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# **Hungary**

## ***Cries unheard***

**The failure to protect women  
from rape and sexual violence  
in the home**



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# Hungary

## *Cries unheard*

### The failure to protect women from rape and sexual violence in the home

*“I have worked as a judge for 20 years but, to tell you the truth, I myself would not report rape. It is very difficult because of the procedures, the attitudes, and social conventions. It is the victim who has to defend and prove everything.”*

*“When he started to beat me regularly, his father said that he was right...When I told the police, they said he had been quite alright the previous evening in the pub... Everyone thought that women should just bear these things... He raped me several times, but this is taboo in villages, I could not tell anyone.”*

*“Are you the one who has come to talk about the birds brought in here who say they have been raped?... At least 85 per cent of them are whores. They want to have sex, but then do not manage to come to an agreement. They are prostitutes, overtly or secretly. An expert can see this.”*

*“[Accusing someone of rape] can come in very handy for women when they want to get a divorce and parental rights... Anyone can hit her own head on a table.”*

## Introduction

The almost insurmountable barrier that confronts girls and women in Hungary seeking justice for rape is illustrated in these words of a judge, a woman who has been raped and police officers interviewed by Amnesty International. Crimes of sexual violence wreck the lives of women in every country in the world, and the effective prosecution of those responsible poses challenges to all governments and societies. Yet in Hungary, the government and the criminal justice system have yet to tackle the widespread prejudices that prevent women who have been raped or subjected to other forms of sexual violence from obtaining justice or redress.

Most rapes and other crimes of sexual violence are committed in the home and by people known to the victim. Husbands and other intimate partners and former partners are most frequently the perpetrators. The number of studies in Hungary has been shockingly small, although it has been estimated that nearly one in three women has been subjected to physical violence by their partner. Of over 1,000 women surveyed in the only recent study on physical and sexual violence in the home in Hungary, 28 per cent reported being beaten and over 7 per cent said they had been forced to have sex by their partners.<sup>1</sup>

Rape and other forms of sexual violence are violations of women’s human rights. The government’s responsibility for criminal acts by private individuals lies in ensuring that laws and procedures provide a framework of protection, that such provisions are vigorously

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<sup>1</sup> Olga Tóth, *Erőszak a családban* (“Domestic Violence”), TÁRKI Social Research Center, 1999.

implemented to protect women from violence, and that women who have been subjected to violence are actively supported in obtaining justice and redress. These obligations on the state are set out in international human rights laws that Hungary has made commitments to uphold.

The government has made some moves in the right direction. In 1997 rape within marriage was recognized as a crime within the Penal Code. In 2003 the National Assembly resolved to establish a national strategy for the prevention and successful handling of domestic violence.<sup>2</sup> Also in 2003 the police issued guidelines on the responsibilities of the police force in responding to domestic violence.<sup>3</sup>

Yet the discrimination and denial that women continue to face in their struggle for justice against rapists and domestic abuse reveals the state's lack of political will to confront the pervasive prejudices that riddle the criminal justice system and broader society. The government is still failing to tackle the legal requirement that physical resistance by the victim must be proved, the dilatory police responses, and the lack of specialist services in the justice and health systems, which all provide positive disincentives to reporting the crime. Girls and women who have been raped can expect to be disbelieved and stigmatized.

This report demonstrates -- including through interviews with women who have been raped and subjected to domestic violence, with police officers, judges and human rights organizations -- the widespread silence and denial about sexual violence in general and violence by intimate partners in particular. It provides stark examples of the devastating impact of such crimes on women's lives, and of the blatant prejudice and discrimination against women in the law, criminal justice system and support services. It looks at obstacles impeding women's access to justice and redress, and identifies the government's obligations under international law.

Amnesty International is calling on the government of Hungary to respect, protect and fulfil women's rights through changes in the law, by ensuring access to justice, and by providing standards and training for professionals working with victims of sexual crimes. The government is urged to set up support services for victims of sexual violence, to carry out research and compile data that will inform policy making, and to actively combat social prejudices through public education. It must tackle crimes of sexual violence as seriously as other acts of violence against the person. Until effective action is taken, girls and women in Hungary will continue to be denied their right to justice and redress without discrimination.

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<sup>2</sup> Resolution 45/2003 (IV, 16) OGY of the Hungarian National Assembly "határozat a családon belüli erőszak megelőzésére és hatékony kezelésére irányuló nemzeti stratégia kialakításáról." Hungarian text: [www.stopvaw.org/sites/3f6d15f4-c12d-4515-8544-26b7a3a5a41e/uploads/45.2003.doc](http://www.stopvaw.org/sites/3f6d15f4-c12d-4515-8544-26b7a3a5a41e/uploads/45.2003.doc). English text: [www.stopvaw.org/sites/3f6d15f4-c12d-4515-8544-26b7a3a5a41e/uploads/Parliamentary\\_resolution\\_2.rtf](http://www.stopvaw.org/sites/3f6d15f4-c12d-4515-8544-26b7a3a5a41e/uploads/Parliamentary_resolution_2.rtf).

<sup>3</sup> Az Országos Rendőrfőkapitány 13/2003. (III.27.) ORFK Intézkedése a családon belüli erőszak kezelésével és a kiskorúak védelmével kapcsolatos rendőri feladatok végrehajtására. (Provision of the Hungarian Chief Commissioner of Police on the tasks of the police force related to domestic violence and the defence of minors (13/2003 (III.27.)) ORFK.)

## 1. The impact of rape

Rape and other forms of sexual violence have a devastating impact on women's lives. Women subjected to domestic violence, which often involves rape, suffer the same pain, humiliation and threat as victims of other forms of violence. They may have physical injuries, be subjected to psychological abuse, and experience the same feelings of powerlessness and depression. In addition, they are often without emotional support, facing alone widely-held myths and prejudices in the community about women's responsibilities for abuse by an intimate partner.

The human rights organization, the Foundation for the Women of Hungary, has found that limited attention has been given in research and policy development to the overlap between rape and domestic violence.<sup>4</sup> It reports that women who have experienced violence in the home will describe physical abuse in detail, but are reluctant to talk about rape or mention it only briefly. Many rape victims feel ashamed of what has happened to them and fewer of them ask for help than the victims of other physical violence.

Such women are only too aware that rape is one of the few crimes in which the victim is treated as guilty until she can prove her innocence, while the accused is deemed innocent until proved guilty. A woman judge told Amnesty International:

*"I have worked as a judge for 20 years, but to tell you the truth, I myself would not report rape. It is very difficult because of the procedures, the attitudes, and social conventions. It is the victim who has to defend and prove everything."*<sup>5</sup>

Court documents, police records, bills of indictment, interviews and surveys all show that it is the victim of domestic violence who has to prove that she has been abused, that she did not provoke the abuse and that she had a good reason for not leaving an abusive partner.

There are still strong prejudices against women who face violence in the family or are raped. In a public opinion poll of nearly 1,200 people in 2006, over 32 per cent of those polled believed that women were responsible for being raped: nearly 40 per cent of the men and over 25 per cent of the women.<sup>6</sup> Most of those questioned thought that domestic violence was an important issue, but over 15 per cent thought it was "exaggerated": of these, nearly 23 per cent were men and nearly 9 per cent women. While over 87 per cent of respondents thought the state should act to stop domestic violence, twice as many men as women thought it should not intervene in family matters: over 14 per cent of the men to over 7 per cent of

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<sup>4</sup> Dorottya Rédei, Réka Sáfrány, Herta Tóth, *Családon belüli erőszak és bűnelkövetés: A családon belüli erőszak jelenségének kutatása női és férfi fogvatartottak körében*, ("Domestic violence and committing crimes: Research on domestic violence among female and male prisoners"), Foundation for the Women of Hungary, 2005, pp. 22-23.

<sup>5</sup> Interview, 16 March 2006. Throughout this report, the identity of interviewees has been withheld at their request.

