70 women and 127 registered anonymously.<sup>362</sup> Between 1995 and 1998, 210 people died of AIDS in Hungary.<sup>363</sup> These data, however, may be a product of the nature of registration regulations which until recently made registration obligatory, but not anonymous. New regulations which permit anonymous registration went into effect, but there is still much confusion (*see below*).<sup>364</sup>

About 6,500 people visited venereal wards in 1998.<sup>365</sup> In 1997 there were 1,907 new patients with venereal diseases, the majority diagnosed with gonorrhea (1,604).<sup>366</sup> The number of serological screenings for syphilis that year was 48,000, and the number of registered patients with syphilis was 510. In 1997, 172 cases of syphilis and 11,569 of gonorrhea were registered.<sup>367</sup>

### ***Laws affecting HIV/AIDS***

The Penal Code does not contain any specific reference to crimes related to HIV/AIDS. Theoretically, article 170 on battery could be used in cases where someone intentionally transfers the infection, while article 171 on endangering within the sphere of occupation can be used if the infection is negligently transferred in a medical setting. The Public Health Care Act requires the reporting of infectious diseases, mandatory examinations, and quarantine and general supervision of infected persons.<sup>368</sup> It instructs the Ministry to specify a list of infectious diseases which entail mandatory screening.<sup>369</sup> The Public Health Care Act provision regarding a patient's rights to secrecy and confidentiality<sup>370</sup> is an important safeguard, although not an absolute protection against state intrusions.

Two Ministry Orders further regulate procedures in cases of HIV/AIDS infection. Welfare Ministry Order No. 18/1998

(VI. 3) establishes the general protocol in cases of infectious diseases, with specific reference to STIs.<sup>371</sup> This order requires all potentially infected persons to undergo an examination.<sup>372</sup> An infected person is then obliged to name those who may have infected her or him, as well as those who may have been infected by her or him.<sup>373</sup> Any treating institution is obliged to report anonymously the infection to the relevant authorities.<sup>374</sup> Foreigners wishing to reside in or immigrate to Hungary are obliged to undergo examination for several infectious diseases, HIV included.<sup>375</sup> HIV screening is obligatory for all blood donations, organ transplantation, and in sperm used in artificial insemination.<sup>376</sup> HIV-positive persons with open wounds or bleeding have to be segregated within the hospital.<sup>377</sup> A health care worker infected with HIV or chronic Hepatitis B or C may not work in a position where invasive interventions are carried out.<sup>378</sup>

Social and Health Ministry Order No. 5/1988 (V.31) lists those who must undergo AIDS screening:<sup>379</sup> persons infected, or suspected to be infected with any venereal disease; sexual partners of infected persons, or people near the infected person who may have become infected; incarcerated persons; prostitutes against whom any criminal procedure is pending; incarcerated juveniles; and intravenous drug users.<sup>380</sup> The first examination is anonymous. If the tested person is found to be HIV-positive, he or she has to undergo a second testing for the verification of the infection; it is at this point that he or she is obliged to provide his or her personal identification data. If he or she refuses to do so, the verifying test will not be carried out.<sup>381</sup>

### ***Laws affecting STIs***

The same regulations apply in cases of STIs. Some minor types of STIs do not require obligatory reporting.

### ***Policies on prevention and treatment of HIV/AIDS and STIs***

The Minister of Welfare established the National AIDS Committee in 1994<sup>382</sup> to coordinate efforts against AIDS, to work out general guidelines, to prepare and evaluate actions, and to fund different programs. The members of the Committee are appointed by the Minister.<sup>383</sup> Throughout the years of its existence, the Committee has funded some programs, partially run by civic organizations, and partially by state institutions.<sup>384</sup> The effectiveness of the programs, particularly the public education campaigns, has not yet been objectively measured.<sup>385</sup>

### **Conclusions**

According to the statistical data, HIV/AIDS is not an "epidemic" in Hungary, but the statistics should be treated with caution — particularly those concerning women. Prostitution and trafficking in women are growing problems in Hungary,<sup>386</sup> and it is unlikely that women involved in prostitution

who are infected with HIV/AIDS are accounted for in the statistics. Hungary lacks a coherent policy for prevention and treatment. Anonymous screening is attainable only for an extremely well-informed individual who knows that he or she can refuse to disclose her or his personal data. Generally, people believe testing is not anonymous and therefore avoid being screened. Laws prohibiting discrimination do exist, but public awareness of HIV transmission is low; many myths circulate and create an intolerant climate.<sup>387</sup>

### III. Understanding the Exercise of Reproductive Rights: Women's Legal Status

#### A. CIVIL RIGHTS WITHIN MARRIAGE

##### *Marriage laws*

Ever since the legal authorization of marriage was transferred from the church to the state in the 19th century, marriage has been regulated by statute. Act IV of 1952 on Marriage, Family and Guardianship [Family Code] and all other related legal orders and policies consider the monogamous, heterosexual, nuclear family as the basic unit of society. The Family Code has been amended several times to reduce the laws which "assured the authority of husband over wife."<sup>388</sup>

One important amendment is the introduction of equal rights between the father and the mother in relation to their children.<sup>389</sup> Another amendment validated "common-law marriage" (domestic partnership) in 1977 and granted a certain degree of economic and inheritance rights to the partners. In 1996, the definition of domestic partnership, which was presumed to apply to a heterosexual couple, was changed to gender-neutral language to include gay and lesbian couples<sup>390</sup> (on the basis of the expert opinion of the General Ombudswoman and pursuant to a decision of the Constitutional Court).<sup>391</sup> The Civil Code now defines the subjects of a "common law marriage" as "two unmarried persons living together in an emotional and financial community in the same household."<sup>392</sup> Laws and regulations relating to parenting in any way, however, define common law marriage as a partnership between a woman and a man. Besides the Family Code, certain provisions of Act XXXI of 1997 on the Protection of Children and on Child Protection Administration, and Act IV of 1959 on the Civil Code regulate marriage.

A marriage is valid if it is registered by the marriage registrar. The registrar may only register a marriage if both parties as well as two witnesses are present, the parties express their

will to marry each other, and they declare that according to the best of their knowledge there is no legal obstacle to their marriage.<sup>393</sup> Age of first marriage for men and women is generally 18, but it is possible to get married at 16 with permission from the Child Protection Authority.<sup>394</sup> The marriage is terminated only by the death of one of the spouses, or by divorce proceedings in court, except where there is reason for annulling the marriage (i.e., bigamy).<sup>395</sup>

The general clause on equal rights of partners was added to the Family Code in 1990.<sup>396</sup> However, equality between the parties within marriage is better reflected in specific provisions relating to access to income and property during and upon the termination of the marriage, general rights and obligations of the spouses towards each other, and matters relating to children. There is also a general clause of obligation to act in good will, honesty, and mutual cooperation which extends to all people, but is most often observed in the breach during domestic disputes.<sup>397</sup>

The Family Code stresses that "the rights and obligations of the spouses are equal; in matters related to their married life, they have to make decisions jointly."<sup>398</sup> Spouses have the right to make decisions independently on questions related to themselves, even though they are directed to keep the family's interest in mind.<sup>399</sup> The spouses are obliged to be faithful to, and to support, each other.<sup>400</sup> The wife has the right to use her husband's name or to keep her own.<sup>401</sup>

The first article of the Family Code was amended in 1991 in order to incorporate into its law the provisions of the 1989 Convention on the Rights of Children.<sup>402</sup> It now states that the provisions of the Code shall at all times be applied in accordance with the rights of children and in consideration of their best interests.<sup>403</sup> A child can bear the family name of either of the parents, as decided by the parents; however, children of married couples should have the same family name. In case of children born to single women, the child has a right only to the mother's name, unless the mother has taken the child's father's last name.<sup>404</sup>

##### *Divorce and custody laws*

By law, marriages end only by the death of one of the spouses or by divorce authorized by the court.<sup>405</sup> A divorce may be requested by either or both parties, and the decree of divorce will be pronounced by the court if it determines that the marriage is entirely and irreparably damaged. The procedural rules are set forth in the law on civil procedure.<sup>406</sup> The proceedings need not be adversarial; the court may consider the marriage to be irreparably damaged if both parties consent and have settled all questions of property division and child custody.<sup>407</sup> Also, if the parties prove to the court that they have been



living separately for three years, and they have agreed on child custody and support matters, a divorce is granted.<sup>408</sup> Divorce proceedings take a minimum of two court hearings, except where the parties have lived apart for more than three years, in which case the court will have only one hearing. In principle, Hungarian law does not require an allegation or examination of fault. However, in cases where there is no understanding between the parties regarding property or child custody, the court will consider the behavior of the parties during the marriage.<sup>409</sup> According to the principles established by an important Supreme Court directive, neither spouse is entitled to any privilege regarding child custody.

Because it is the government's policy that marriages should be saved if possible, courts are required to "call the divorcing couple's attention to the detrimental effect of the disintegration of the family in order to enhance the parents' feeling of responsibility towards the child(ren)," and the court is required to attempt the reconciliation of the parties "any time there is hope for its success."<sup>410</sup> Questions such as fidelity, moral characteristics, financial circumstances, housing, ability and devotion to raising the child(ren) are to be investigated by the court. Questions such as spousal or child abuse or sexual abuse are noticeably absent from the Supreme Court's directive.

#### ***Maintenance/child support***

A spouse living separately is entitled to maintenance if he or she, through no fault of her or his own, is unable to earn any income. In practice, spousal maintenance is rarely awarded. As a general rule, child support is considered, by law, to be given in kind by the custodial parent, and in money by the non-custodial parent.<sup>411</sup> Child support after divorce generally ranges from 15–25% of the income of the party obliged to pay, but total support and maintenance payments may not exceed 50% of his or her income.<sup>412</sup> There is no official data as to the number of divorced spouses who do not pay child maintenance, but it is widely known that child maintenance is frequently unpaid. One of the techniques used by parties to avoid paying child maintenance is to register as earning only the minimum wage, or to drop out of work altogether, and therefore become exempt from paying.<sup>413</sup>

The goods and assets acquired during marriage are considered joint property of the couple regardless of whether the parties acquired them together or on their own.<sup>414</sup> All joint property is to be managed by mutual consent during marriage.<sup>415</sup> Upon divorce, the parties may come to their own agreement as to the distribution of joint property, or the court may have to decide. The guideline for court disposition of property is that its distribution shall not inequitably advantage either of the parties.<sup>416</sup> Property rights in the family are rather

poorly elaborated by the Family Code, so judge-made law plays an important role in this field.<sup>417</sup> The Family Code does not contain any specific reference as to whether work done in the household constitutes a contribution to a couple's joint property. One section in the Civil Code, however, explicitly deals with this question in cases of "common law marriage"<sup>418</sup>: "Work done in the household is considered to be a contribution to the acquisition of joint property."<sup>419</sup> As for child rearing, Act LXXXIV of 1998 on the Support of Families stipulates five different forms of support mothers (or, in some cases, fathers, or foster parents) are entitled to, depending on the ages and number of children. Two of these are functions of the income of the family, and one refers to "full-time parenting," which can be applied for only if the applicant mother has at least three children, the youngest of whom is under eight years old.<sup>420</sup>

#### ***Use of the apartment after divorce***

Due to an enormous shortage of affordable housing, obtaining an apartment after divorce is a problem for many couples. It is common for a divorced couple to live together in the same apartment after divorce. An entire chapter in the Family Code deals with regulations governing the use of the apartment,<sup>421</sup> and in cases where the parties cannot agree on the disposition of the apartment the Court decides, guided primarily by what it considers to be in the best interest of the child(ren).<sup>422</sup> The party leaving the apartment is entitled to compensation in proportion to the value of the loss.<sup>423</sup>

#### ***Child custody***

Because of housing and other financial difficulties, custody disputes are often a proxy for possession of the marital apartment, and the Supreme Court has issued a directive to courts to not automatically assume that the mother has provided all the child care and homemaking in awarding custody, and therefore, the marital apartment.<sup>424</sup> While this non-discrimination directive is laudable, it actually threatens women's housing rights, especially when in fact it is often the mother who has taken care of the household and raised the children.

Custody is awarded according to the best interests of the minor child, while taking into account the child's opinion whenever possible.<sup>425</sup> Parents may jointly take care of their child(ren) after divorce.<sup>426</sup> Whether by mutual consent or court decision, when one parent is granted physical custody of the children,<sup>427</sup> both parents are required to cooperate in important decisions regarding their children. Such issues concern "the name, or the changing of the name of the child, the residence, education and/or the path of life of the child."<sup>428</sup> Custody of children over the age of 14 may occur only according to their preference, unless such placement would endanger the child's development.<sup>429</sup> The court may restrict or withdraw

the custody rights from a parent if such restriction is in the best interest of the child.<sup>430</sup> The Code of Civil Procedure also allows the court in a divorce proceeding to pass a temporary order *ex officio*, if necessary, on the placement and maintenance of a minor, extension or limitation of parental right of supervision, communication between a parent and a child, or maintenance of a spouse in need.<sup>431</sup> This allows a court to restrict custody or visitation rights if necessary. According to the experience of women's organizations, however, the court is very reluctant to use this power; the general tendency is to permit the child contact with both parents.<sup>432</sup>

## **B. ECONOMIC AND SOCIAL RIGHTS**

### ***Property rights***

There is no discrimination based on gender in the laws dealing with inheritance.<sup>433</sup> A married spouse is not legally entitled to inheritance if, at the time of the death of the other party, he and she did not live together and it is clear from the circumstances that the spouses did not consider re-instituting their married life,<sup>434</sup> except when clearly stated in the deceased spouse's will.<sup>435</sup> Neither the regulations concerning intestate succession,<sup>436</sup> nor the articles dealing with "common law marriage,"<sup>437</sup> mention "common law" partners as entitled to inheritance by intestate succession.