<sup>6</sup> MEDIÁN Közvélemény- és Piackutató Intézet (MEDIÁN Public Opinion Poll and Market Research Institution), 2006. Unpublished data provided to Amnesty International.

women. Again, almost twice as many men thought that a husband forcing his wife to have sex was not rape: over 15 per cent of the men to over 8 per cent of women.

Rózsa received no support from friends or relatives although her husband beat and raped her routinely – indeed, they tried to explain and legitimize the violence – as she told Amnesty International.

*“I escaped from my former husband three years ago. I did not have anything but my two children. I left even my clothes behind... When he started to beat me regularly, his father said that he was right. He was jealous of everyone. He began to beat me daily. When I told the police, they told that he had been quite alright the previous evening in the pub. I had nowhere to turn. I called switchboards. They at least listened to me. I was ashamed to talk about this to my acquaintances. Everyone thought that women should just bear these things. He used to say that we were married: he could prove that I was his property, so I had to do whatever he wanted. I tried to avoid having sex with him, but he didn’t care. He raped me several times, but this is taboo in villages, I could not tell anyone. No, I didn’t know about the law. Although – what could I have done with it? If I complained to a friend, she said that I was exaggerating things. I know that many women think like that.”<sup>7</sup>*

### Rape by an intimate partner

There are two main categories of sexual violence: those in which the perpetrator is a stranger and those in which the perpetrator is known to the victim. In Hungary, the attackers are most often spouses, boyfriends, friends, schoolmates, colleagues, former lovers or partners of the victims.<sup>8</sup> Although in two thirds of other types of crimes, the victim does not know the perpetrator, this ratio is reversed for sexual crimes: two thirds of known sexual crimes in Hungary are committed by people known to the victim.<sup>9</sup>

All rape has a devastating impact on the victim, but rape by an intimate partner can have a particular traumatic effect that others frequently ignore. Unlike rape by a stranger, it is not an unusual disaster, invoking general public sympathy, but leaves the victim under continuous threat of a repeat attack, powerless, disbelieved by many around her and frequently held responsible for the attacks she has endured. These circumstances make it more difficult for victims to seek help and to recover from their experience. As one survivor said:

*“So what is marital rape like? Anyone can imagine it who has seen a film in which a woman is attacked, beaten and raped in a park, in her own apartment or anywhere else. The thing is: it is exactly the same as any other rape. Someone grabs your hair,*

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<sup>7</sup> Interview, 8 March 2006. Throughout this report, the names of victims of sexual violence have been changed.

<sup>8</sup> György Virág, “A szexuális erőszak áldozatai a társadalomban és a büntetőeljárásban” (“Victims of sexual violence in the society and in criminal procedures”), *Belügyi Szemle*, 3/1998., pp. 39-50.

<sup>9</sup> György Virág, “Szexuális bűncselekmények” (“Sexual crimes”), in *Áldozatok és vélemények II*, OKRI (National Institute of Criminology), Bp. 2004, p. 73.

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*slaps your face or hits it with a clenched fist, kicks you in the stomach, or simply holds a knife to your throat...The difference between rape in films and marital rape is that we cannot scream, as our child might wake up in the other room. Or that our child is right there, next to us, her or his face distorted with terror. And another difference is that the person who does this to us is someone we used to love, someone we once trusted more than anyone else. And there's another difference, too: that others say that we invented the whole thing. That we tell lies. Or if this can really happen, it is not such a big deal.”<sup>10</sup>*

## High rates of attrition

A key barrier to women in trying to obtain justice for rape and other crimes of sexual violence is the high rate of attrition in such cases – the large number and proportion of cases that drop out of the legal process, failing even to reach court or not resulting in criminal convictions. Cases can be lost at a number of stages and for a variety of reasons. The police may not identify the attacker. The victim or other witnesses may decide to withdraw their statements or not to press charges. The case may be labelled a “false report”. Amnesty International found in interviews with police officers that many believe that women frequently lie about rape, even among specialists in rape investigations. The police, prosecutors or judges may decide there is not enough evidence. Many experts argue that the first and in many ways most significant point of attrition is the failure to report the crime.

This attrition rate is reflected in national police statistics. In 2005, 876 reports of “crimes against sexual morals” were recorded by the police: a decision that no crime had occurred was taken in over 3 per cent of these cases; the victim decided not to press charges in nearly 15 per cent of cases; charges were brought in nearly 74 per cent. Of the 876 crimes reported, 264 were reports of rape: a decision that no crime had occurred was taken in over 5 per cent of these cases; the victim decided not to press charges in over 19 per cent of cases; and charges were brought in nearly 66 per cent.<sup>11</sup>

Despite high levels of attrition, Hungary’s conviction rate for rape and other sexual crimes is one of the highest in Europe, averaging convictions in over half of all cases.<sup>12</sup> However, remarkably fewer cases are reported to the police than in other European countries. In Sweden, which has 9 million inhabitants, 1,752 cases were reported in 2001, while in Hungary, with 10 million inhabitants, 803 “crimes against sexual morals” were reported in 2004 and 876 in

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<sup>10</sup> Quoted in Krisztina Morvai, *A családon belüli erőszakos bűncselekmények kontextuális megközelítésének jelentősége a büntető jogalkotásban és jogalkalmazásban* (The Significance of a Contextual Approach to Cases of Domestic Violence in Legislation and the Application of Criminal Law), PhD dissertation, Budapest, 2001.

<sup>11</sup> Unified Crime Statistics of the Police and the Prosecutors (ERÜBS), data provided by the Highest Prosecution Service of the Republic of Hungary (25 January and 20 March 2006).

<sup>12</sup> Linda Regan and Liz Kelly, *Rape: Still a Forgotten Issue*, Briefing document for *Strengthening the Linkages – Consolidating the European Network Project*, Child and Woman Abuse Studies Unit, London Metropolitan University, 2003, p. 10.

2005.<sup>13</sup> Low levels of reporting are attributable to poor investigative skills and training within the police, the lack of official support and services offered to victims, the flawed laws on rape and other sexual crimes, and widespread social prejudices encountered by women who report such crimes. Only the strongest cases reach the courts, those in which the victims have been seriously injured or which involve suspects with a criminal record or low educational attainment. Of 13 cases that came to court in one city in Hungary studied by Amnesty International, the perpetrators in 10 of them had received no education beyond primary school.

Social prejudices about the perpetrators of rape, and perceptions that women frequently make false allegations of rape, are widespread. Two judges told Amnesty International that they thought only uneducated and poor people committed rape. One of them also said that women could easily use an accusation of rape or child abuse to get rid of an alcoholic husband. Yet such views are strongly disputed in the accounts of non-governmental organizations that provide support for victims of sexual violence, such as NANE Women's Rights Association and the Habeas Corpus Working Group, and in one research study, which all show for example that rape occurs among all socio-economic groups.<sup>14</sup>

### Hungary's international legal obligations

States' obligations to respect, protect and fulfil all human rights have been elaborated in international human rights standards since the 1980s. To exercise their duty of due diligence regarding sexual violence and rape, states should reform laws, ensure access to justice for women, train judicial and law enforcement personnel, set up support services for victims, conduct research and prepare statistics, develop guidelines for professionals in the field, run school education programmes and public information campaigns, and secure funding for these activities.

According to the UN Committee on Economic, Social and Cultural Rights:  
 “[A]ll human rights [impose] three types or levels of obligations on States parties: the obligations to **respect**, **protect** and **fulfil**. In turn, the obligation to fulfil contains obligations to facilitate, provide, and promote.  
 The obligation to **respect** requires States to refrain from interfering directly or indirectly with the right...  
 The obligation to **protect** requires states to take measures that prevent third parties from interfering with... guarantees.  
 Finally, the obligation to **fulfil** requires States to adopt appropriate legislative, administrative, budgetary, judicial, promotional and other measures towards the full

<sup>13</sup> Linda Regan and Liz Kelly, *Rape: Still a Forgotten Issue*, Briefing document for *Strengthening the Linkages – Consolidating the European Network Project*, Child and Woman Abuse Studies Unit, London Metropolitan University, 2003, p. 8.

<sup>14</sup> Olga Tóth, *Erőszak a családban* (“Domestic Violence”), TÁRKI Social Research Center, 1999.

*realization of the right.”*

(General Comment 14: The right to the highest attainable standard of health (Article 12))<sup>15</sup>  
(Emphasis added.)

Throughout this report, examples are given of the international human rights laws that set out standards in these areas, standards which the government of Hungary should meet.

## 2. Flawed rape laws

There are serious shortcomings in the way the Hungarian Penal Code defines and punishes crimes of sexual violence. Much of it still reflects 19th century laws and social attitudes, despite significant reforms in recent years, including the criminalization of marital rape in 1997.

The Penal Code continues to define rape and other crimes of sexual violence as “crimes against marriage, the family, youth and sexual morality”.<sup>16</sup> The implications of such a definition are to remove the focus from the harm done to the victim, usually a girl or woman, and to encourage the victim to remain silent for fear of the damage even a complaint will do to her standing in her community. In many other countries these crimes have been redefined to reflect the view that they are crimes against the person or sexual crimes.

The Council of Europe has recommended member states to: “ensure that criminal law provides that any act of violence against a person, in particular physical or sexual violence, constitutes a violation of that person's physical, psychological and/or sexual freedom and integrity, and not solely a violation of morality, honour or decency” (Committee of Ministers, Recommendation (2002) 5, 34).

However, the most serious failing in the Penal Code's definition of rape is its requirement that women must prove that they fought back, that they physically resisted, no matter the level of threat or violence that they face:

*“whoever forces someone, by violence or by directly threatening the other person's life or bodily integrity, to engage in sexual intercourse, or takes advantage of someone's inability to defend herself/himself or to express her/his wish to have sexual intercourse, is to be sentenced to two to eight years in prison”* (Article 197).<sup>17</sup>

The Committee for the Elimination of Discrimination against Women (CEDAW) has included relevant concerns and recommendations in its concluding observations to Hungary, after the consideration of the country's combined fourth and fifth periodic report in 2002: “the Committee remains concerned that the Hungarian Penal Code currently treats sexual

<sup>15</sup> UN Doc. E/CN.12/2000/4

<sup>16</sup> Chapter XIV.

<sup>17</sup> Btk. 197. § (1) Aki mást erőszakkal, avagy az élet vagy testi épség ellen irányuló közvetlen fenyegetéssel közöszülésre kényszerít, vagy más védekezésre, illetőleg akaratnyilvánításra képtelen állapotát közöszülésre használja fel, büntetett követ el, és két évtől nyolc évig terjedő szabadságvesztéssel büntetendő.

*crimes as crimes against decency rather than violations of women's rights to bodily security. It is particularly concerned that the definition of rape, including that within marriage, is based on the use of force rather than the lack of consent. The Committee recommends that the State party reform its law to define sexual crimes as crimes involving violations of women's rights to bodily security and that the State party define the crime of rape as sexual intercourse without consent"*(CEDAW A/57/38 part III (2002) 333,334)

Penetration or ejaculation is not required to prove rape. If the purpose of the perpetrator is not sexual (and vaginal) intercourse, the crime is defined as an act of indecency and punishable as for rape (Article 198). The penalty is between five to 10 years' imprisonment if the perpetrator is responsible for the victim as a parent, an educator, a doctor or a nurse. It is not necessary to prove serious resistance where the victim is unconscious as a result of alcohol or drugs, is sleeping deeply, has a physical or severe mental disability, or is under 12 years of age.

This requirement to prove resistance effectively denies women's rights to sexual autonomy and physical integrity, and fails to provide proper protection from violence. In practice, it has been interpreted restrictively by the courts, which have assumed that, however severe the risk to the women's safety, she is deemed to have consented to sex unless she can prove she resisted.

*János and Szilvia, a middle-aged couple, were attacked by four young men on their way home one night. János was beaten up and injured in the street outside their house. The couple could not prevent their attackers from getting in the house. Szilvia was taken into the garden and raped. The four young men were subsequently tried and convicted, but received only suspended prison sentences. On appeal, three were acquitted and the fourth was given a suspended four-month prison term. The appeal court ruled that "the victim is required to resist or at least express her resistance, if she is able to resist. This resistance must be serious, and the victim must say that she does not give her consent: she must also do something physically to try and avert the crime."*<sup>18</sup>

The requirement also applies to rape by intimate partners when the victim knows the likely levels of violence that will result. Where a girl or woman lives under constant threat, it is likely that she will be unable to prove that she did not consent to rape.

*"I knew that if I said no and resisted, he went on the rampage. I could not do this to my children, so in order not to cause them trouble, I closed my eyes and waited until it was over."*<sup>19</sup>

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<sup>18</sup> Court records, 2003. Throughout this report, details of court records have been withheld so as not to identify the individuals involved.

<sup>19</sup> Quoted in Krisztina Morvai, *A családon belüli erőszakos bűncselekmények kontextuális megközelítésének jelentősége a büntető jogalkotásban és jogalkalmazásban* ("The Significance of a

One appeal court suspended a prison sentence for rape on the grounds that a child with learning and physical disabilities had not been able to prove that she did not physically resist for fear of her attacker.

*Barbara was 15, had epilepsy and a learning disability, and was living in a community home when she was raped by a 40-year-old man. He had talked to Barbara and her girlfriends several times. One day when she was on her own, he persuaded her to get into his car. A teacher later told the police after discovering Barbara was pregnant. The man was convicted of rape and sentenced to three and a half years in prison in 2005, but on appeal had his sentence suspended and reduced to two years. The appeal court overturned the finding of the trial court that “it was physical violence that kept the victim from doing what she wanted”, giving as its reason that “this could not be established without doubt from her testimony, but only from that of the psychiatric specialist, who gave the opinion that the determined manner of the perpetrator, and his superior strength, restrained her from defending herself effectively.”<sup>20</sup>*

The European Court of Human Rights has ruled that requiring evidence of physical force and resistance for rape to be established would unduly narrow the scope of rape laws and would be contrary to basic European human rights standards.<sup>21</sup> The Court has found that laws on rape tend no longer to require evidence of physical force and resistance but recognize rape as a violation of sexual autonomy, and that research shows that physical resistance is often not the primary reaction of victims.

Requiring evidence that a woman physically resists rape denies women both equality and sexual autonomy, the right to choose when, how and with whom to engage in sexual contact. A useful definition of the “equality approach” has been given by Rebecca Cook:

*“The equality approach starts by examining not whether the woman said ‘no’, but whether she said ‘yes’. Women do not walk around in a state of constant consent to sexual activity unless and until they say ‘no’, or offer resistance to anyone who targets them for sexual activity. The right to physical and sexual autonomy means that they have to affirmatively consent to sexual activity.”<sup>22</sup>*

To introduce the concepts of sexual autonomy and equality in Hungarian law, the definition of rape and other crimes of sexual violence must include the possibility that they may be committed with intent or recklessly: with intent when the perpetrator knows that no consent

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Contextual Approach to Cases of Domestic Violence in Legislature and the Application of Criminal Law”), PhD dissertation, Budapest, 2001, p. 98.

<sup>20</sup> Court records, 2005.

<sup>21</sup> *M.C. v. Bulgaria*, application no. 39272/98, judgment, 4 December 2003.

<sup>22</sup> Professor Rebecca Cook, Professor Bernard Dickens and Paul Kaufman, “Report to the UN Special Rapporteur on Violence against Women – Analysis of Canadian Law”, quoted in INTERIGHTS (International Centre for the Legal Protection of Human Rights), written comments, 12 April 2003, in the European Court of Human Rights, Case No. 39272/98 between M.C. (Applicant) and Bulgaria (Respondent).

has been given; recklessly when the perpetrator is reckless of whether consent has been given, which includes not giving any thought to whether consent has been given. Such a definition does not affect the burden of proof or the presumption of innocence for the defendant: The prosecution still has to prove that there was no consent or free agreement.