### ***Labor rights***

The general constitutional provision on non-discrimination<sup>438</sup> applies to labor rights, and the Labor Code states that "in connection with an employment relationship, no discrimination shall be practiced against employees on the basis of gender, age, race, national origin, religion, political views or membership in employee interest representation organizations or activities connected therewith, as well as any other circumstances not related to employment. Any differentiation clearly and directly required by the character or nature of the work shall not be construed as discrimination."<sup>439</sup> In cases of alleged discrimination, the employer has to prove that it did not violate the non-discrimination provision of the Labor Code.<sup>440</sup>

The Labor Code forbids employers to terminate an employment relationship by regular dismissal during pregnancy, for three months after giving birth, during maternity leave, and during a leave of absence without pay for the purpose of taking care of children.<sup>441</sup> Maternity leave is 24 weeks, to begin four weeks prior to the expected date of birth.<sup>442</sup> Under the Labor Code, during the first six months after giving birth, a woman is entitled to two hours off work each day to breast-feed her infant, and one hour daily thereafter up to the end of the ninth month.<sup>443</sup> This right, however, is rarely exercised by women.

In 1999 there were 284,700 unemployed persons in Hungary, 40% of whom (114,000) were women.<sup>444</sup> Approximately 60% more male university graduates are employed in high-paying, white-collar, managerial jobs than women. In 1997, the average gross earning of men employed in the financial sector was USD \$672 per month, while women earned an average of USD \$401 per month. Women are systematically tracked into lower-paying jobs. Women are overwhelmingly found in educational and social service positions, which are traditionally underpaid. Even in these sectors, though, women still earn an average of USD \$42 less per month than men in those categories.<sup>445</sup>

To date, only three court cases have been filed regarding discrimination, and all of them complained about discriminatory job advertisements. Article 70/A and K of the Constitution guarantees that violations of non-discrimination provisions will be punished. However, "case law has been somewhat slow to develop in Hungary" in this field,<sup>446</sup> not the least because of the lack of clear definitions in the legal provisions. The nature of the possible punishment is not defined and lower courts are reluctant to interpret constitutional rights.<sup>447</sup>

### ***Retirement age***

Retirement age is 62 years for both men and women. Early retirement is possible from age 57 for women and 60 for men.<sup>448</sup>

### ***Access to credit***

There are no laws in Hungary governing access to credit that apply specifically to women.

### ***Access to education***

The Constitution guarantees the right to the freedom of thought, conscience and religion,<sup>449</sup> the right of parents to choose the kind of education their children are to receive,<sup>450</sup> the right to education<sup>451</sup> and parents' and guardians' obligations to see to the education of minor children.<sup>452</sup> Since 1989, these provisions translated into the creation and the re-establishment of private schools, some with religious affiliations, which must conform to the National Basic Educational Program.<sup>453</sup> There are two laws that explicitly guarantee non-discrimination regarding access and level of education in Hungary. The first was enacted in 1964, and reflects Hungary's ratification of the International Convention on the Elimination of All Forms of Discrimination in Education.<sup>454</sup> The second is Act LXXIX of 1993 on Public Education.<sup>455</sup> This latter law was amended several times; a non-discrimination clause — prohibiting discrimination on the basis of sex — was added in 1996.<sup>456</sup>

It should be noted, however, that both direct and indirect discrimination occurs in the educational system. The most notorious form of discrimination is ethnic. Roma children

comprise the vast majority of children placed by authorities — often child protection authorities — in schools for “retarded” children.<sup>457</sup> Furthermore, sex discrimination is apparent when statistical data are examined regarding the percentage of women who complete college and university education. The percentage of women in these schools is approximately 3% less than that of men in the same age group.<sup>458</sup>

#### *National machinery for the promotion of women's equality*

In 1995, the Ministry of Labor created a Department for Policy on Women — in 1996, its name was changed to Department for Equal Opportunities,<sup>459</sup> and was then abolished in May 1998. It has been replaced by the Secretariat for Women's Representation, which was established in the new Ministry for Social and Family Affairs<sup>460</sup> as part of the new government's emphasis on the role of the women within the family.<sup>461</sup>

The Secretariat for Women's Representation has been implementing the government's projects, which have come to be known as the National Action Plan. This includes women's rights, implementation of equal opportunities, improvement of women's social equality, elaboration of recommendations regarding gender education in public schools, violence against women, creation of a database and information system about and for women.<sup>462</sup> The government intends to set up a Women's Council, which will be composed of the deputy state secretaries of the competent ministries, representatives of women's NGOs and experts, to advise on laws and governmental programs on equal opportunities. The Secretariat for Women's Representation also intends to create local committees of NGOs to cooperate in the implementation of gender policies in rural areas.<sup>463</sup>

### **C. RIGHT TO PHYSICAL INTEGRITY**

#### *Rape*

The Penal Code defines the crime of rape as “a person who by violent action or direct menace against life or limb forces a woman to have sexual intercourse, or uses the incapacity of the woman for defense or for the manifestation of her will for sexual intercourse.”<sup>464</sup> As defined, rape is a felony punishable with imprisonment between two to eight years.<sup>465</sup> Since September 1997, the Penal Code provision on rape was amended to explicitly recognize marital rape, as well as same-sex rape. The Code now reads “forces another person,”<sup>466</sup> instead of “forces a woman.”<sup>467</sup> The punishment is the same for all rapes, however: two to eight years, or five to ten years if the victim is under 12 years of age, if he or she is under the education, supervision, care or medical treatment of the perpetrator, or if more than one person have sexual intercourse with or sodomize the victim on the same occasion, knowing about each other's acts.<sup>468</sup>

The law also regards same-sex sexual activity as criminal (even when no force is used), if one of the participants is under 18 years of age and the other is over 18. This crime is to be punished with up to three years imprisonment.<sup>469</sup> This parallels the crime of seduction, where the basis of crime is not force, but age.<sup>470</sup> Sexual intercourse with a person younger than 14 (seduction) — is punishable by one to five years in prison.<sup>471</sup>

Prosecution of these sex crimes must be instigated by the survivor (or a person entitled to start actions on behalf of the survivor); sex crimes are not considered to be “public” crimes. The behavior of the survivor of any of these crimes is considered a material element of the crime: the imprudent or careless behavior of the survivor shall be regarded as a mitigating circumstance and ultimately reflect on the charges.<sup>472</sup>

Incest is defined as “sexual intercourse or fornication with a relative in direct line.”<sup>473</sup> This felony is punishable by imprisonment from one year to five years, although if the assailant is younger than 18 at the time, the act is not punishable.<sup>474</sup> Among siblings, the crime is a misdemeanor punishable by imprisonment of up to two years.<sup>475</sup>

#### *Domestic violence*

There is no single law in Hungary that covers domestic violence. The principal sources of law are found in the Penal Code and the Code on Criminal Offenses.<sup>476</sup> More often, other regulations such as the Act on the Protection of Children<sup>477</sup> and the Family Code are applicable, with the possible charges ranging from inflicting bodily harm to endangering a minor or abusing firearms. The most basic offense is simple battery, defined as injury to the bodily integrity or health of another person that heals within eight days. This is a misdemeanor and can be punished with imprisonment up to two years, community service or a fine.<sup>478</sup> If the injury takes longer than eight days to heal the act is a felony, punished by up to three years in prison.<sup>479</sup> Aggravated battery is battery committed for a base reason, if the victim was defenseless or unable to express his or her will,<sup>480</sup> if the attack causes permanent physical disability or a grave injury to health, or if it is committed with extreme cruelty.<sup>481</sup> The punishment in these cases is up to three to five years in prison. If battery causes danger to life or death, the sentence is from two to eight years in prison.<sup>482</sup> Aggravated battery due to negligence can be punished with imprisonment (the length depends on aggravating circumstances), community service, or a fine.<sup>483</sup>

To start a judicial proceeding for domestic violence, a woman must file a police report.<sup>484</sup> The proceedings can be civil or criminal in nature.<sup>485</sup> A woman must also have a proof of injury, which requires a special medical examination.

The cost of this medical report is USD \$8.50.<sup>486</sup> The administration of justice is often hostile to domestic violence complaints. Most women who report domestic violence must either leave their homes, or continue to live with their assailant as there are no restraining orders in Hungary, and few shelters exist.<sup>487</sup> In the majority of the cases, the perpetrator is not detained by the authorities. Court hearings are often scheduled months after the actual incident. As a result, women frequently end up withdrawing their police complaints or changing their testimony during court hearings.<sup>488</sup>

Courts, meanwhile, often accept as normal that husbands beat their wives and children. This assumption is often expressed when a judge evaluates whether the abuse was “in proportion to the behavior of the wife or children.” A case in point concerns a decision of a court where a woman was nearly stabbed to death by her husband. The Court stated that the relationship of the plaintiff and the defendant can be categorized as average: during disagreements, the offender had usually slapped the plaintiff.<sup>489</sup> However, women who kill their abusers, sometimes after enduring long years of abuse and often after attempting to involve the criminal justice authorities, receive jail sentences approximately three times longer than sentences of men who kill their wives. The average prison sentence for women is six to seven years as opposed to two to four years for men.<sup>490</sup> Criminal justice authorities blame these women for not leaving their husbands or not getting divorced.

#### *Sexual harassment*

There is no law against sexual harassment in Hungary. The only possibility would be to file a civil case based on article 76 of the Civil Code,<sup>491</sup> but there has never been an action filed under this provision or any other law for sexual harassment. There have been attempts to get the Ministry of Justice and other authorities to develop legislation, but to date there has been no progress.

#### *Trafficking in women*

The 1998 amendment of the Penal Code introduced the offense of trafficking in persons.<sup>492</sup> This new section stipulates that “a person who sells, buys, exchanges for another person, or obtains for this goal for a third party another person, commits a felony, and shall be punishable with imprisonment of up to three years.”<sup>493</sup> If the felony has deprived a person of her personal freedom, or if that person was under age 18, and the purpose of trafficking the person is labor or sex work, the punishment can be one to five years of imprisonment. The punishment may increase to 15 years of imprisonment if more than one aggravating factor applies, and the perpetrator is part of a criminal conspiracy (organized crime). While trafficking in women has been criminalized by this new amendment,

prostitution has been partially legalized.<sup>494</sup> The law establishes tolerance zones, designated by local authorities by decree, where prostitution and solicitation of sexual services would be allowed.

#### *Conclusions*

The legal provisions in Hungary broadly protect human rights. Many achievements are due to the establishment and activity of the Constitutional Court, as well as the pressure of public and civic organizations. Another motivation is Hungary’s need to harmonize its legal system with the EU standards before becoming eligible to join the EU.<sup>495</sup>

However, there is much work to do. In the case of domestic and sexual violence, the lack of a restraining order, for example, leaves women and children completely vulnerable to the repeated aggressions of their assailants. The absence of specific training for police officers and doctors regarding the treatment of rape survivors, and the lack of sensitive procedural provisions ensure that the overwhelming majority of rape cases go unreported. In employment, women’s prospects suffer given the practice of courts disregarding discriminatory advertisements and employment policy, the unrealistic burden generous maternity leave places on employers, and the absence of sexual harassment law.

## IV. Focusing on the Rights of a Special Group: Adolescents

Almost 21% of Hungary’s population is comprised of children under age 18. Girls aged 13–18 years account for 3% of the total population.<sup>496</sup> Concern about the aging of Hungary’s population is a constant theme in public discourse. In each government’s family policy, one of the recurrent goals is encouraging families to raise three children.