A non-exhaustive list of examples showing when consent or free agreement is not present, provided in guidelines produced by the United Kingdom government, include the following situations in which a victim of sexual violence:

- *submits or is unable to resist because of force or fear of force;*
- *submits because of threats or fear of serious harm or serious detriment of any type to themselves or another person;*
- *was asleep, unconscious, or too affected by alcohol or drugs to give free agreement;*
- *did not understand the purpose of the act, whether because they lacked the capacity to understand, or were deceived as to the purpose of the act;*
- *submits or is unable to resist because they are abducted or unlawfully detained;*
- *has agreement given for them by a third party.*<sup>23</sup>

The Council of Europe has recommended that member states: “provide for appropriate measures and sanctions in national legislation, making it possible to take swift and effective action against perpetrators of violence and redress the wrong done to women who are victims of violence. In particular, national law should:

- penalise sexual violence and rape between spouses, regular or occasional partners and cohabitants;
- penalise any sexual act committed against non-consenting persons, even if they do not show signs of resistance.”

(Committee of Ministers, Recommendation (2002) 5, 35)<sup>24</sup>

### 3. Failures to deliver justice and redress

The implementation of criminal procedures and regulations frequently fails to protect victims and proves a greater hurdle than the failings of the law itself. “The major problem is that the procedures should be regulated in a different way”, emphasizes Júlia Spronz, Director of the non-governmental Habeas Corpus Working Party, which operates a legal aid service for the victims of sexual crimes. “It is not the law that is the biggest problem.”<sup>25</sup>

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<sup>23</sup> United Kingdom Home Office, *Setting the Boundaries: Reforming the law on sex offences*, 2000, p. xii.

<sup>24</sup> [http://cm.coe.int/stat/E/Public/2002/adopted\\_texts/recommendations/2002r5.htm](http://cm.coe.int/stat/E/Public/2002/adopted_texts/recommendations/2002r5.htm)

<sup>25</sup> Interview, 15 December 2005.

## Inadequate investigation

Despite the difficulties of cases in which there are frequently no independent witnesses, the police too often fail to carry out professional investigations into reports of sexual crimes, especially those committed by intimate partners.

Current police regulations on responding to domestic violence cases require officers to provide information on how to enforce rights and where to seek shelter and support services, to listen to those involved and witnesses separately, to record allegations of systematic abuse or previous similar acts, to note the emotional state of those concerned, and to look for evidence and witnesses.<sup>26</sup>

However, one study in Hungary found that too often police investigation files submitted in court are formalistic and unusable, that vital material evidence such as stained clothing is not seized for forensic examination, and that witnesses are not sought out or interviewed.<sup>27</sup> More recent reports suggest that the police still do not always investigate rape cases properly.

*Sztella reported to the police that her former husband had raped her at her apartment. He was visiting their daughter following a difficult divorce, and the attack reportedly took place while the child was in the garden. He had harassed Sztella repeatedly since their divorce, sending her text messages which were sexually explicit and expressed his jealousy, apparently in an attempt at reconciliation. After she called the police, he too phoned the police and accused his ex-wife of lying. In a statement he made outside the building to two police officers who arrived on the scene, he said that he and his former wife had had consensual sex, and that she had then scratched herself, torn her own clothes, broken a lamp and other objects, and banged her head against something. The two officers did not enter the building to examine the scene or attempt to interview Sztella, who was soon taken away by ambulance.*

*Following a decision, months later, that the police had no reason to investigate, and that no crime could be ascertained or result expected, Sztella lodged a complaint. The county public prosecutor found her complaint to be groundless, and she had to initiate a private prosecution. When the case came to court, the accused chose not to testify in his defence. One of the officers who attended the scene told the court: "Well, she was crying, but she did not ask either of us to have a look at the scene". The other said, "I do not think the rape had happened. He was calm and settled." According to the court record: "The witness [one of the officers]... could not explain why they had not examined the scene at that time or shortly afterwards". Sztella "was uncertain about pressing charges, as she was sceptical about the possibility of success against*

<sup>26</sup> Az Országos Rendőrfőkapitány 13/2003. (III.27.) ORFK Intézkedése a családon belüli erőszak kezelésével és a kiskorúak védelmével kapcsolatos rendőri feladatok végrehajtására. (Provision of the Hungarian Chief Commissioner of Police on the tasks of the police force related to domestic violence and the defence of minors (13/2003 (III.27.)) ORFK.)

<sup>27</sup> Veronika Dénes, "A bírósági eljárás sajátosságai a családon belül elkövetett szexuális bűncselekmények tárgyalása során" ("The characteristics of court proceedings related to sexual violence committed by family members"), *Belügyi Szemle* 2000/4-5, pp. 127-146.

*her former husband, who also worked in the law enforcement field”, her sister explained at one hearing. Sztella told the court that an investigator who had begun to deal with the case announced that he was biased as he knew her husband, and how she had not been kept informed about the progress of the case. Her mother told the court that she had cleaned blood off the wall.*

*The court decided that there was insufficient evidence for a conviction.*<sup>28</sup>

The UN General Assembly has urged members states to ensure that: “*Evidence of prior acts of violence, abuse, stalking and exploitation by the perpetrator is considered during court proceedings*” (Resolution 52/86 on Crime prevention and criminal justice measures to eliminate violence against women, Annex: Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice, para 7 (f))

Other cases reveal a failure to gather evidence:

*A 16-year-old girl, Diana, was attacked by an acquaintance of hers as she was walking home from a disco. She managed to escape, leaving her coat behind. According to a subsequent medical report, her attacker kicked her in the mouth and pulled out some of her hair. She called the police who, while taking her home, caught sight of the man, still holding her coat. However the police let him go and he was not questioned until two months later. He was subsequently tried and sentenced to one year’s imprisonment for attempted rape. The court in its judgement noted that “steps taken by the police were insufficient and unsatisfactory. The victim said she had bitten the finger of her attacker, but this was not checked and the accused man was let go immediately. This made gathering evidence more difficult, and made it impossible to ask for further evidence”.*<sup>29</sup>

“Examination facilities should make top to toe examination possible, and a set of rules should define how injuries should be examined and recorded, as well as treatment and follow-up care and documenting.” (World Health Organization, Guidelines for medico-legal care for victims of sexual violence, Geneva, 2003)

## **Prejudice within the police**

Interviews by Amnesty International with several police officers revealed common prejudices about rape and about women who make accusations of rape:

*“What is rape? It is different from a man’s and from a woman’s point of view... [Accusing someone of rape] can come in very handy for women when they want to get a divorce and parental rights... Anyone can hit her own head on a table... Why*

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<sup>28</sup> Court records, 2005.

<sup>29</sup> Court records, 2004.

would police officers, prosecutors or judges be different from society?... Women often change their mind, and do not want to press charges.”<sup>30</sup>

One Hungarian study on official responses to domestic violence found many cases in which the police refused to pursue investigations on the grounds that the woman’s complaint provided an insufficient basis for arresting the suspect.<sup>31</sup> The police appeared to reach this conclusion simply because they did not believe the complainant. Such a response “strengthens the position of the battering partner when he claims that his wife was interested in making false reports to speed up their divorce”, the study found. In other cases, officers said that everything was quiet by the time they reached the scene, and that, in the presence of the abusive partner, the woman had told them she was to blame.

The police often advise women seeking to report sexual crimes that they will be unable to prove their case, are facing a very difficult and exhausting process, and should not expose themselves to a court procedure, according to the Habeas Corpus Working Party. “There are times when women report and nothing is recorded. This is why we suggest that women should submit a written report,” Director Júlia Spronz told Amnesty International.<sup>32</sup> Statistics produced by the police and prosecution service do not show how many cases of rape and other sexual crimes were reported to the police, only cases that the police begin investigating.

The police department itself has said that women victims of domestic violence seldom report attacks and press charges, mostly because they fear their abuser and his associates, but also because of the financial implications for them and their children.<sup>33</sup> The police have also blamed the lack of resources made available to the police, for example an insufficient number of video cameras to record testimonies or crime scenes.

However, there appears to be a serious failure at the heart of the police service to appreciate the negative attitudes women face when reporting sexual crimes or in their dealings with police officers about such cases. Senior officers have revealed blatant prejudice in attempts to shift not only the responsibility for under-reporting but also for the crimes themselves to the victims.

A response to the criminalization of marital rape in 1997 by Lieutenant-Colonel Gyula Kovács, Deputy Director of the Investigation Department, voiced prejudices that still seem to define some officers’ thinking.<sup>34</sup> “It is especially significant to clarify to what extent the

<sup>30</sup> Interviews, January and February 2006.

<sup>31</sup> Katalin Parti, “Ügyészség, rendőrség, gyámhatóság - érintkezési pontok, problémák, hiányosságok a családon belüli erőszak kezelésében” (“Public prosecutors, police, court of guardians – points of contact, problems and deficiencies in the treatment of domestic violence”), *Ügyészek Lapja*, 2002/5.

<sup>32</sup> Interview, 15 December 2005.

<sup>33</sup> *Report on the activity of the police in the field of domestic violence in 2004*, [http://www.orfk.hu/megelozes/bunmegelozes/aldozatvedelem/csalad\\_eroszak.html](http://www.orfk.hu/megelozes/bunmegelozes/aldozatvedelem/csalad_eroszak.html)

<sup>34</sup> Gyula Kovács, “Az erőszakos közösülés bizonyítási problémái az 1997. évi LXXIII. Törvény módosítását követően” (“The difficulties of proving rape after the modification of Act LXXIII in 1997”). *Belügyi Szemle*, 2000/4-5, pp. 39-60, posted on the National Police Headquarters website in September 2005, [http://www.orfk.hu/elemzesek/jogalkotas/ero\\_kozosules.html?pagenum=1](http://www.orfk.hu/elemzesek/jogalkotas/ero_kozosules.html?pagenum=1).

provocative behaviour of the offended party influenced the realization of the crime”, the article suggested. It went on to say, “We have to take into consideration the fact that there are relatively many unsubstantiated reports concerning rape”, without providing any data to substantiate the statement. It concluded that it is almost impossible to prove rape within marriage, that its criminalization puts a weapon in women’s hands, and that it should not have been made a criminal offence in the absence of evidence of its prevalence.

A police expert on rape issues greeted Amnesty International’s representative in 2006 with the words: “Are you the one who has come to talk about the birds brought in here who say they have been raped?... At least 85 per cent of them are whores. They want to have sex, but then do not manage to come to an agreement. They are prostitutes, overtly or secretly. An expert can see this.”<sup>35</sup> He said men’s “instincts cannot be restrained, as they are all natural, related to race preservation”, and that rape – especially gang rape – cannot be proved. He joked that he had raped his wife at least five times, “as happens in every good marriage.”

Such bigotry is compounded by police fears of unsuccessful prosecutions for rape, and possibly even of legal action against the police by acquitted perpetrators, according to Judit Wirth, a leading member of the non-governmental NANE Women’s Rights Association, which has run training sessions for the Hungarian police. She dismisses police arguments of insufficient evidence. “First of all, there are perpetrators who do not even deny it, as they think they have the right to do this... It is also a matter of questioning. They often say that the trouble is that there’s one person who states something and the other one denies it. They would never say such a thing about counterfeiting.” However, it is not only the police that are at fault, she says. “They cannot do it right if they are opposed by the laws, the Parliament, the Constitutional Court, the government, the courts and the Public Prosecutor’s Office, as well as the perpetrator... People’s way of thinking must be changed.”<sup>36</sup>

### **Prejudice in the courts**

In one case involving the gang rape and torture of a woman with a mental illness, two men were respectively acquitted and had their sentence reduced on appeal. The court ruled as relevant that the woman had allegedly admitted to working as a prostitute in the past.

*Dóra was in her late 20s and everybody in the village knew that she was on medication after being diagnosed with schizophrenia. After a birthday party, several young men raped and tortured her: they tied her up, forced a stick and a bottle into her vagina, and urinated on her. Medical examination found bruising all over her body, a broken toe and evidence of post-traumatic stress disorder. The accused all blamed each other, and Dóra had to testify repeatedly in court. Her mother said: “Before this happened, she had been so well that it seemed possible that she would be allowed to stop taking her medication... During these three years [of court hearings], she has spent one and a half in hospital.” Although two men were sentenced to three*

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<sup>35</sup> Interview, 1 February 2006.

<sup>36</sup> Interview, 12 December 2005.

*years and six months respectively for acts of indecency, the appeal court ordered a retrial, at which the charge was reduced to slander. Two years later, one man was acquitted and the other fined. The court said that Dóra had admitted to working as a prostitute in the past, and “that this circumstance is relevant when considering her judgment by society.”<sup>37</sup>*

The International Criminal Court (ICC) applies the following principles in cases concerning victims and witnesses of sexual violence:

*“(a) Consent cannot be inferred by reason of any words or conduct of a victim where force, threat of force, coercion or taking advantage of a coercive environment undermined the victim’s ability to give voluntary and genuine consent;*

*(b) Consent cannot be inferred by reason of any words or conduct of a victim where the victim is incapable of giving genuine consent;*

*(c) Consent cannot be inferred by reason of the silence of, or lack of resistance by, a victim to the alleged sexual violence;*

*(d) Credibility, character or predisposition to sexual availability of a victim or witness cannot be inferred by reason of the sexual nature of the prior or subsequent conduct of a victim or witness.” (Rule 70 of the ICC Rules of Procedure and Evidence)*

Evidence of “the prior or subsequent sexual conduct of a victim or witness” in such cases is explicitly deemed inadmissible (Rule 71). The International Criminal Tribunal for the former Yugoslavia has ruled that the testimony of victims of sexual violence should not be subject to corroboration (Rule 96, Rules of Evidence and Procedure).<sup>38</sup>

## Unprotected witnesses

Criminal procedural law in Hungary fails to include proper provision for the protection of witnesses and victims from harassment by the defendant and others.

Under the Criminal Procedure Act, Act 19 of 1998, if the accused and witnesses, including the victim, make contradictory statements, they must be present for each other’s testimony and can question each other, both before the police and before the court (Article 124). Although such confrontation must be omitted if the defence of the witness makes this necessary (Article 124), one senior police officer told Amnesty International that in practice the victim always has to undergo this confrontation. There may be only one confrontation session, in front of the police, but in the vast majority of cases there is more than one because both sides maintain their accounts. “I found this quite useless and traumatizing when I worked as an investigator,” one police officer told Amnesty International.<sup>39</sup>

The trauma continues in court, where victims have to give evidence in the presence of the accused, especially if they have reason to fear reprisals

<sup>37</sup> Court records, 2004.

<sup>38</sup> See case of *Delalic Mucic et al*, IT-96-21 “Celebici Camp”.

<sup>39</sup> Interview, 24 January 2006.

*One 16-year-old girl, Eva, was not allowed to have her mother present while she reported a rape and was interviewed by the police. In 2003 the trial court acquitted the man charged with raping her, although it sentenced him to nine years' imprisonment for raping another woman and robbery. On appeal, the county court ordered a retrial of the charges relating to Eva. Although she had consistently said that she had been raped, at one hearing she had told the court that sex had been consensual. However, the court record showed that she was reluctant to answer questions, barely spoke and was incoherent, in contrast to her previous testimony before the court. Relatives and supporters of the accused were present in court that day. At the next hearing, she said that she had been threatened by the relatives at the entrance to the court, an allegation confirmed by a teacher who escorted her.<sup>40</sup>*

In another case, Lili was threatened by the accused during the court hearings. She told the court:

*"During the last hearing, when there were breaks, he talked to me several times in front of the room as he was walking out and I was waiting. He threatened me, saying that he would kill me when he gets out."<sup>41</sup>*

The Council of Europe has recommended member states to: "*where necessary, ensure that measures are taken to protect victims effectively against threats and possible acts of revenge*". (Committee of Ministers Recommendation (2002)5, 44, on the protection of women against violence)

## **4. Missing data and lack of support services**

The government fails to ensure there is statistical information and up-to-date research to form the basis of policy making and legislative reform in the area of sexual crimes. There is also a lack of training to address common misconceptions about the role of women which block access to professional support and treatment.