In terms of protecting minors, specific acts, such as the Child Protection Act, regulate their rights by special regulations regarding the employment of children in the Labor Code, and by special protection of adolescent and juvenile victims or perpetrators in criminal cases.<sup>497</sup> In accordance with the Convention on the Rights of the Child and the Constitution, all laws must make the best interests of the child the paramount standard for actions undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies.<sup>498</sup> Act LXIV of 1991 (the Enactment of the New York Convention) gives a comprehensive list of the specific areas where children’s rights are to be especially protected.<sup>499</sup>

### A. REPRODUCTIVE HEALTH AND ADOLESCENTS

Official statistics do not report the percentage of adolescent pregnancies, but there are presumed to be about 25,000 teenage pregnancies each year, representing less than 2% of approximately 1.08 million women under age 18.<sup>500</sup> Other surveys have concluded the numbers are much higher. According to one study conducted by the Health Prevention Program of the Budapest Medical University and two foundations in 1998, 14% of women were pregnant before age 18.<sup>501</sup> One of the conclusions to be drawn from the comparison of the results of the official statistics and those of the study, is that adolescent women tend to hide their pregnancies, and terminate them either in a very early stage or in an unofficial way.<sup>502</sup>

According to official statistics, the number of induced abortions in 1997 for girls under age 19 was 10,797, which amounts to about 14.4% of all abortions that year. The number of live births to girls in the same age group in 1997 was 10,251, or 10.2% of all live births. Of these, 1,562 were to girls under age 16; 10% of these births were to married girls under 16 years old.<sup>503</sup>

The National Public Education Program sets forth the minimal requirements for health education in schools, including family planning education in the tenth grade (for children about age 16).<sup>504</sup> According to a ministerial decree, welfare officers and district nurses on school duty are to participate in health education classes where family planning and contraception methods are taught.<sup>505</sup>

### B. MARRIAGE AND ADOLESCENTS

As a general rule, marriages may be contracted between a man and a woman of full legal capacity.<sup>506</sup> It is possible, though, for persons under age 18 to marry with the prior permission of the Public Guardianship Authority.<sup>507</sup> In 1997, 18.8 out of every 1,000 women under the age of 19 were married. The Public Guardianship Authority makes the decision after having heard the parent(s) or the legal guardians of the minor.<sup>508</sup> Permission is granted based on numerous conditions: the interest, free will, financial stability, and the couple's physical, intellectual, and moral maturity. The fact that the young woman is pregnant will not, in and of itself, secure permission.<sup>509</sup> Marriage at a young age is more widespread in the Roma community than among other ethnic communities in Hungary.<sup>510</sup> Marriage confers majority status;<sup>511</sup> therefore, children who wish to leave home get married, and thus become "independent."

### C. SEXUAL OFFENSES AGAINST MINORS

Article 6(5) of the Child Protection Act declares that the child has the right to human dignity, and to be free of physical, sexual or emotional battery, and neglect.<sup>512</sup> The Penal Code presumes children under age 12 to be incapable of self-defense,<sup>513</sup> and all

sexual offenses against them are aggravated. The punishment for such "assaults against decency" is five to ten years of imprisonment if no other aggravating factors apply.<sup>514</sup> Other aggravating factors include if the perpetrator is the caretaker of the child, or if the crime is committed by more than one person.<sup>515</sup>

Between ages 12 to 14, the sexual offense is called seduction, and a distinction is made as to the heterosexual or homosexual nature of the crime. In case of heterosexual activity, all offenders are to be punished; in case of homosexual activity, only offenders over 18. The punishment is between one to five years of imprisonment. In case of homosexual activity, attempted seduction is also punishable with up to three years of imprisonment.<sup>516</sup> Being the caretaker of the child is an aggravating factor.<sup>517</sup> Punishment of up to three years of imprisonment applies to same-sex activity (sodomy in the law) involving a person under 18 if the other one is over 18, regardless of consent.<sup>518</sup> "Sodomy" committed by force or direct threats, or using the survivor's incapacity for defense or for the manifestation of will for the act is a felony, and is punishable with imprisonment from two to eight years. The punishment is imprisonment from five to ten years if the minor is under 12 years of age and can be higher if he or she is under the education, supervision, care or medical treatment of the perpetrator; or if several people sodomize the child on the same occasion, knowing about each other's acts.<sup>519</sup> Inducing a person under age 14 to have sexual intercourse or to fornicate with another person is also a felony. It is punishable with imprisonment from one to five years.<sup>520</sup>

### D. EDUCATION AND ADOLESCENTS

According to the Public Education Act, education is compulsory for every child, starting at age six until the end of the school year in which the child turns 16.<sup>521</sup> For children starting school in the school year of 1998-1999 or thereafter, the duration of compulsory education will end in the school year in which they turn 18.<sup>522</sup> The student (and, if she or he is still a minor, her or his parent) may apply for exemption under this rule after age 16.<sup>523</sup> Hungary has ratified and enacted the International Convention on the Elimination of All Forms of Discrimination in Education,<sup>524</sup> which prohibits discrimination based on sex. The Public Education Act further reinforces the prohibition.<sup>525</sup> Nonetheless, a reality of Hungarian society is overt discrimination against Roma children.<sup>526</sup>

### E. SEX EDUCATION

There is neither a general overall policy, nor a unified practice, regarding sex education for adolescents in Hungary. The National Basic Education program contains a sex education and family planning curriculum to be completed by students in the 10th grade.<sup>527</sup> Civic organizations and individual programs of

some institutions conduct work in this field. Many of these programs focus on other topics as their central theme (such as AIDS prevention, sexual abuse of children, drug abuse etc.), and touch upon sex education only as related to these themes.

## F. TRAFFICKING IN ADOLESCENTS

There are no statistics about the number of young women trafficked out of Hungary, but the legislature has responded to the growing concern about trafficking. As of March 1, 1999, both trafficking in persons and depriving a person of personal freedom is a crime.<sup>528</sup> The latter is punishable by imprisonment of two to eight years. If it is committed against a minor under age 18, it is punishable with five to ten years of imprisonment.<sup>529</sup> Trafficking is generally punishable with up to three years of imprisonment, but up to five years if committed against a minor under age 18, and the penalty may increase up to 15 years if aggravating circumstances apply.<sup>530</sup>

Hungary is a party to the New York Convention on the Prohibition of Trafficking in Persons and Sexual Exploitation, which prohibits the direct punishment of prostitutes. In cases of soliciting or pandering, the punishment is up to three years of imprisonment or more if a person involved was under age 18. Producing pornography is likewise a felony and is punishable with imprisonment between two to eight years.<sup>531</sup>

## NOTE ON SOURCES

The information in this chapter is drawn from primary sources of law in Hungarian and secondary sources in Hungarian and English. All primary sources of national law are in Hungarian. Unless otherwise noted, they are available in JURIX, at <<http://www.spiderweb.hu/>> and at <[www.mkogy.hu](http://www.mkogy.hu/)> (Information System of the Hungarian National Assembly). Unofficial and official English translations of some laws, regulations and Constitutional Court decisions are on file with The Center for Reproductive Law & Policy. The chapter conforms to THE BLUEBOOK (16th ed. 1996). Blue book footnote style may show variations due to production incompatibilities with certain character fonts.

## GLOSSARY OF ABBREVIATED TERMS

MK.: Hungarian Gazette  
 A MAGYAR KÖZTÁRSASÁG ALKOTMÁNYA: Constitution of the Hungarian Republic  
 PTK.: Civil Code  
 BTK.: Criminal Code  
 CSJT: Act on Marriage, Family and Guardianship  
 MT: Labor Code  
 PP.: Code of Civil Procedure

## ENDNOTES

1. CIA, HUNGARY, 1999 WORLD FACTBOOK (visited Mar. 7, 2000) <[\[www.cia.gov/cia/publications/factbook/hu.html\]\(http://www.cia.gov/cia/publications/factbook/hu.html\)> \[hereinafter WORLD FACTBOOK\].

2. 1949. évi XX. Törvény A Magyar Köztársaság Alkotmánya \[Act XX of 1949 Constitution of the Hungarian Republic\] \[A MAGYAR KÖZTÁRSASÁG ALKOTMÁNYA\], art. 70/A\(3\) \(visited Mar. 7, 2000\) <<http://www.mkogy.hu/alkotmany/alkotm.htm>>, translated at <\[http://www.uni-wuerzburg.de/law/hu00000\\\_.html\]\(http://www.uni-wuerzburg.de/law/hu00000\_.html\)>.
3. 1993. évi LXXVII. törvény a nemzeti és etnikai kisebbségek jogairól \[Act LXXVII of 1993 on the Rights of National and Ethnic Minorities\], art. 61\(1\) \(visited Mar. 7, 2000\) <<http://www.meh.hu/nekh/Magyar/6-1-2.htm>>, translated at <<http://www.meh.hu/nekh/Angol/93LXXVIIkistv.htm>>.
4. Four percent of the population. WORLD FACTBOOK, \*supra\* note 1.
5. A MAGYAR KÖZTÁRSASÁG ALKOTMÁNYA art. 2\(1\). The Constitution has always acknowledged the representative system, though such system did not in fact function under state socialism.
6. SUPPORT FOR IMPROVEMENT IN GOVERNANCE AND MANAGEMENT IN CENTRAL AND EASTERN EUROPEAN COUNTRIES \[SIGMA\], PUBLIC MANAGEMENT PROFILES OF CENTRAL AND EASTERN EUROPEAN COUNTRIES: HUNGARY, at 7 \(visited Mar. 8, 2000\) <<http://www.oecd.org/puma/sigmaweb>>.
7. \*Id.\*
8. A MAGYAR KÖZTÁRSASÁG ALKOTMÁNYA art. 33\(1\).
9. \*Id.\* art. art. 35\(1\)\(a\),\(b\).
10. \*Id.\* art. 35\(1\) \(c\) - \(j\).
11. \*Id.\* art. 35\(2\).
12. \*Id.\* art. 35\(4\).
13. \*Id.\* art. 33\(3\).
14. \*Id.\* art. 39\(1\).
15. \*Id.\* art. 21\(3\); see also SIGMA, \*supra\* note 6, at 15.
16. A MAGYAR KÖZTÁRSASÁG ALKOTMÁNYA art. 29.
17. \*Id.\* art. 29A.
18. \*Id.\* art. 30A\(1\)\(a\)-\(d\), \(j\)-\(m\).
19. \*Id.\* art. 30A\(1\)\(f\)-\(i\).
20. \*Id.\* art. 33\(3\), \(4\).
21. \*Id.\* art. 30A\(2\).
22. SIGMA, \*supra\* note 6, at 14.
23. A MAGYAR KÖZTÁRSASÁG ALKOTMÁNYA art. 26.
24. \*Id.\* art. 2\(2\).
25. \*Id.\* art. 19\(1\).
26. SIGMA, \*supra\* note 6, at 4.
27. After the 1998 elections, there are 33 women deputies, constituting only 8.5% of all members. This is even fewer than in the previous government, where they represented 11% of all deputies. Lévai Katalin & Kis Róbert, Nők a közéletben \[Women in Public Life\], in SZEREPVÁLTÓZÁSOK, TÁRKI, SZOCIÁLIS ÉS CSALÁDÜGYI MINISZTERIUM NŐKÉPVISELETI TITKÁRSÁGA 40-51 \(Pongráz & Tóth eds., 1999\).
28. Their number may change, since it is possible for a representative to change her or his seat and move to the "independents" from their original fraction. See SIGMA, \*supra\* note 6, at 2.
29. A MAGYAR KÖZTÁRSASÁG ALKOTMÁNYA art. 19\(2\).
30. \*Id.\* art. 19\(3\)\(a\)-\(j\), \(l\),\(m\).
31. \*Id.\* art. 19\(3\)\(k\).
32. \*Id.\* art. 19\(3\)\(d\).
33. \*Id.\* art. 39A\(1\).
34. \*Id.\* art. 24\(1\)-\(3\).
35. \*Id.\* art. 19\(4\).
36. \*Id.\* art. 19\(5\).
37. \*Id.\* art. 29B\(2\).
38. \*Id.\* art. 32A\(6\).
39. \*Id.\* art. 32B\(7\).
40. \*Id.\* art. 48\(1\).
41. \*Id.\* art. 25\(3\).
42. \*Id.\* art. 26\(1\)-\(3\).
43. \*Id.\* art. 26\(4\).
44. \*Id.\* art. 26\(5\).
45. \*Id.\* art. 32/A.
46. \*Id.\* art. 32/B.
47. \*Id.\* art. 20\(2\).
48. \*Id.\* art. 32/B \(2\).
49. \*Id.\* art. 32A\(1\), \(2\).](http://</a></p>
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50. 1989. évi XXXII. Törvény az Alkotmánybíróságról [Act XXXII of 1989 on the Constitutional Court], art. 1(c), (Argent Kft., JURIX as of March 2000, <<http://www.spiderweb.hu/jurix>>). Unless otherwise noted, all legislative, executive and judicial acts are available in JURIX.
51. *Id.* art. 1(d).
52. *Id.* art. 1(e).
53. *Id.* art. 1(f).
54. *Id.* art. 1(g).
55. *Id.* art. 27(1), (2).
56. A MAGYAR KÖZTÁRSASÁG ALKOTMÁNYA art. 32A(4).
57. *Id.* art. 32A(5).
58. *Id.* art. 45(1).
59. *Id.* art. 50(1), (2).
60. *Id.* art. 50(3).
61. *Id.*
62. *Id.* art. 47(2).
63. *Id.* art. 48(1).
64. *Id.*
65. Women's rights organizations, lawyers and activists active in combatting domestic violence or children's rights often advocate for specialized family courts. See *below* Legal Status of Women.
66. 1997. évi LXVI. Törvény a bíróságok szervezetéről és igazgatásáról [Act LXVI of 1997 on the Judiciary System], arts. 20(4), 26 [JURIX].
67. The original 1972 Law on the Judiciary System was first repealed by Act LVI of 1991, which, in turn, was repealed by the current Act LXVI of 1997. The law now in effect stipulates, in art. 16 (b), that a fourth level of the judiciary system be introduced (between the county and the Supreme Court levels). However, the present government postponed the establishment of these "High Courts of Justice." Recently this has caused considerable friction between the judiciary and the government.
68. Act LXVI of 1997 on the Judiciary System, art. 15(1).
69. SIGMA, *supra* note 6, at 17.
70. *Id.*
71. 1990. évi LXIV. törvény a helyi önkormányzati képviselők és polgármesterek választásáról [Act LXIV of 1990 on the Election of Representatives of the Local Government and Mayors], arts. 1, 2, 46, 47 [JURIX].
72. 1993. évi LXXVII. törvény a nemzeti és etnikai kisebbségek jogairól [Act LXXVII of 1993 on the Rights of National and Ethnic Minorities], art. 22(1) (visited Mar. 7, 2000) <<http://www.meh.hu/nekh/Magyar/6-1-2.htm>>, translated at <<http://www.meh.hu/nekh/Angol/93LXXVIIkistv.htm>>.
73. A MAGYAR KÖZTÁRSASÁG ALKOTMÁNYA art. 44 (2).
74. *Id.* art. 44B(1).
75. *Id.* arts. 44A, 44B(2).
76. *Id.* art. 42.
77. *Id.* art. 44A(2).
78. SIGMA, *supra* note 6, at 18.
79. *Id.*
80. Act LXXVII of 1993 on the Rights of National and Ethnic Minorities, art. 5.
81. *Id.* art. 7(1).
82. *Id.* art. 7(2).
83. A MAGYAR KÖZTÁRSASÁG ALKOTMÁNYA art. 77(1).
84. SIGMA, *supra* note 6, at 6.
85. *Id.*
86. A MAGYAR KÖZTÁRSASÁG ALKOTMÁNYA art. 47(2).
87. *Id.* art. 8(1).
88. *Id.* art. 77(2).
89. *Id.* art. 70A(1).
90. *Id.* art. 70A(2), (3).
91. *Id.* art. 66(1).
92. *Id.* art. 66(2), (3).
93. *Id.* arts. 70B(2), 57(1), 60, 61.
94. *Id.* arts. 54, 62, 63, 70F, 70D.
95. See, for example, the revision of the National Policy on Families, prepared by the Ministry of Family and Social Affairs at the time of this writing. One of the crucial points, removed after public outcry, was setting the age of first marriage at 14.
96. A MAGYAR KÖZTÁRSASÁG ALKOTMÁNYA art. 7(1).
97. *Opened for signature* Mar. 1, 1980, 1249 U.N.T.S. 13 (*entry into force* September 3, 1981); UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS, STATUS BY COUNTRY (visited Mar. 22, 2000) <<http://www.unhcr.ch>>.
98. *Adopted* Dec. 16, 1966, 999 U.N.T.S. 171 (*entry into force* Mar. 23, 1976, *ratified by Hungary* Jan. 17, 1974).
99. *Adopted* Dec. 16, 1966, 993 U.N.T.S. 3 (*entry into force* Jan. 3, 1976, *ratified by Hungary* Jan. 17, 1974).
100. ETS No. 5 (*entry into force* Sept. 3, 1953, *ratified by Hungary* Nov. 5, 1992). Last amended by Protocol No. 11, ETS No. 155 (*entry into force* Nov. 1, 1998).
101. *Opened for signature* Mar. 7, 1966, 660 U.N.T.S. 195 (*entry into force* Jan. 4, 1969, *ratified by Hungary* May 5, 1967).
102. *Adopted* Dec. 16, 1966, 999 U.N.T.S. 171 (*entry into force* Mar. 23, 1976).
103. *Opened for signature* Nov. 20, 1989, 1577 U.N.T.S. 3 (*entry into force* Sept. 2, 1990, *ratified by Hungary* Oct. 7, 1991).
104. This change was planned to be introduced by the end of 1999, but the law proposal did not pass in December 1999 due to the absence of one of the coalition parties. The Parliament finally passed the bill on February 4, permitting the country's 7,000 family doctors, pediatricians and dentists to privatize their practices. Carl Kovac, *A Clean Bill of Health*, BUDAPEST SUN, Feb. 17, 2000 (visited Mar. 26, 2000) <<http://www.budapestsun.com>>.
105. This pertains to questions of liability for damages, general company rules in case of health care enterprises, personality rights and some questions of patients' rights.
106. Especially those relating to civil service workers, or protection of minors and pregnant women.
107. Crimes against self-determination, unlawful intervention and endangerment.
108. Public health-epidemic prevention norms, rules and institutions of services, pharmaceutical services, rules of education and training of health care professionals, etc.
109. See A MAGYAR KÖZTÁRSASÁG KORMÁNYÁNAK PROGRAMJA [GOVERNMENT PROGRAMME FOR A CIVIC HUNGARY] (visited Mar. 22, 2000) <<http://193.6.238.66/ULES/kormanyprogram.htm>>, official English translation at <<http://www.meh.hu/default.htm>>.
110. *Id.*
111. A MAGYAR KÖZTÁRSASÁG ALKOTMÁNYA art. 70D(1).
112. *Id.* art. 70D(2).
113. 1997. évi CLIV. törvény az egészségügyről [Act CLIV of 1997 on Public Health Care] (JURIX).
114. *Id.* art. 1(a).
115. *Id.* art. 1(b).
116. *Id.* art. 1(c).
117. *Id.* art. 1(d).
118. *Id.* art. 1(e).
119. *Id.* art. 1(f).
120. *Id.* art. 2(2).
121. *Id.* art. 2(1). Patients' rights may only be restricted in accordance to this law, and only for justified medical reasons.
122. *Id.* art. 2(3).
123. *Id.* arts. 145, 147, 148, 150.
124. *Id.* art. 152.
125. *Id.* ch. 3.
126. *Id.* art. 79(a).
127. *Id.* art. 79(ba).
128. *Id.* art. 79(bb).
129. *Id.* art. 79(bd).
130. *Id.* arts. 81-85.
131. *Id.* art. 86.
132. *Id.* art. 88.
133. *Id.* arts. 89, 90.
134. *Id.* arts. 91, 92.
135. *Id.* art. 93.
136. *Id.* art. 94.
137. *Id.* art. 99. This article mentions offering emotional, psychological and practical support for both the patient and the relatives taking care of him or her, preferably at home.
138. *Id.* art. 100.
139. *Id.* art. 102.
140. *Id.* art. 103.
141. *Id.* art. 104.
142. Local municipalities may enter into a contract for the provision of health services with a private health company.
143. Although certain groups of people - the unemployed or expatriates who return to Hungary and fail to register themselves as returning citizens - "fall out" of this net.