### **Lack of data and statistics**

Some statistics are produced by the police and prosecution service about rape and other crimes of sexual or domestic violence. However, these show only the number of cases that the police started to investigate. The number of complaints made to the police is not recorded – including those dismissed without investigation. It is therefore unclear how many cases were not investigated because a victim decided not to press charges or because the police decided there was insufficient evidence to prosecute.

Nor does the police and prosecution service conduct or commission research into the reasons for low levels of reporting to the police and prosecutions; into the experiences of girls

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<sup>40</sup> Court records, 2004.

<sup>41</sup> Bill of indictment, court records, 2001.

and women who press charges against rapists; or into the state's responsibilities under international human rights law. Only with full documentation about these crimes and how they are currently combated can the government formulate policies and action plans to combat them effectively.

The Council of Europe calls for:

*"a. the preparation of statistics sorted by gender, integrated statistics and common indicators in order to better evaluate the scale of violence against women*

*b. the medium and long-term consequences of assaults on victims*

*c. the consequences on those who are witness to it, inter alia, within the family*

*d. the health, social and economic costs of violence against women*

*e. the assessment of the efficiency of the judiciary and legal systems in combating violence against women*

*f. the causes of violence against women, i.e. the reasons which cause men to be violent and the reasons why society condones such violence*

*g. elaboration of criteria for benchmarking in the field of violence."*

(Committee of Ministers Recommendation (2002)5 on the protection of women against violence, Appendix Article 5(a)).

The Committee on the Elimination of All Forms of Discrimination against Women recommends that "States should encourage the compilation of statistics and research on the extent, causes and effects of violence, and on the effectiveness of measures to prevent and deal with violence" (General Recommendation 19, paragraph 24 c).

## The need for specialist training

Many of the professionals dealing with cases of rape and other crimes of sexual violence against women are not specialists in such work. Sometimes they betray prejudices about the role of women that are clearly prejudicial to a successful prosecution of the perpetrators of violence against women.

A Hungarian study on responses by officials to domestic violence found that they often shared the view that victims contributed to the violence against them.<sup>42</sup> In one case example in the study, a woman reported that a judicial psychologist had scolded her and attempted to force her to meet her husband, despite her reluctance because he had beaten her and the children. The psychologist had also made clear his disapproval of their forthcoming divorce.

There is an urgent need for specialist training for law enforcement personnel, prosecutors, forensic experts and judges to ensure that the criminal justice system effectively responds to and investigates reports of sexual and intimate partner violence, vigorously prosecutes cases, and appropriately sentences convicted perpetrators. Incompetent, abusive or doubting attitudes from those working in the criminal justice system are seen by women who have experienced rape as a continuation of abuse.

<sup>42</sup> Katalin Parti, "Ügyészség, rendőrség, gyámhatóság - érintkezési pontok, problémák, hiányosságok a családon belüli erőszak kezelésében" ("Public prosecutors, police, court of guardians - points of contact, problems and deficiencies in the treatment of domestic violence"), *Ügyészek Lapja*, 2002/5.

The Council of Europe recommends that member states should:

- “8. include in the basic training programmes of members of the police force, judicial personnel and the medical and social fields, elements concerning the treatment of domestic violence as well as all other forms of violence affecting women;*
- 9. include in the vocational training programmes of these personnel, information and training so as to give the means to detect and manage crisis situations and improve the manner in which victims are received, listened to and counselled;*
- 10. encourage the participation of these personnel in specialised training programmes, by integrating the latter in a merit-awarding scheme;*
- 11. encourage the inclusion of questions concerning violence against women in the training of judges;*
- 12. encourage self-regulating professions, such as therapists, to develop strategies against sexual abuse which could be committed by persons in positions of authority.”*
- (Committee of Ministers Recommendation (2002)5)

Major Péter Fekete, Deputy Head of the Crime Prevention Department of the Pest County Central Police Station, told Amnesty International that 240 officers throughout Hungary had received professional training in 2004, followed in 2005 by a further 80 officers who record complaints and those responsible for the defence of victims.<sup>43</sup> However, there was a serious lack of funding for such training.

Appropriate levels of funding for the infrastructure of the criminal justice system, and for services and support to survivors, are an important measure of the government’s commitment to planning how to address violence against women and implementing those plans.

The Declaration on the Elimination of Violence against Women calls on states to: “Include in government budgets adequate resources for their activities related to the elimination of violence against women.” (Article 4 h).

## **Lack of support and services**

There is a lack of professional help, advice and treatment available for the survivors of sexual crimes in Hungary.

György Virág, Managing Director of the Foundation for the Rehabilitation of the Victims of Violent Sexual Attack (ESZTER Foundation), told Amnesty International that, while the police had made positive changes, the rest of the criminal justice system was lagging behind. Prosecutors, judges and medical professionals still receive no training in this field, and women affected by crimes of sexual or domestic violence receive no support services. “Victims/survivors of violence against women need professional help and complex services from social workers, psychological and legal aid”, he said.<sup>44</sup>

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<sup>43</sup> Interview, 24 January 2006.

<sup>44</sup> Interview, 2 February 2006.

*Three young men were convicted and sentenced to prison terms for gang raping and sexually abusing Zsuzsa in 2005. She had known one of them, a university student, spent an evening with him in a bar, and had gone with him to the apartment of a friend of his where he and two others assaulted her. She was allowed to leave in the morning. In severe pain, before reporting to the police, she went with her sister-in-law to a gynaecologist. Although the sister-in-law informed an assistant what had happened, the doctor removed a tampon that had been forced up into Zsuzsa's cervix by the rapes without asking any questions. The police later took Zsuzsa to be examined by another gynaecologist, who reported in detail on her internal injuries. Subsequently in court, the differences between the reports of the two medical examinations were highlighted during questioning. The first doctor who had seen her said that he did not remember the case.<sup>45</sup>*

In Hungary, forensic examinations of women who have been raped or sexually assaulted are performed by gynaecologists in hospitals, not by a specially trained medico-legal examiner or health care provider. Hungary lacks specialist centres that can provide both treatment for the survivors of sexual assaults and meet criminal justice requirements with respect to the collection of forensic evidence. The failure to provide such services denies women justice because of delays in locating a forensic examiner, inconsistency in standards of evidence gathering, and the absence of medical follow-up. It also directly contributes to low levels of reporting of rape because of the intimidating and unsympathetic environment in which forensic examinations often take place, the low likelihood of being examined by a female forensic examiner and the lack of support services.

Studies have shown that a specialist, less institutional, service, which can provide sensitive and professional care, reduces the trauma experienced by women already feeling humiliated and degraded, and accords a higher priority to their welfare and dignity.<sup>46</sup> They have concluded that women should have the option of being examined by a female examiner, in privacy, and should have only one, prompt examination, which would combine medical treatment with the gathering of evidence. They should be offered medical follow-up and counselling, and services to assist their recovery.

*“Victims of sexual assault require comprehensive, gender-sensitive health services in order to cope with the physical and mental health consequences of their experience and to aid their recovery from an extremely distressing and traumatic event. The types of services that are needed include pregnancy testing, pregnancy prevention, abortion services, STI [sexually transmitted infection] testing and/or prophylaxis, treatment of injuries and psychosocial counselling... Treatment guidelines or protocols serve a number of valuable functions. They can help national health systems improve the quality of treatment and support provided to victims of sexual violence; standard protocols can guide the process of forensic evidence*

<sup>45</sup> Court records, 2004.