144. *Júlia Gáti, Elvonókúra: A társadalombiztosítás megszorító tervei [Detoxification Cure: Plans to Restrict Social Insurance]*, HVG, Oct. 30, 1999, at 86.
145. KÖZPONTI STATISZTIKAI HIVATAL [HUNGARIAN CENTRAL STATISTICAL OFFICE], POCKETBOOK OF HUNGARIAN STATISTICS 1998 (1999).
146. KÖZPONTI STATISZTIKAI HIVATAL [HUNGARIAN CENTRAL STATISTICAL OFFICE], MAJOR ANNUAL FIGURES, tbl. 6.07 Public Health (visited July 24, 2000) <<http://www.ksh.hu/eng/free/e6eves/e607.html>>.
147. *Id.*
148. KINGA SVASTICS, U.S. & FOREIGN COMMERCIAL SERVICE & U.S. DEPARTMENT OF STATE, HEALTH CARE MARKET (1997) (visited July 24, 2000) <<http://www.usis.hu/docs/health98.htm>>.
149. KÖZPONTI STATISZTIKAI HIVATAL [HUNGARIAN CENTRAL STATISTICAL OFFICE], MAGYAR STATISZTIKAI ÉVKÖNYV 1997 [STATISTICAL YEARBOOK OF HUNGARY] 170 (1998).
150. *Id.*
151. 1997. évi LXXX. törvény a társadalombiztosítás ellátásaira és a magánnyugdíjra jogosultakról, valamint e szolgáltatások fedezetéről [Act LXXX of 1997 on Eligibility for Services Provided by the Social Security and on Private Pensions] (JURIX).
152. *Id.* art. 2(3).
153. Forms for obtaining the social security number are provided by the hospital upon birth, and by the registrar in case the birth did not take place in a hospital. A kötelező egészségbiztosítás ellátásairól szóló 1997. évi LXXXIII. törvény végrehajtására kiadott 217/1997. (XII. 1.) Korm. rendelet [Government Decree to Implement Act LXXXIII of 1997 on Services Provided by Mandatory Health Insurance], art. 12 (JURIX). The same Article regulates the procedure for foreigners.
154. 1997. évi LXXXIII. törvény a kötelező egészségbiztosítás ellátásairól [Act LXXXIII of 1997 on Services Provided by Mandatory Health Insurance], arts. 10-17 (JURIX).
155. Government Decree 217/1997 to Implement Act LXXXIII of 1997 on Services Provided by Mandatory Health Insurance, art. 2.
156. *Id.* art. 2(1).
157. The list of free services available without referral is regulated by art. 2 of the Government Decree 217/1997 to Implement Act LXXXIII of 1997 on Services Provided by Mandatory Health Insurance.
158. 5/1995. (II.8) NM rendelet a körzeti védőnői szolgálatról [Ministry of Welfare Decree on Services Provided by Mother and Child Health Nurses] (JURIX).
159. 1992. évi LXXIX. törvény a magzati élet védelméről [Act LXXIX of 1992 on the Protection of Fetal Life], art. 8 (JURIX).
160. According to training experiences of NaNE! (NŐK A NŐKÉRT EGYÜTT AZ ERŐSZAK ELLEN [WOMEN WORKING WITH WOMEN AGAINST VIOLENCE]), MCH nurses are often ignorant of the realities of domestic violence, or hold very traditional views of the roles in the family. In recent years the National Association of MCH Nurses became more open to learn about these issues.
161. FINANCE MINISTRY, INFORMATION ON THE CHANGES OF THE BUDGETARY APPROPRIATIONS OF THE GENERAL GOVERNMENT SYSTEM BY FUNCTION AND ON THE INTERNATIONAL PRACTICES OF MEDIUM TERM BUDGETING (visited Mar. 22, 2000) <<http://www.meh.hu/default.htm>>. Current exchange rate is 271 HUF per US dollar (average exchange rate). MAGYAR NEMZETI BANK (visited July 22, 2000) <<http://www.mnb.hu/index-a.htm>>.
162. The scope of close relatives is defined by art. 685(b) of the 1959. évi IV. Törvény a Magyar Köztársaság Polgári Törvénykönyvéről [Act IV of 1959 on the Civil Code of the Republic of Hungary] [PTK.] (JURIX) (official English translation on file with the Center for Reproductive Law & Policy). Regarding the question of eligibility for health services, common-law partners are considered close relatives.
163. 1997. évi LXXX. törvény a társadalombiztosítás ellátásaira és a magánnyugdíjra jogosultakról, valamint e szolgáltatások fedezetéről [Act LXXX of 1997 on Eligibility for Services Provided by the Social Security and on Private Pensions], art. 16(1)(a)-(o) (JURIX).
164. *Id.* art. 39(2).
165. A kötelező egészségbiztosítás ellátásairól szóló 1997. évi LXXXIII. törvény végrehajtására kiadott 217/1997. (XII. 1.) Korm. rendelet [Government Decree 217/1997 to Implement Act LXXXIII of 1997 on Services Provided by Mandatory Health Insurance], art. 19(1) (JURIX); MINISTRY OF ECONOMIC AFFAIRS, INVESTORS' HANDBOOK, PART V (visited Mar. 22, 2000) <http://www.gm.hu/investor/e/imp-1.htm>.
166. *Id.* art. 34(2). "Income" is the amount the policy-holder specifies, but it may not be less than the fixed minimum wage at the time of the agreement. (The minimum wage is currently HUF 22,500, approximately USD \$90)
167. Government Decree 217/1997 to Implement Act LXXXIII of 1997 on Services Provided by Mandatory Health Insurance, art. 2.
168. 1997. évi CLIV. törvény az egészségügyről [Act CLIV of 1997 on Public Health Care], art. 88(2)(ba) (JURIX).
169. *Id.* art. 88(2)(bb).
170. *Id.* art. 88(2)(bc).
171. Government Decree 217/1997 to Implement Act LXXXIII of 1997 on Services Provided by Mandatory Health Insurance, art. 7(2).
172. *Id.* art. 7(9).
173. 1997. évi LXXXIII. törvény a kötelező egészségbiztosítás ellátásairól [Act LXXXIII of 1997 on Services Provided by Mandatory Health Insurance], art. 18(6) (JURIX).
174. The complete list is set forth by 46/1997. (XII. 17.) NM rendelet a kötelező egészségbiztosítás terhére igénybe nem vehető ellátásokról [Ministerial Decree NM No. 46/1997 (XII. 17) on Services Not Provided under Mandatory Health Insurance] (JURIX). Possible correctional surgery after birth would almost invariably fall under the first category according to current Hungarian practice.
175. These include, for example, services for pregnant women, or preventive and obligatory immunization provided by the state, or services partly subsidized, like dental plates for minors, but they also include services besides the general care required by the patient. Act LXXXIII of 1997 on Services Provided by Mandatory Health Insurance, arts. 18(5), 23.
176. 284/1997. (XII. 23) Korm. rendelet a térítési díj ellenében igénybevehető egyes egészségügyi szolgáltatások térítési díjáról [Government Decree 284/1997 on Payment of Fees for Certain Medical Services], app. 1 (JURIX). At 2000 HUF (USD \$7), the cost is prohibitive for most women. *See infra* Domestic Violence.
177. 1997. évi CLIV. törvény az egészségügyről [Act CLIV of 1997 on Public Health Care], arts. 115(3), 116(1) (JURIX).
178. *Id.* art. 117.
179. Down to the number of toilets and closets for medicines.
180. The regulated facilities are hospitals; specialized hospitals; other institutions with overnight facilities; departments; wards; outpatient care; specialized polyclinics; specialized outpatient care (provided by hospitals); specialized services outside of hospitals, polyclinics or home-care; independent institutions providing regular but not medical care; independent wards with the same profile; home-care; waking departments; hospital pharmacies. 21/1998. (VI.3.) NM rendelet az egészségügyi szolgáltatást nyújtó egyes intézmények szakmai minimumfeltételeiről [Decree of the Welfare Ministry on Minimal Conditions for Health Care Providers] (JURIX).
181. 36/1996. (III.5.) Korm. rendelet az egészségügyi felsőoktatás alapképzési szakjainak képesítési követelményeiről [Government Decree on Medical Higher Education and Requirements for Training] (JURIX).
182. 11/1998. (XII.11.) EüM rendelet az egészségügyi felsőfokú szakirányú szakképzésről és továbbképzésről [Health Ministry Order on Higher Specialized Professional Training] (JURIX).
183. *Id.*; 28/1998. (VI.17.) NM rendelet az egészségügyi szakdolgozók továbbképzésének szabályairól [Decree of the Welfare Ministry on Continuing Education of Ancillary Health Workers] (JURIX).
184. HUNGARIAN CENTRAL STATISTICAL OFFICE, MAJOR ANNUAL FIGURES, *supra* note 146, tbl. 6.07 Public Health.
185. 1997. évi CLIV. törvény az egészségügyről [Act CLIV of 1997 on Public Health Care], art. 104 (JURIX).
186. 40/1997. (III.5.) Korm. rendelet a természetgyógyászati tevékenységről [Government Decree on Alternative Medicine] (JURIX).
187. 11/1997. (V.28.) NM rendelet a természetgyógyászati tevékenység gyakorlásának egyes kérdéseiről [Welfare Ministry Order on Some Questions Related to Alternative Medicine] (JURIX).
188. *Id.* app. 1 (giving the full list).
189. *Id.* art. 5.
190. Government Decree 40/1997 (III. 5) on Alternative Medicine, art. 4(7).
191. 1997. évi CLIV. törvény az egészségügyről [Act CLIV of 1997 on Public Health Care], art. 108(1) (JURIX).
192. *Id.* art. 111 (1), (5).
193. *Id.* art. 112 (1).
194. *Id.* art. 112 (9). Professional training and formal requirements are regulated by 36/1996. (III.5.) Korm. rendelet az egészségügyi felsőoktatás alapképzési szakjainak képesítési követelményeiről [Government Decree on Medical Higher Education and Requirements for Training] (JURIX); 113/1996. (VII.23) Korm. rendelet az egészségügyi szolgáltatás nyújtására jogosító működési engedélyekről [Government Decree on the Authorization of Health Institutions] (JURIX); 11/1998. (XII.11.) EüM rendelet az egészségügyi felsőfokú szakirányú szakképzésről és továbbképzésről [Health Ministry Order on Higher Specialized Professional Training] (JURIX). None of these specify, however, what are the