<sup>46</sup> Liz Kelly, *A Research Review on the Reporting, Investigation and Prosecution of Rape Cases*, Her Majesty's Crown Prosecution Service Inspectorate, London, 2002; Linda Regan, Jo Lovett and Liz Kelly, *Forensic nursing: An option for improving responses to reported rape and sexual assault*, Home Office Online Research Report 28/04, 2004, <http://www.homeoffice.gov.uk/rds/pdfs04/dpr31.pdf>.

*collection; they can be a useful educational tool for health care professionals.”* (World Health Organization, Guidelines for medico-legal care for victims of sexual violence, Geneva, 2003)

The World Health Organization highlights the importance of health workers in recognizing and responding appropriately to individual cases of sexual assault.<sup>47</sup> People who have experienced sexual violence often seek medical assistance, although they do not always disclose the cause of their injuries. Despite high levels of domestic violence worldwide, the characteristic response of healthcare institutions and other services in many countries is denial and a failure to register a high percentage of such cases, even where there is visible evidence such as black eyes or strangulation marks on the neck.<sup>48</sup>

Members of the Habeas Corpus Working Group told Amnesty International that doctors and psychologists in Hungary usually do not ask relevant questions when women seek medical care for injuries that could have resulted from domestic violence, even if the signs are clear. Their medical statements reflect only what the woman has told them. If she talks only about physical injuries, they will not ask whether she has been sexually assaulted as well.

In addition to providing immediate health care, the health sector could act as an important referral point for other services that the victim may later need, for example, social welfare and legal aid. Health workers are also well placed to collect and document the evidence necessary for corroborating the circumstances of the assault, and for identifying the perpetrator and the health consequences of the event. The use of evidence kits and standardized reporting forms by health service professionals would not only strengthen evidence gathering but also improve the treatment of victims.

The Council of Europe recommends that member states:

“23. ensure that victims, without any discrimination, receive immediate and comprehensive assistance provided by a coordinated, multi-disciplinary and professional effort, whether or not they lodge a complaint, including medical and forensic medical examination and treatment, together with post-traumatic psychological and social support as well as legal assistance; this should be provided on a confidential basis, free of charge and be available around the clock;

25. take all the necessary measures in order to ensure that collection of forensic evidence and information is carried out according to standardised protocol and forms;

26. provide documentation particularly geared to victims, informing them in a clear and comprehensible manner of their rights, the service they have received and the actions they could envisage to take, regardless of whether they are lodging a complaint or not, as well as of their possibilities to continue to receive psychological, medical and social support and legal assistance;

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<sup>47</sup> World Health Organization, *Guidelines for medico-legal care for victims of sexual violence*, 2003.

<sup>48</sup> Unpublished summary by Anna Betlen, participant at the 6<sup>th</sup> Expert Meeting of the European Network on Conflict, Gender and Violence, Vienna, 11-13 October 2001, of a presentation by Patrizia Romito, University of Trieste, Department of Psychology.

27. promote cooperation between the police, health and social services and the judiciary system in order to ensure such coordinated actions and encourage and support the establishment of a collaborative network of NGOs;

28. encourage the establishment of emergency services such as anonymous, free of charge telephone help lines for victims of violence and/or persons confronted or threatened by situations of violence; regularly monitor calls and evaluate the data obtained from the assistance provided with due respect for data protection standards;

29. ensure that the police and other law-enforcement bodies receive, treat and counsel victims in an appropriate manner, based on respect for human beings and dignity, and handle complaints confidentially; victims should be heard without delay by specially trained staff in premises that are designed to establish a relationship of confidence between the victim and the police officer and ensure, as far as possible, that the victims of violence have the possibility to be heard by a female officer should they so wish;

30. to this end, take steps to increase the number of female police officers at all levels of responsibility;

33. take all necessary measures to ensure that none of the victims suffer secondary (re)victimisation or any gender-insensitive treatment by the police, health and social personnel responsible for assistance, as well as by judiciary personnel.”

(Committee of Ministers Recommendation (2002)5 on the protection of women against violence)

## 5. Prejudice and stigma

The police repeatedly cite the low number of women who report rape and other sexual crimes or press charges against abusers, and ascribe an economic motivation to women's failure to report intimate partners in domestic violence cases. However, they usually fail to explore why the numbers are so low or look in depth at the reasons.

The reasons why women do not report such crimes are complex and diverse. Typically, the reasons women give are their fear of retribution from the abuser and his associates, the stigma and ridicule they fear from their community, and their lack of confidence in the officials in the criminal justice system and health services.

Other factors reflect profound attitudes towards women and sex, including among women. One survey in Hungary found that only 2.2 per cent of the women surveyed said they had been raped.<sup>49</sup> Another 7.6 per cent said their husband or partner had forced them to have sex, but they did not identify the forced sex as rape. Of the women interviewed, 35 per cent believed that women were responsible for becoming victims of rape.

In a public opinion poll of nearly 1,200 people in 2006, a total of 62 per cent did not know that marital rape was a crime: over 41 per cent of men and nearly 56 per cent of women thought it was not punishable as a crime in Hungarian law, and nearly 12 per cent did not

<sup>49</sup> Olga Tóth, *Erőszak a családban* (“Domestic Violence”), TÁRKI Social Research Center, 1999.

know.<sup>50</sup> In the same poll, over 32 per cent believed women too were responsible for being raped (nearly 40 per cent of men and over 25 per cent of women).

When marital rape was criminalized in 1997, many counterarguments were heard in parliamentary debates and the media. People voiced their worries about how the new legislation would be implemented when it came into force.<sup>51</sup> A general misconception, that marital rape happens occasionally in ordinary marriages when men want to have sex and express what they want too forcefully, is not borne out by evidence from victims of marital rape or in the findings of research. Marital rape is not about sex but power, and is usually to be found in relationships in which other forms of abuse are present. “Jokes” about women wanting to be raped reflect a common denial of the realities of violence, and there are widespread expectations that women should be willing to have sex whenever their partner wants it.

Women fear being stigmatized and blamed if family, friends or partners learn that they have been abused within an intimate relationship or raped.

*“He began to beat me on the day of our wedding... When I gave birth to our child and went home from the hospital, he raped me: I had plastic surgery because of my injuries. I did not want to have sex with him after this... I did not tell this to anyone for a long time... I had to talk about being raped during the court hearings, and this is how my current partner found out that this had happened to me earlier. I was so ashamed. I didn’t want him to hear this. I was afraid people would condemn me for this.”<sup>52</sup>*

Women often think, rightly, that people will not believe that an educated or successful man can rape or abuse his partner.

*“Nobody could see it. He had two diplomas. Whenever I asked for help, people said that my husband was so intelligent and earned so much... The psychologist also said that I should find a compromise and bear everything.”<sup>53</sup>*

Women may fear further attack if they take any action to end the abuse. Even if they own the property they live in, their partner may refuse to leave the home, and the police may be reluctant to assist unless there is evidence of serious injury. They may feel forced to put up with the abuse in silence. As one daughter said of her battered mother:

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<sup>50</sup> MEDIÁN Közvélemény- és Piackutató Intézet (MEDIÁN Public Opinion Poll and Market Research Institution), 2006. Unpublished data provided to Amnesty International.

<sup>51</sup> See, for example, Gyula Kovács, “Az erőszakos közösülés” (“Rape”), *Magyar Rendészet*, 2000/1.

<sup>52</sup> Dorottya Rédei, Réka Sáfrány, Herta Tóth, *Családon belüli erőszak és bűnelkövetés: A családon belüli erőszak jelenségének kutatása női és férfi fogvatartottak körében*. (“Domestic violence and committing crimes: A research on domestic violence among female and male prisoners.”), Foundation for the Women of Hungary, 2005, p. 23.