exact grounds for revocation of license in case of ethical or professional malpractice.

195. Act CLIV of 1997 on Public Health Care, art. 113 (1) (a) – (d).
196. 14/1998. (XII.11.) EüM rendelet a kórházi etikai bizottságokról [Ministry of Health Order on the Ethical Committees at Hospitals], art. 9 (2) (JURIX).
197. *Id. art. 7 (7).*
198. 1978. évi IV. Törvény a Büntető Törvénykönyvről [Act IV of 1978 on the Criminal Code] [BTK.], arts. 171 (endangering the life, physical integrity or health within the sphere of occupation – medical malpractice), 173/A – 173/I (JURIX) (official English translation on file with The Center for Reproductive Law & Policy).
199. *Id. art. 171 (1).*
200. *Id. art. 171 (2).*
201. *Id. art. 171 (3).* The fourth paragraph of the article criminalizes abuse of firearms when their use is related to an occupation.
202. *Id. art. 173/A.*
203. *Id. art. 173/B.*
204. *Id. art. 173/C.*
205. *Id. art. 173/D.*
206. *Id. art. 173/E – 173/G.* These provisions basically prohibit all forms of cloning for any reason.
207. *Id. art. 173/H.* This article deals with interventions performed without consent.
208. *Id. art. 173/I (prohibiting the unlawful obtaining and any kind of sale of all parts of the human body from genes to the whole body).*
209. *Id. arts. 173/B, 173/E, 173/F, 173/G, 173/I.* Attempts are either misdemeanors punishable by up to two years, or crime in themselves, punishable by up to three years imprisonment.
210. *Id. art. 173/A (2)* (if the intervention produces change in the gene-stock of the person, fetus or embryo).
211. *Id. art. 173/I (2).*
212. *Id. art. 173/I (3).* This provision was created as a tool against organized crime.
213. PTK. arts. 339–346, 348–350, 355–360.
214. 1997. évi CLIV. törvény az egészségügyről [Act CLIV of 1997 on Public Health Care], arts. 125 – 128 (JURIX).
215. *Id. arts. 129–130.*
216. *Id. arts. 134–135.*
217. *Id. arts. 136–137.*
218. *Id. art. 138.*
219. In the Hungarian legal system the burden of proof is shifted in cases of negligence, which means that the defendant (public hospital or private doctor) has to prove that its action was not negligent. A nation-wide survey published in 1997 concluded that the most frequent cases of malpractice were gynecology and obstetrics cases. JUDIT SÁNDOR, GYÓGYÍTÁS ÉS ÍTÉLKEZÉS [CURE AND SENTENCE] 237 (1997).
220. PTK. art. 345.
221. 1998. évi XXVII. törvény a géntechnológiai tevékenységről [Act XXVII on the Regulation of Genetic Technology], art. 27 (JURIX).
222. PTK. arts. 355–360 (regulating loss or permanent change of income, taking into consideration future foreseeable changes, the situation of dependents on the aggrieved person, etc).
223. Out of court settlements were introduced in 1997. Until then, the only form of redress for malpractice victims was to sue hospitals. Gusztav Kosztolanyi, *Operation Successful, Patient Dead – The Crisis in the Hungarian Health Service*, CENTRAL EUROPE REVIEW, Vol. 1, No. 16, Oct. 11, 1999 (visited Mar. 26, 2000) <<http://www.ce-review.org/99/16/csardas16.html>>.
224. 1997. évi CLIV. törvény az egészségügyről [Act CLIV of 1997 on Public Health Care], art. 5 (JURIX).
225. *Id. art. 26.*
226. *Id. arts. 6 – 9.*
227. *Id. art. 10.*
228. *Id. art. 11.*
229. *Id. art. 12.*
230. *Id. arts. 13, 14.*
231. *Id. arts. 15 – 19.*
232. *Id. arts. 20 – 23.*
233. *Id. art. 24.*
234. *Id. art. 25.*
235. *Id. arts. 189 – 201.*
236. *Id. arts. 30–34.* The Patients' Rights Representative works within the framework of the National Population Health Services, and may not be an employee of the hospital which offers services to the patients he or she represents. *Id. art. 31 (1), (2).* A civil organization,

SZÓSZÓLÓ [Foundation for Patients' Rights] conducted a pilot study to develop methods of patients' rights advocacy. The patients' rights representatives of the foundation worked in 15 health care institutions in Hungary. This program served as a model for the recently launched national system for the patients' rights representation.

237. *Id. art. 156 (5)(b), 156 (3)(c).*
238. *Id. art. 156 (6).*
239. *Id. art. 156 (4).*
240. A MAGYAR KÖZTÁRSASÁG ALKOTMÁNYA art. 54(1).
241. *Id. art. 70D.*
242. PTK. arts. 76 (listing violations of inherent rights, of which injury to body or health is one), 75 (3) (stipulating that “inherent rights shall not be deemed violated by conduct that is approved by the holder of the rights, provided the granting of such approval is not in violation or breach of the interests of society. A contract or unilateral statement that otherwise restricts inherent rights is null and void.”).
243. 1997. évi CLIV. törvény az egészségügyről [Act CLIV of 1997 on Public Health Care], arts. 15 –17, 20 – 23 (JURIX).
244. BTK. art. 22(e).
245. *Id. art. 22(g).*
246. Act CLIV of 1997 on Public Health Care, art. 20. If the refusal would endanger the life or health of others, the refusal of life maintaining treatment will be allowed only if the illness is incurable and would lead to death in a short time, even with the proper available medical treatment. The refusal must be authorized by a committee of three doctors. The refusal has to be requested again three days later. If the refusal would likely entail serious or permanent deterioration in the patient's condition, such refusal must be made in the presence of two witnesses. The refusal to undergo life preserving or life saving intervention will not be accepted if the patient is pregnant and is likely to be able to carry the pregnancy (art. 20(6)).
247. 117/1998. (VI.16) Korm. rendelet egyes egészségügyi ellátások visszautasításának részletes szabályairól [Government Decree on Detailed Rules of Refusal of Certain Health Services], arts. 1, 3, 5, 7, 8 (JURIX).
248. Act CLIV of 1997 on Public Health Care, art. 13 (1)–(8).
249. *Id. art. 14 (3).*
250. 11/1997. (V.28.) NM rendelet a természetgyógyászati tevékenység gyakorlásának egyes kérdéseiről [Decree of the Welfare Ministry Order on Some Questions Related to Alternative Medicine], art. 2(1) (JURIX).
251. Act CLIV of 1997 on Public Health Care, arts. 119 –130.
252. *Id. art. 119 (3) (b), (ca).*
253. *Id. art. 126 (3).*
254. *Id. art. 125.*
255. *Id. art. 28; 14/1998. (XII.11) EüM rendelet a kórházi etikai bizottságokról [Ministry of Health Order 14/1998 (XII. 11) on the Ethical Committees of Hospitals], art. 6 (JURIX)* (specifying that the patient must be notified of her/his right to turn to the Ethical Committee while staying in the hospital).
256. Act CLIV of 1997 on Public Health Care, art. 29 (2).
257. UNICEF, THE STATE OF THE WORLD'S CHILDREN 1999, at 111, tbl.5 (1999) [hereinafter THE STATE OF THE WORLD'S CHILDREN].
258. WORLD BANK, BASIC DEMOGRAPHIC DATA: HUNGARY (visited Mar. 25, 2000) <<http://genderstats.worldbank.org>> [hereinafter BASIC DEMOGRAPHIC DATA].
259. THE STATE OF THE WORLD'S CHILDREN, *supra* note 257, at 111, tbl.5. The rate has remained constant in the last twenty years . BASIC DEMOGRAPHIC DATA, *supra* note 258.
260. THE STATE OF THE WORLD'S CHILDREN, *supra* note 257, at 111, tbl.5.
261. BASIC DEMOGRAPHIC DATA, *supra* note 258.
262. WORLD BANK, SUMMARY GENDER PROFILE: HUNGARY (visited Mar. 25, 2000) <<http://genderstats.worldbank.org>>.
263. Tamás S. Kiss, *Government Looking to Boost Population*, BUDAPEST SUN, Mar. 30, 2000 (visited Apr. 3, 2000) <<http://www.budapestsun.com>>.
264. GOVERNMENT PROGRAMME FOR A CIVIC HUNGARY, *supra* note 109.
265. As mentioned earlier, Act LXXXIV of 1998 on Support for Families regulates the types of support. One of the types – support for child raising – is only available if there are three or more children in the family, and the youngest is less than eight years old. 1998. évi LXXXIV. törvény a családok támogatásáról [Act LXXXIV on Support for Families], art. 23 (JURIX).
266. SZOCIÁLIS ÉS CSALÁDÜGYI MINISZTERIUM [MINISTRY OF SOCIAL AND FAMILY AFFAIRS], CSALÁDPOLITIKAI KONCEPCIÓ [FAMILY POLICY CONCEPT] (visited Mar. 25, 2000) <<http://www.meh.hu/szcm/csalad/index.html>>. The Project is still in a planning-phase, and may be slightly modified until finalization.

Hopefully, the normative language (like “whole” and “broken” families) will indeed be changed. The content and main goals, however, are unlikely to be substantially altered.

267. AIDS or war, or other extreme factors are not applicable here.

268. See *below* Labor Rights.

269. 5/1995. (II.8.) NM rendelet a körzeti védőnői szolgálatról [Ministry of Welfare Decree on Services Provided by Mother and Child Health Nurses] (JURIX).

270. 130/1995. (X.26.) Korm. rendelet a Nemzeti alaptanterv kiadásáról [Government Decree 130/1995 on the Issuance of the National Basic Educational Program] (as amended by Government Decree 100/1997. (VI.13)) (JURIX).

271. Hungary also attempted to regulate surrogacy. Before 1997, there was no legal provision for surrogacy. In 1997 Parliament adopted legal provisions that would have allowed altruistic forms of surrogacy between relatives, forbidding any commercial benefit. The application of these provisions was postponed until 2000. In 1999, however, a new law came into force: 1999. évi CXIX. törvény az államszervezetre vonatkozó egyes törvények, továbbá az ingatlan-nyilvántartásról, az egészségügyről, valamint a halászatról és a horgászatról szóló törvények módosításáról [Act CXIX of 1999 Amending Acts on State Administration and Land Registry, Health Care and Fishing] (visited Apr. 3, 2000) <<http://www.kerszov.hu>>. This Act no longer mentions surrogacy among reproductive health care services.

272. A MAGYAR KÖZTÁRSASÁG ALKOTMÁNYA art. 15.

273. *Id.* art. 66 (2).

274. 1997. évi CLIV. törvény az egészségügyről [Act CLIV of 1997 on Public Health Care], art. 41 (JURIX).

275. *Id.* art. 86; Act LXXXIII of 1997 on Health Insurance regulates that newborn infants are entitled to preventive screening and development examinations (art. 10 (1)(a)), fetuses are entitled to medically justified intrauterine treatment, while insured women are entitled to birth services at hospitals, medically necessary abortion, and medically necessary treatment of infertility (art. 15). 1997. évi LXXXIII. törvény a kötelező egészségbiztosítás ellátásairól [Act LXXXIII of 1997 on Services Provided by Mandatory Health Insurance], arts. 10-17 (JURIX); 3/1992. (XII.23.) NM rendelet a terhesgondozásról [Welfare Ministry Order on Pre-natal Care] (JURIX) (regulating in detail the extent and content of cooperation required by pregnant women, MCH nurses and doctors, and the tasks the health care professionals have to carry out).

276. 1998. évi LXXXIV. törvény a családok támogatásáról [Act LXXXIV on Support for Families], art. 29(1)(a) (JURIX).

277. 1997. évi CLIV. törvény az egészségügyről [Act CLIV of 1997 on Public Health Care], art. 11(5) (JURIX).

278. Communication from NaNE! (on file with the Center for Reproductive Law & Policy).

279. Anecdotal evidence puts the current rate at around HUF 20,000 (approximately USD \$80) – 20 dollars less than the official monthly minimum wage. The evaluation of such payment is not uniform: according to the Ethical Code of the Chamber of Doctors, and according to the Commentary to the Civil Code, it is not illegal, but some lawyers pointed out that it is. In any case, paying “gratitude money” is so common, that it is built in to the calculation of the wages of doctors and other health care workers. Kosztolanyi, *supra* note 223.

280. See Beáta Pál, *Unsolicited Advice*, BUDAPEST SUN, Mar. 2, 2000 (visited Mar. 26, 2000) <<http://www.budapestsun.com>>.

281. One of these is heavily “anti-choice,” the other does not accept foster parents who are not married, though this latter is very reliable. For links to some NGOs see <<http://www.tfk.elte.hu/hirnok/kozelet/civil/civil.html>>.

282. INTERNATIONAL PLANNED PARENTHOOD FEDERATION, COUNTRY PROFILE: HUNGARY (visited Mar. 26, 2000) <<http://www.ippf.org/regions/countries/hun>>.

283. Pál, *supra* note 280.

284. *Id.*

285. Zoltán Borthaiser & Attila Kereszturi, *Reproductive Health in Hungary* (visited Mar. 26, 2000) <<http://matweb.hcuge.ch>>.

286. Géda Szamosi, *Getting Tough with Delicate Problem*, BUDAPEST SUN, Jan. 28, 1999 (visited Mar. 26, 2000) <<http://www.budapestsun.com>>.

287. *New Teen Clinics Open to Combat Abortion*, BUDAPEST SUN, May 20, 1999 (visited Mar. 26, 2000) <<http://www.budapestsun.com>>.

288. MAGYAR GYÓGYSZERKÖNYV [HUNGARIAN REGISTRY OF MEDICINES].

289. Several practicing OB/GYN specialists interviewed by NaNE! have never used this possibility. Communication from NaNE! (on file with The Center for Reproductive Law & Policy).

290. ABORTION IN LAW, HISTORY AND RELIGION (visited Mar. 26, 2000) <<http://www.cbctrust.com/abortion.html#25>>.

291. 14/1984. (XII.28.) EüM rendelet a méhen belüli fogamzásgátló eszköz alkalmazásáról és forgalomba hozataláról [Ministry of Health Order on Intra-Uterine Instruments and Contraception] (JURIX).

292. Except for condom use, contraception is considered to be the responsibility of women.

293. 1998. évi XXV. törvény az emberi felhasználásra kerülő gyógyszerekről [Act XXV of 1998 on Use of Pharmaceutical Products], arts. 4(a), 5(1) (visited Mar. 26, 2000) <<http://www.spiderweb.hu>>.

294. *Id.* art. 5(3).

295. 13/1987. (VIII.19.) EüM rendelet a gyógyszerkészítmények törzskönyvezéséről és a törzskönyvbé bejegyzett gyógyszerkészítmények forgalomba hozataláról [Ministry of Health Order on the Registration and Circulation of Pharmaceutical Products], art. 3 (JURIX).

296. Act XXV of 1998 on Pharmaceutical Products, art. 4 (w).

297. 8/1987. (VII.28.) EüM rendelet a VII. kiadású Magyar Gyógyszerkönyv hatálybalépítéséről [Ministry of Health Order on the Hungarian Registry of Medicines], art. 3(2) (JURIX).

298. 1997. évi LVIII. törvény a gazdasági reklámtevékenységről [Act LVIII of 1997 on Business Advertising Activity] (JURIX) (unofficial English translation on file with The Center for Reproductive Law & Policy); 24/1997. (VIII.14.) NM rendelet az embergyógyászatban használatos gyógyszerek, illetve a gyógyszerek nem minősülő gyógyhatású készítmények reklámozásáról és ismertetéséről [Welfare Ministry Order on the Advertisement of Medicines and Medicinal Products] (JURIX). Art. 5 (1)(a) of Act LVIII of 1997 generally prohibits advertising targeted at children if it may harm their physical, intellectual or moral development, while paragraph 2 of the same article prohibits advertising if it may harm the physical, intellectual or moral development of children, including in particular advertising which shows children in dangerous or violent situations or in situations with sexual emphasis.

299. Act LVIII of 1997 on Advertising, art. 9(1): “With the exception of advertising of pharmaceutical products for professional purposes (hereinafter referred to as: representation of pharmaceuticals), pharmaceuticals sold in pharmacies exclusively on a physician’s prescription, or licensed for use exclusively in health institutions for hospitalized patients, or procurable exclusively by physicians’ surgeries or welfare centers may not be advertised.”; Ministry of Welfare Order 24/1997 on Advertisement of Medicinal Products, art. 2(2).

300. Ministry of Welfare Order 24/1997 on Advertisement of Medicinal Products, art. 3(2).

301. *Id.* art. 4 (1)-(4).

302. Stanley K. Henshaw et. al, *Recent Trends in Abortion Rates Worldwide*, FAMILY PLANNING PERSPECTIVES, Vol. 25, No. 1, March 1999 (visited Mar. 27, 2000) <<http://www.agi-usa.org>>.

303. Borthaiser & Kereszturi, *supra* note 285, app. 2.

304. Pál, *supra* note 280.

305. *New Teen Clinics Open to Combat Abortion*, *supra* note 287.

306. Pál, *supra* note 280.

307. 1992. évi LXXIX. törvény a magzati élet védelméről [Act LXXIX of 1992 on the Protection of Fetal Life] (JURIX).

308. 32/1992. (XII.23.) NM rendelet a magzati élet védelméről szóló 1992. évi LXXIX. törvény végrehajtásáról [Welfare Ministry Order on the Implementation of Act LXXIX of 1992] (JURIX).

309. 48/1998. (XI. 23.) AB határozat [Constitutional Court Decision], Magyar Közlöny [Hungarian Gazette] [MK.] No. 105/1998 (JURIX).

310. The first sentence of art. 29(4) of Law II of 1972 on Health established that “termination of pregnancy is permitted only in circumstances prescribed by law and in the manner set forth by regulations.” 1972. évi II. törvény az egészségügyről [Act II of 1972 on Health] (JURIX). The law was implemented by Health Ministry Order 4/1973 (XII. 1) on the Judgement of Application for Abortion, replaced by 76/1988. (XI. 3) MT rendelet [Council of Ministers Order], implemented by 15/1988. (XII. 15) SZEM rendelet [Social and Health Ministry Order]. These orders were declared unconstitutional by 64/1991. (XII.17) AB határozat [Constitutional Court Decision] (JURIX) (English translation on file with The Center for Reproductive Law & Policy).

311. Such as, for example, the fact that the woman was not married, or has been living separately from her husband for more than six months; if she was over 35; if she already had two children; other social reasons; it was considered a medical indication if she had become pregnant in spite of contraceptive usage.

312. *Constitution Watch: Hungary*, E.EUR.CONSTREV, Vol. 8, No. 1-2, Winter/Spring 1999 (visited Mar. 27, 2000) <<http://www.law.nyu.edu/eecr>>.

313. PTK. art. 10: “If it is necessary for the protection of a child’s rights, particularly if there is a conflict of interest between the child and its legal representative, a legal guardian must be appointed before the child is born.” However, the Constitutional Court in both its deci-