<sup>53</sup> Henrietta Nagy, *Holtomiglan? A családon belüli erőszak* (“Till my death? About domestic violence”), Tanítómester Kft., 2005, p. 79.

*“In the end, if she wanted to live in peace for a few days, she did not resist him. He raped her. He used to humiliate her, not only physically but psychologically, too.”<sup>54</sup>*

That silence may result from economic dependency as well as on physical fear of the abusive partner. Unemployment rates are especially high in rural areas and among mothers with very young children.

*In 2004, Maria’s husband was sentenced to three years and four months in prison for raping her, for endangering their children who had witnessed these acts, for violating the privacy of his mother-in-law’s house and for assault. Both Maria and her mother were afraid of her husband, and Maria was also anxious that she would not be able to support the family. Maria’s mother denied any knowledge of her daughter being abused, although one of the children said that after the beatings they usually escaped from home and went to their grandmother’s apartment with their mother. Maria asked for a light punishment for her husband, “so that the unity of the family can be restored as soon as possible.”<sup>55</sup>*

Fear of what can be expected from the police deters other women from making even an initial contact with the police in similar circumstances. Women with disabilities or whose first language is not Hungarian may face particular difficulties in communicating what has happened to them to the authorities.

The Council of Europe recommends that states should:

*“13. Organize awareness-raising campaigns on male violence towards women, stressing that men should be responsible for their acts and encouraging them to analyse and dismantle mechanisms of violence and to adopt different behaviour.”*

(Committee of Ministers on the protection of women against violence, Recommendation (2002)5)

## 6. Recommendations

Amnesty International calls on the Hungarian government to:

### Reform the law

- Amend the Penal Code (Articles 197, 198) to define rape and other crimes of sexual violence as crimes against a person’s physical, psychological or sexual freedom and integrity, and not as crimes against sexual morality.
- Amend the Penal Code (Articles 197, 198) to reflect rights to sexual autonomy and physical integrity by requiring proof of consent or “free agreement”, not proof of physical resistance, as the basis for establishing rape and other crimes of sexual violence. The Code should set out a non-exhaustive list of examples illustrating situations in which

<sup>54</sup> Henrietta Nagy, *Holtomiglan? A családon belüli erőszak* (“Till my death? About domestic violence.”) Tanítómester Kft., 2005, p. 139.

<sup>55</sup> Court records, 2004.

consent or free agreement is not present, such as when a person submits to rape for fear of serious harm or because they are too affected by alcohol.

### **Deliver justice and effective redress**

- Review, evaluate and implement the law, procedures and guidelines for police investigations of crimes – in particular with regard to the initial response, the recording and follow-up of complaints (including those that are withdrawn), evidence gathering, forensic examination, the taking of statements, and the interview or arrest of suspects – to ensure that they are applied as rigorously in cases of rape, other crimes of sexual violence and domestic violence as in those of other serious crimes against the person.
- Set up special centres, for example rape crisis centres or sexual assault referral centres, to deliver quality forensic practice for the purposes of effective investigation as well as support and services for the complainant (see below). Such centres could be based in hospitals.
- Establish effective mechanisms that allow the police to take prompt action against the perpetrators of crimes of sexual and domestic violence, for example in issuing and implementing court control orders and in setting up witness protection programmes aimed at safeguarding survivors and witnesses of rape, other crimes of sexual violence and domestic violence from threats or reprisals before, during and after criminal proceedings.
- Allocate cases of rape, other crimes of sexual violence and domestic violence to specially trained prosecutors.
- Ensure effective control of the court building and court room during a trial to protect witnesses, including the victim, from threats and intimidation. Measures such as the presence of a support person, or the introduction of screens to enable witnesses, including the victim, from seeing the accused or the public while giving evidence, should be considered.
- Ensure prompt, thorough, independent and impartial investigations are carried out into all allegations of police failures to investigate properly rape and other crimes of sexual violence. Police and government officials who fail to carry out their legal duty to protect women and prevent violence when clearly required to do so should be brought to justice.
- Establish specialist treatment programmes for the perpetrators of rape, other crimes of sexual violence and domestic violence, involving professionals and civil society organizations with expertise on violence against women and domestic violence, with the aim of preventing recurrence.

### **Strengthen professional standards and training**

- Collect data and publish statistical information about rape, other crimes of sexual violence and domestic violence, in particular on:

- the prevalence of these crimes
- the number of complaints lodged with the police – including those dismissed without investigation – and the number of complaints withdrawn by complainants and investigations dropped by the police or prosecution before they come to court
- the number of complaints that result in prosecutions
- Conduct or commission research into:
  - the reasons for low levels of reporting to the police, prosecutions or convictions
  - the experiences of girls and women who press charges against rapists
  - examples of best practice so that the state can fulfil its obligations to prevent crimes of rape, other crimes of sexual violence and domestic violence, prosecute perpetrators and provide protection for victims in line with international standards.
- Such research should form the basis for relevant policy, legislative and training initiatives
- Translate, disseminate and include in the training of health care professionals the 2003 *Guidelines for medico-legal care for victims of sexual violence* produced by the World Health Organization.
- Provide and fund specialized training and guidelines for police, judges, prosecutors, defence lawyers, and others involved in dealing with women survivors of rape, other sexual crimes and domestic violence. Such training and guidelines should involve professionals and civil society organizations with expertise on violence against women and domestic violence, and should cover:
  - the nature of violence against women, particularly in relation to these crimes, in order to eliminate prejudices and stereotyping about both victims and perpetrators
  - effective investigations and prosecutions and sentencing guidelines to ensure that perpetrators are given sentences commensurate with the crime
- Raise the standard of forensic examinations and medical treatment of survivors of rape, other crimes of sexual violence and domestic violence by introducing standards and protocols based on best practice for the gathering of evidence by health care professionals, including the use of evidence kits.
- Support for victims that includes the collection of evidence without pressure to proceed with or drop the complaint; avoidance of procedures and practices during investigation and trial which re-traumatise victims and lead to a reluctance to proceed with the case
- Promote the access of victims to be examined by female forensic practitioners
- Ensure witness protection programmes provide witness protection before, during and after criminal proceedings, which includes the issuing and implementation of court orders to protect complainants and witnesses

- Integrate a gender perspective throughout the criminal justice system

### **Provide support and services for survivors**

- Ensure that police investigating cases of rape, other sexual crimes and domestic violence, when they arrive at the scene, inform the victim about support services available, including shelters and crisis centres. Such information should be given in private and not in the presence of the abuser, and regardless of whether the victim has asked for information.
- Set up special centres, for example rape crisis centres or sexual assault referral centres, to deliver support and services for the complainant – such as appropriate medical treatment including psychological care, crisis intervention, advocacy and legal counselling – as well as quality forensic practice for the purposes of effective investigation (see above). Such centres could be based in hospitals.
- Provide and fund specialized training and guidelines for health care, social workers and others involved in providing services to women survivors of rape, other sexual crimes and domestic violence. Such training and guidelines should involve professionals and civil society organizations with expertise on violence against women and domestic violence, and should cover:
  - the nature of violence against women, particularly in relation to these crimes
  - social prejudices about violence against women
  - advice on available services including shelters, medical and other support services, and legal services
- Ensure professional support, including psychological support, to the survivors of rape, other crimes of sexual violence and domestic violence, who are providing evidence to the police or in criminal proceedings.
- Provide and fund shelters for women escaping rape and sexual violence in the home, and ensure that women at risk of these crimes have security of tenure for themselves and their children in the homes they have shared with abusive partners.

### **Public information and education**

- Organize and fund public education campaigns on the right of women to live free from violence, showing that rape is and other forms of violence are a manifestation of unequal power relations between men and women, which have led to domination over and discrimination against women by men.
- In cooperation with health workers and civil society organizations, prepare and distribute education materials and information about available services for survivors of rape, other crimes of sexual violence and domestic violence.

- Include education about equality and mutual respect between the sexes, and the prevention of violence against women, in primary and secondary school curricula.