- sions referred to the fact that the technical method by which the Civil Code provides a fictional legal capacity is not sufficient for tackling the question of abortion. 48/1998. (XI. 23) AB határozat [Constitutional Court Decision], MK. No. 105/1998 (JURIX).
314. *Id.*
315. 1992. évi LXXIX. törvény a magzati élet védelméről [Act LXXIX of 1992 on the Protection of Fetal Life], art. 6(1)(d) (JURIX).
316. *Id.* art. 12(6).
317. Some petitioners argued that the 1992 law, which allowed the termination of pregnancy in emergency situations, resulted in an unlimited right to abortions. Another petitioner asked the Court to determine the fetus' legal status. Petitions were based on various provisions of the Constitution, such as the right to life (art. 54(1)), the obligation of the state to protect fundamental rights (art. 8(1)), mothers' rights to state aid and protection before and after giving birth (art. 66(2)), the right to health (art. 70(d)), and the right to social security (art. 70(e)). Finally, other petitioners claimed that the 1992 law did not comply with the principles laid down by the Court in its 1991 decision. *Constitution Watch: Hungary, supra* note 312; Constitutional Court Decision 48/1998. (XI.23) AB.
318. The human rights periodical FUNDAMENTUM played a crucial role by publishing the petition of the pro-life association PACEM IN UTERO and inviting scholars to present their opinion on the constitutional debate. In the summer of 1998, the journal dedicated a special edition to the abortion debate. See FUNDAMENTUM. AZ EMBERI JOGOK FOLYÓIRATA [FUNDAMENTUM. THE HUMAN RIGHTS PERIODICAL] (visited July 25, 2000) <<http://www.c3.hu/~indok/f/rtart.htm>>.
319. *Constitution Watch: Hungary, supra* note 312.
320. A collective of civil organizations, as well as other civil organizations and individuals independently, is currently lobbying for an amendment favorable for women. Communication from NaNE! (on file with The Center for Reproductive Law & Policy).
321. 1992. évi LXXIX. törvény a magzati élet védelméről [Act LXXIX of 1992 on the Protection of Fetal Life], art. 6(1) (JURIX).
322. In order to save the healthy fetuses, the number of fetuses may be reduced in cases of multiple pregnancies, if one of the fetuses is seriously impaired. It is also allowed if all the fetuses are healthy, but the reduction is necessary to protect the health of the mother and enhance the chances of the fetuses. 1997. évi CLIV. törvény az egészségügyről [Act CLIV of 1997 on Public Health Care], art. 185(1), (2) (JURIX).
323. *Id.* art. 6 (2).
324. *Id.* art. 6 (3).
325. *Id.* art. 6 (4).
326. 32/1992. (XII.23.) NM rendelet a magzati élet védelméről szóló 1992. évi LXXIX. törvény végrehajtásáról [Welfare Ministry Order on the Implementation of Act LXXIX of 1992], art. 1 (JURIX).
327. Act LXXIX of 1992 on the Protection of Fetal Life, art. 7 (2).
328. Welfare Ministry Order 32/1992 on the Implementation of Act LXXIX of 1992, app. 3.
329. Act LXXIX of 1992 on the Protection of Fetal Life, art. 7 (1).
330. *Id.* art. 8 (1).
331. *Id.* art. 8 (2).
332. *Id.* art. 9.
333. *Id.* art. 10 (2).
334. *Id.* art. 10 (1).
335. *Id.* art. 12 (1), (2).
336. *Id.* art. 12 (5).
337. 48/1998. (XI. 23) AB határozat [Constitutional Court Decision], MK. No. 105/1998 (JURIX) .
338. Act LXXIX of 1992 on the Protection of Fetal life, art. 16 (1).
339. Welfare Ministry Order 32/1992 on the Implementation of Act LXXIX of 1992, art. 13 (3).
340. *Id.* arts. 11, 13 (1), (2).
341. BTK. art. 169 (1).
342. *Id.* art. 169 (2).
343. *Id.* art. 169 (3).
344. *Id.* art. 169 (2)(b).
345. *Id.* art. 169 (1).
346. *Id.* art. 169 (4).
347. 1992. évi LXXIX. törvény a magzati élet védelméről [Act LXXIX of 1992 on the Protection of Fetal Life], art. 15 (JURIX).
348. Concurring opinion of Judge Kilyényi, Constitutional Court Decision 64/1991. (XII.17) AB (JURIX) (English translation on file with The Center for Reproductive Law & Policy).
349. 1997. évi CLIV. törvény az egészségügyről [Act CLIV of 1997 on Public Health Care], art. 187 (JURIX).
350. 25/1998. (VI.17.) NM rendelet a művi meddővételről [Ministry of Welfare Order on Artificial Sterilization] (JURIX).
351. Act CLIV of 1997 on Public Health Care, art. 187 (1).
352. Ministry of Welfare Order 25/1998 on Artificial Sterilization, art. 2.
353. Act CLIV of 1997 on Public Health Care, art. 187 (2), (3).
354. BTK. art. 171.
355. Ministry of Welfare Order 25/1998 on Artificial Sterilization, art. 5.
356. Act CLIV of 1997 on Public Health Care, art. 187 (4).
357. Communication from NaNE! (on file with The Center for Reproductive Law & Policy).
358. This fee is based on the list of the medical treatments fees issued by the National Health Insurance Office.
359. Communication from NaNE! (on file with The Center for Reproductive Law & Policy).
360. POCKETBOOK OF HUNGARIAN STATISTICS, *supra* note 145, at 83; ORSZÁGOS EPIDEMIOLOGIAI KÖZPONT [NATIONAL EPIDEMIOLOGICAL CENTER], BEJELENTETT AIDS-ES BETEGEK MEGOSZLÁSA A MEG-BETEGEDÉS ÉVE ÉS NEMEK SZERINT [RECORD OF AIDS CASES BY YEAR] (visited Mar. 28, 2000) <<http://www.sztaki.hu/cgi-bin/nm3>> .
361. EUROPEAN CENTRE FOR THE EPIDEMIOLOGICAL MONITORING OF AIDS, HIV/AIDS SURVEILLANCE IN EUROPE, Report No. 61, No. 1/1999, at 8-9, tbl. 1.
362. ORSZÁGOS EPIDEMIOLOGIAI KÖZPONT [NATIONAL EPIDEMIOLOGICAL CENTER], A NYILVÁNTARTOTT HIV-FERTŐZÖTT SZEMÉLYEK NEMENKÉNTI MEGOSZLÁSA A DIAGNÓZIS ÉVE SZERINT [RECORD OF HIV INFECTED INDIVIDUALS BY YEAR OF DIAGNOSTIC] (visited Mar. 28, 2000) <<http://www.sztaki.hu/cgi-bin/nm3>> .
363. HIV/AIDS SURVEILLANCE IN EUROPE, *supra* note 361, at 16, tbl. 8.
364. Communication from NaNE! (on file with The Center for Reproductive Law & Policy).
365. POCKETBOOK OF HUNGARIAN STATISTICS, *supra* note 145, at 80. The data does not contain references as to the actual number of infected people or the rate of types of disease.
366. STATISTICAL YEARBOOK OF HUNGARY 1997, *supra* note 149, at 194.
367. *Id.*
368. 1997. évi CLIV. törvény az egészségügyről [Act CLIV of 1997 on Public Health Care], arts. 60, 70 (JURIX). This is spelled out in more detail in the two Ministry Orders discussed below.
369. *Id.* art. 59(2).
370. *Id.* art. 25.
371. 18/1998. (VI.3.) NM rendelet a fertőző betegségek és a járványok megelőzése érdekében szükséges járványügyi intézkedésekről [Ministry of Welfare Order on Infectious Diseases and on Necessary Measures for the Prevention of an Epidemic] (JURIX). Some other ministry orders also relate to this topic, e.g. 7/1996. (VII. 30.) HM-NM együttes rendelet a katonai szolgálatra való egészségi alkalmasság elbírálásáról [Order of the Ministry of Defence and the Ministry of Welfare on Suitability for Military Service] (JURIX) (stating in art. 43 that students at military schools have to undergo HIV screening).
372. Ministry of Welfare Order on Infectious Diseases 18/1998, art. 20 (1).
373. *Id.* art. 21 (2).
374. *Id.* art. 21 (1).
375. *Id.* art. 22.
376. *Id.* art. 24.
377. *Id.* art. 28.
378. *Id.* app. 2.
379. 5/1988. (V.31.) SZEM rendelet a szerzett immunhiányos tünetcsoport terjedésének meggátálása érdekében szükséges intézkedésekről és a szűrővizsgálat elrendeléséről [Order of the Social and Health Ministry Order on the Prevention of the Spread of AIDS and Screening] (JURIX), last amended by Welfare Ministry Order 9/1998. (III.20).
380. *Id.* art. 1.
381. *Id.* art. 11.
382. 1/1994. (NK 2.) NM utasítás a Nemzeti AIDS Bizottságról [Ministry of Welfare Instruction on the National AIDS Committee] (on file with The Center for Reproductive Law & Policy).
383. *Id.* arts. 1, 2, 4 (2).
384. Programs funded included the launching of a "Sex Education Program" by the National Health Education Institute, the establishment of a hotline on basic information on HIV/AIDS and screening. Communication from NaNE! (on file with The Center for

Reproductive Law & Policy).

385. As a leading activist for sexual self-determination put it, by and large the current programs are more like threatening with AIDS ("Like selling condoms with a sign of skull and crossbones") than dispelling the myths surrounding it. *Id.*

386. See FORCED PROSTITUTION AND TRAFFICKING IN WOMEN (Lenke Fehér & Judit Forrai eds., 1999).

387. Communication from NaNE! (on file with The Center for Reproductive Law & Policy).

388. Márta Katona Soltész, *Equal Rights of Men and Women, Human Rights in the Family*, in HUMAN RIGHTS IN HUNGARY 289 (1990).

389. 1952. évi IV. törvény a házasságról, a családról és a gyámságról [Act IV of 1952 on Marriage, Family and Guardianship] [CSJT], art. 23 (JURIX).

390. PTK. art. 578/G.

391. 14/1995. (III.13) AB határozat [Decision of the Constitutional Court] (JURIX).

392. PTK. art. 685/A.

393. CSJT. art. 2.

394. *Id.* art. 10 (1) – (5). See *below* Marriage and Adolescents.

395. *Id.* arts. 17, 18.

396. *Id.* art. 1 (1).

397. PTK. art. 4.

398. CSJT. art. 23 (1).

399. *Id.* art. 23 (2).

400. *Id.* art. 24.

401. *Id.* art. 26.

402. 1991. évi XLIV. törvény a Gyermekek jogairól szóló, New Yorkban, 1989. november 20-án kelt Egyezmény kihirdetéséről [Act LXIV of 1991 on the Adoption of the 1989 New York Convention on the Rights of Children] (JURIX).

403. CSJT. art. 1 (2).

404. *Id.* art. 42 (1).

405. *Id.* art. 17 (1).

406. 1952. évi III. törvény a polgári perrendtartásról [Act III of 1952 on the Code of Civil Procedure] [PP], arts. 276–292 (JURIX).

407. CSJT. art. 18 (2) (a).

408. *Id.* art. 18 (2) (b).

409. Legfelsőbb Bíróság [Supreme Court], V. Polgári elvi döntés a házastársi tartásra való érdemtelenségről [Ruling No. V on Marital Support] (JURIX); Legfelsőbb Bíróság [Supreme Court], 17. számú Irányelv a gyermek elhelyezésével kapcsolatos szempontokról [Directive No. 17 on Guidelines on Child Custody] (JURIX).

410. Supreme Court, Ruling No. V on Marital Support; Directive No. 17 on Child Custody. As a result, if one of the spouses does not want to get divorced, or there is no agreement between the parties as to the distribution of the property, divorce proceedings take between two to five years. Communication from NaNE! (on file with The Center for Reproductive Law & Policy).

411. CSJT. art. 69/A (2).

412. *Id.* art. 69/C (1), (2).

413. Communication from NaNE! (on file with The Center for Reproductive Law & Policy).

414. CSJT. art. 27 (1).

415. *Id.* art. 29, 30.

416. *Id.* art. 31 (2), (5).

417. Kommentár a Csjt. 27. §-hoz [Commentary to Art. 27 of the Family Code] (on file with The Center for Reproductive Law & Policy).

418. PTK. art. 578/G (1).

419. *Id.*

420. The amount of "salary" paid by the state for this work is half of the fixed minimum wage.

421. CSJT. arts. 31/A–31/E.

422. *Id.* art. 31/A (2). Even though the provision states this principle in relation to a court decision which is contrary to the agreement of the parties, it is apparent from the other provisions of this chapter of the Code (e.g. art. 31/A (3), (4)) and form the general clause in art. 1 (2) that the interest of the child(ren) is to be prioritized in general.

423. *Id.* art. 31/C (1).

424. Legfelsőbb Bíróság [Supreme Court], 17. számú Irányelv a gyermek elhelyezésével kapcsolatos szempontokról [Directive No. 17 on Guidelines on Child Custody], pt. 3 (JURIX) (The Directive stresses that since "distribution of housework had gone through essential changes with the majority of women working outside of the home, and since ascribing all housework and duties around the children to one of the parties is a violation of

equal rights within marriage, therefore, any party – man or woman – who had proven his or her ability to fulfil the duties toward the children is entitled, regardless of the age or sex of the child, to claim custody rights with equal conditions.").

425. CSJT. art. 71 (1).

426. *Id.* art. 72 (1).

427. *Id.* art. 72 (2).

428. *Id.* art. 72/B (1), (2).

429. *Id.* art. 74.

430. *Id.* art. 72/B (3).

431. PP. art. 287.

432. Communication from NaNE! (on file with The Center for Reproductive Law & Policy); 1997. évi XXXI. törvény a gyermek védelméről és a gyámügyi igazgatásról [Act XXXI of 1997 on the Protection of Children], art. 74 (JURIX); 149/1997. (IX.10) Korm. rendelet a gyámhatóságokról, valamint a gyermekvédelmi és gyámügyi eljárásról [Government Decree on Child Protection Authorities and Procedure], art. 27–30 (JURIX).

433. PTK. art. 599.

434. *Id.* art. 601 (1).

435. *Id.* art. 601 (2).

436. *Id.* arts. 607–610.

437. *Id.* arts. 578/G, 685/A.

438. A MAGYAR KÖZTÁRSASÁG ALKOTMÁNYA art. 70/A.

439. 1992. évi XXII. törvény a Munka Törvénykönyvéről [Act XXII of 1992 on the Labor Code] [MT], art. 5(1) (JURIX).

440. *Id.* art. 5 (2).

441. *Id.* art. 90 (1) (c).

442. *Id.* art. 138 (1).

443. *Id.* art. 138 (5).

444. KÖZPONTI STATISZTIKAI HIVATAL [HUNGARIAN CENTRAL STATISTICAL OFFICE], NUMBER OF UNEMPLOYED PERSONS, 1999 (visited Mar. 29, 2000) <<http://www.ksh.hu>>; HUNGARY IN FIGURES (visited Mar. 29, 2000) <<http://www.ksh.hu>>.

445. STATISTICAL YEARBOOK OF HUNGARY 1997, *supra* note 149, at 77–78, 87.

446. BIRKS SINCLAIR & ASSOCIATES LTD, NATIONAL SOCIAL SECURITY LEGISLATION AND EU LAW ON EQUAL TREATMENT OF MEN AND WOMEN IN HUNGARY, INTERIM REPORT ¶ 3.1.9 (1999).

447. The first – and last – case successfully pursued was based on a discriminatory advertisement in which both the sex and the age of the potential applicants were defined (only men aged 25–35 were called to apply for the job). The case was tried by the Monor City Court, in 1997/1998. The plaintiff — a woman aged 51 and supported by the Equal Opportunities Secretariat of the Ministry of Welfare — won. The decision was interesting, because it was based on the provisions of the Constitution, and it was the first time a regular court – not the Constitutional Court – applied the Constitution directly to a case. However, the decision did elicit criticism, since, according to many lawyers, the Labor Code would also provide basis for such decision. Court Decision No. 3.P.21.321/1997/13. See *generally* 4 FUNDAMENTUM: AZ EMBERI JOGOK FOLYÓIRATA [FUNDAMENTUM. THE HUMAN RIGHTS PERIODICAL] 1998, at 75–99, 158–159.

448. The Court decided that raising a child is in itself basis for early retirement and men and women enjoy equal rights and have identical responsibilities with respect to raising children. Consequently, no regulation may treat men disadvantageously in reference to these rights and responsibilities. Decision of the Constitutional Court 32/1997 [VI.16] AB h, *discussed in Constitution Watch: Hungary*, E.EUR.CONSTREV, Vol. 6, No. 2 & 3, Spring/Summer 1997 (visited Apr. 3, 2000) <<http://www.law.nyu.edu/eecr>>.

449. A MAGYAR KÖZTÁRSASÁG ALKOTMÁNYA art. 60 (1).

450. *Id.* art. 67 (2).

451. *Id.* art. 70/F (2).

452. *Id.* art. 70/J.

453. Due to the recent amendment of the Public Education Act, the National Basic Educational Program has probably been superceded, but the consequences of the changes in the law cannot yet be foreseen. FEHÉR KÖNYV A KÖZOKTATÁSRÓL [WHITE BOOK ON PUBLIC EDUCATION] (1999).

454. 1964. évi 11. törvényerejű rendelet az oktatásban alkalmazott megkülönböztetés elleni küzdelemről szóló egyezmény kihirdetéséről [Law Decree on the Application of the International Convention on the Elimination of All Forms of Discrimination in Education] (JURIX).

455. 1993. évi LXXIX. törvény a közoktatásról [Act LXXIX of 1993 on Public Education] (JURIX).

456. 1996. évi LXII. törvény a közoktatásról szóló 1993. évi LXXIX. törvény

- módosításáról [Act LXII of 1996 on the Amendment of the Public Education Act] (JURIX)
457. See *below* Focusing on the Rights of a Special Group: Minors.
458. STATISTICAL YEARBOOK OF HUNGARY 1997, *supra* note 149, at 38.
459. KARAT COALITION FOR REGIONAL ACTION, REGIONAL REPORT ON INSTITUTIONAL MECHANISMS FOR THE ADVANCEMENT OF WOMEN IN THE COUNTRIES OF CENTRAL AND EASTERN EUROPE, PREPARED FOR THE 43RD SESSION OF THE COMMISSION ON THE STATUS OF WOMEN 6 (1999).
460. *Id.*
461. See GOVERNMENT PROGRAMME FOR A CIVIC HUNGARY, *supra* note 109.
462. *Id.* at 7.
463. *Id.* at 17.
464. BTK. art. 197 (1).
465. *Id.*
466. 1997. évi LXXIII. törvény a Büntető Törvénykönyvről szóló 1978. évi IV. törvény módosításáról [Act LXXIII of 1997 for the Amendment of the Criminal Code], art. 22 (JURIX).
467. BTK. art. 200.
468. *Id.* arts. 197 (2), 200 (2). The punishment is imprisonment between five to fifteen years if the survivor of a gang rape or of a rape committed by teacher, supervisor or doctor is under 12 years of age (arts. 197(3), 200(3)).
469. *Id.* art. 199.
470. *Id.* art. 201(1).
471. In Hungarian there is no grammatical gender. The discriminatory nature of the differences in the age-limits in the crimes regulated in arts. 197, 199 and 201 is currently criticized by civic organizations. Five NGOs have submitted a request to the Ministry of Justice for the amendment of the law. This request had not been taken into consideration during the recent amendment of the Penal Code. However, the NGO called *Habeas Corpus - Working Group for the Freedom of Physical Integrity* is currently working on a law-proposal which aims to radically change the whole section on "crimes against sexuality" in the Penal Code. The new chapter would include, among others, the criminalization of sexual harassment, and the elimination of all forms of discrimination based on sex. Also, it aims to give more protection to minors. Communication from NaNE! (on file with The Center for Reproductive Law & Policy).
472. See NAGY-TOKAJI. A MAGYAR BÜNTETŐJOG ÁLTALÁNOS RÉSZE. [THE GENERAL PART OF THE HUNGARIAN CRIMINAL LAW] 181 (1998).
473. BTK. art. 203 (1).
474. *Id.* art. 203 (2).
475. *Id.* art. 203 (3).
476. 1968. évi I. törvény a szabálysértésekről [Act I of 1968 on Criminal Offences], art. 96/A (1) (JURIX).
477. 1997. évi XXXI. törvény a gyermek védelméről és a gyámügyi igazgatásról [Act XXXI of 1997 on the Protection of Children] (JURIX).
478. BTK. art. 170 (1).
479. *Id.* art. 170 (2).
480. *Id.* art. 170 (3).
481. *Id.* art. 170 (4).
482. *Id.* art. 170 (5).
483. *Id.* art. 170 (6).
484. *Id.* art. 170 (7). This is the case only for simple battery, for all other forms of aggravated battery and assault the proceedings start *ex officio*.
485. According to the Hungarian legal system it would be possible to claim damages within the criminal case, but lawyers rarely inform the clients about this possibility because criminal judges are very reluctant to decide such claims. The other possibility would be to file a civil suit for damages at the civil court, but this, too is rare due to the economic, psychological and physical situation of the survivor of domestic violence. Communication from NaNE! (on file with The Center for Reproductive Law & Policy).
486. A woman can have an examination free of charge at a hospital without filing a domestic violence report [284/1997. (XII. 23.) Korm. rendelet a térítési díj ellenében igénybevehető egyes egészségügyi szolgáltatások térítési díjáról [Government Decree 284/1997 on Payment of Fees for Certain Medical Services], app. 1 (JURIX)], but most doctors do not inform the women of this. Communication from NaNE! (on file with The Center for Reproductive Law & Policy).
487. One national NGO, NaNE!, assists women who wish to leave abusive situations, but it cannot meet the demand. The state has, at times, supported NaNE!'s work by donating shelters, but it is far from having an official program or policy to combat domestic violence. Communication from NaNE! (on file with The Center for Reproductive Law & Policy).
488. *Id.*
489. KRISZTINA MORVAI, TERROR A CSALÁDBAN: A FELESÉGBÁNTALMAZÁS ÉS A JOG [TERROR IN THE FAMILY: WIFE BEATING AND THE LAW] 98 (1998). In another case, the court wrote: "The judicial confession of the offender (the husband) and the contributing behavior of the victim (the wife) are mitigating circumstances. Undoubtedly, the victim behaved in an unacceptable and provoking manner which could justly call forth the anger of her husband. Of course, this behavior of the victim did not entitle the offender to beat her as seriously as he did."
490. *Id.* at 179-184. The author cites several court decisions displaying the extremely biased evaluation of the courts. Reviewing the case of a husband who killed his wife in front of their six year old daughter in a clearly premeditated manner, the court mentioned that "it cannot be overlooked that the offender committed his act on the basis of a family conflict." The author concludes that "no such grave crime seems to exist which will not be evaluated as less serious if it is a 'family matter.'" *Id.* at 185.
491. This article bans, *inter alia*, discrimination on the grounds of gender, race, ancestry, national origin, or religion, any unlawful restriction of personal freedom, contempt for or insult to the honor, integrity, or human dignity.
492. 1998. évi LXXXVII. törvény a büntető jogszabályok módosításáról [Act LXXXVII of 1998 Amending the Criminal Code], art. 43 (JURIX). The amendment is effective as of March 1, 1999.
493. BTK. art. 175/B.
494. For a brief analysis of the law see Gusztav Kosztolanyi, *A Green Light to Red-Light Districts*, CENTRAL EUROPE REVIEW, Vol. 1, No. 22, Nov. 22, 1999 (visited Mar. 30, 2000) <[www.ce-review.org](http://www.ce-review.org)>.
495. The target date set by different governments of Hungary of becoming a part of the EU is somewhere between 2002-2006.
496. KÖZPONTI STATISZTIKAI HIVATAL [HUNGARIAN CENTRAL STATISTICAL OFFICE], MAGYAR STATISZTIKAI ÉVKÖNYV 1998 [STATISTICAL YEARBOOK OF HUNGARY], at 32 (1999).
497. The laws that most directly refer to the rights of children are: 1991. évi LXIV. törvény a Gyermek jogairól szóló, New Yorkban, 1989. november 20-án kelt Egyezmény kihirdetéséről [Act LXIV of 1991 on the Enactment of the New York Convention on the Rights of Children], 1997. évi XXXI. törvény a gyermek védelméről és a gyámügyi igazgatásról [Act XXXI of 1997 on the Protection of Children and Public Guardianship Management] the Family Code; 149/1997. (IX.10.) Korm. rendelet a gyámhatóságokról, valamint a gyermekvédelmi és gyámügyi eljárásról [Government Decree No. 149/1997 (IX. 10) on Public Guardianship Authorities and Child Protection Procedures] (all available in JURIX).
498. Act LXIV of 1991 on the Enactment of the New York Convention on the Rights of Children, art. 3.
499. Such as the right to life, name and nationality, the right to live with his or her own parents, the right to education, health, freedom of expression, right to protection from all forms of physical or mental violence or other forms of abuse, from economic and sexual exploitation, etc.
500. Communication from NaNE! (on file with The Center for Reproductive Law & Policy).
501. INSTITUTE OF BEHAVIORAL SCIENCES, SEMMELWEIS MEDICAL UNIVERSITY & FOUNDATION VÉGEKEN, JOBB EGÉSZSÉGET A NŐNEK EGÉSZSÉGMEGŐRZŐ PROGRAM 1998-AS FELMÉRÉS ELSŐ EREDMÉNYEI [FIRST RESULTS OF THE STUDY OF HEALTH PREVENTION PROGRAM: BETTER HEALTH FOR WOMEN] (visited Mar. 31, 2000) <<http://www.women-health.net>>.
502. For a recent and controversial case on teenage abortion see *Abortion Ordeal*, BUDAPEST SUN, Jan. 27, 2000 (visited Mar. 31, 2000) <<http://www.budapestsun.com>>.
503. STATISTICAL YEARBOOK OF HUNGARY 1998, *supra* note 496, at 50-51. This is somewhat contradictory with the provisions of the Family Code regarding age of first marriage (see *below* Marriage and Adolescents).
504. 130/1995. (X.26.) Korm. rendelet a Nemzeti alaptanterv kiadásáról [Government Decree 130/1995 on the Issuance of the National Basic Educational Program] (as amended by Government Decree 100/1997. (VI.13.) (JURIX)). As mentioned earlier, the Program's functioning is questioned by the newest amendment of the Public Education Act LXXXIX of 1993.
505. 26/1997. (IX.3.) NM rendelet az iskola-egészségügyi ellátásról [Decree No. 26/1997 of the Ministry of Public Welfare on Health Education in Schools], app. 3 (JURIX).
506. CSJT. art. 10 (1).
507. *Id.* art. 10 (2).
508. *Id.* art. 10 (4).
509. 149/1997. (IX.10.) Korm. rendelet a gyámhatóságokról, valamint a gyermekvédel-

mi és gyámügyi eljárásról [Government Decree on Public Guardianship Authorities and Child Protection Procedures], art. 36 (JURIX).

510. This raises the debate over whether cultural differences are to be tolerated, or the laws of the majority are to be enforced.

511. PTK. art. 12 (2).

512. 1997. évi XXXI. törvény a gyermek védelméről és a gyámügyi igazgatásról [Act XXXI of 1997 on the Protection of Children] (JURIX).

513. BTK. arts. 197 (2) (a), 198 (2) (a).

514. *Id.*

515. *Id.* arts. 197 (2)(b), (c), 198 (2)(b), (c).

516. *Id.* art. 201 (1), (2).

517. *Id.* art. 201 (3).

518. *Id.* art. 199.

519. *Id.* art. 200.

520. *Id.* art. 201.

521. 1993. évi LXXIX. törvény a közoktatásról [Act LXXIX of 1993 on Public Education], art. 6 (1), (2) (JURIX).

522. *Id.* art. 131 (1).

523. *Id.* art. 131 (2).

524. 1964. évi 11. törvényerejű rendelet az oktatásban alkalmazott megkülönböztetés elleni küzdelemről szóló egyezmény kihirdetéséről [Law Decree on the Application of the International Convention on the Elimination of All Forms of Discrimination in Education] (JURIX).

525. Act LXXIX of 1993 on Public Education, art. 4 (7).

526. According to the report of the Ombudsman of National and Ethnic Minority Rights, there is systematic discrimination against Roma children. The main method of discrimination is placing the Roma children into subsidiary schools (facilities for mentally disadvantaged children known for their extremely low standards) in a rate six to seven times higher than placing the non-Roma children there. Children completing such schools have practically no other future than to work as unqualified workers in the most insecure and most underpaid jobs. REPORT BY THE OMBUDSMAN FOR NATIONAL AND ETHNIC MINORITY RIGHTS REGARDING THE COMPREHENSIVE SURVEY OF THE EDUCATION OF MINORITIES IN HUNGARY - 1998 (visited Mar. 31, 2000) <<http://www.obh.hu/nekh/angol.ver/cases/u-index.htm>>.

527. 130/1995. (X.26.) Korm. rendelet a Nemzeti alaptanterv kiadásáról [Government Decree 130/1995 on the Issuance of the National Basic Educational Program] (as amended by Government Decree 100/1997. (VI.13)) (JURIX).

528. 1998. évi LXXXVII. törvény a büntető jogszabályok módosításáról [Act LXXXVII of 1998 Amending the Criminal Code], art. 42 (JURIX).

529. BTK. art. 175 (2), (3)(e).

530. *Id.* art. 175/B (2)-(5). Other aggravating circumstances are: trafficking the person for work, sex-work, depriving the trafficked person of her or his personal freedom, the trafficked person is under the care of the perpetrator, or the perpetrator is a member of an organized crime.

531. *Id.* art. 195/A.